

ORIGINAL

DOCKET NO. 980500-PU

CERTIFICATION OF  
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES  
FILED WITH THE  
DEPARTMENT OF STATE

FILED  
92 APR 13 AM 10:39  
STATE DEPARTMENT

I do hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

(2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and:

(a) Are filed not more than 90 days after the notice;  
or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending;  
APP \_\_\_\_\_ or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment o

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG \_\_\_\_\_  
LIN \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_  
SEL 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

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the final public hearing on the rule; or

✓/ (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

✓/ (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

✓/ (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

✓/ (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

✓/ (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-22.001  
25-22.002  
25-22.003  
25-22.004  
25-22.005  
25-22.008  
25-22.012  
25-22.013  
25-22.014  
25-22.015  
25-22.016  
25-22.017  
25-22.018  
25-22.020  
25-22.021  
25-22.022  
25-22.025  
25-22.026  
25-22.028  
25-22.029  
25-22.034  
25-22.035  
25-22.0355  
25-22.036  
25-22.037  
25-22.0375  
25-22.038  
25-22.0405  
25-22.0406  
25-22.0407  
25-22.041  
25-22.042  
25-22.045  
25-22.046  
25-22.048  
25-22.049  
25-22.056  
25-22.059

Under the provision of subparagraph 120.54(3)(e)6., F.S.,  
the rules take effect 20 days from the date filed with the  
Department of State or a later date as set out below:

Effective: May 3, 1999  
(month) (day) (year)

Blanca S. Bayó  
BLANCA S. BAYÓ, Director  
Division of Records & Reporting

51  
Number of Pages Certified

(S E A L)

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TALLAHASSEE, FLORIDA  
STATE ARCHIVES

1 CHAPTER 25-22  
2 RULES GOVERNING PRACTICE AND PROCEDURE  
3 PART I GENERAL PROVISIONS  
4 25-22.001 Notice of Meeting or Workshop.

5 ~~(1) Except in the case of emergency meetings the Commission~~  
6 ~~shall give at least seven (7) days' public notice of any meeting~~  
7 ~~or workshop by publication in the Florida Administrative Weekly.~~

8 ~~(2) The Commission shall use the following form in providing~~  
9 ~~notice of the meeting or workshop.~~

10 ~~NOTICE OF PUBLIC MEETING OR WORKSHOP~~

11 ~~The Florida Public Service Commission announces a public meeting~~  
12 ~~or workshop to which all persons are invited.~~

13 ~~DATE AND TIME: \_\_\_\_\_~~

14 ~~PLACE: \_\_\_\_\_~~

15 ~~PURPOSE: \_\_\_\_\_~~

16 ~~A copy of the agenda for any public meeting may be obtained by~~  
17 ~~writing to the Division of Records and Reporting at 2540 Shumard~~  
18 ~~Oak Boulevard, Tallahassee, Florida 32399-0850.~~

19 ~~(1)(3)~~ A public meeting, for the purposes of notice in Rule  
20 28-102.001, F.A.C. herein, is limited to a gathering of  
21 Commissioners for the purpose of conducting public business. The  
22 term meeting includes Agenda Conference.

23 ~~(2)(4)~~ A workshop, for the purposes of notice in Rule 28-  
24 102.001, F.A.C., is a gathering where Commissioners may be  
25 present or Commission staff or person(s) designated by the

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1 | commission are meeting with interested persons for a specific  
2 | purpose as designated in the notice. The term workshop includes  
3 | gatherings for the specific purpose of rule drafting at which  
4 | time no official votes are taken or policy adopted.

5 | Specific Authority: 350.127(2) ~~120-53~~, F.S.

6 | Law Implemented: 120.525, ~~120-53~~, F.S.

7 | History--New 12/21/81, Formerly 25-22.01, Amended.

8 | 25-22.002 Agenda of Meetings.

9 | ~~(1) The agenda for meetings shall be prepared by the~~  
10 | ~~Commission in time to insure that a copy may be received at least~~  
11 | ~~seven (7) days before the meeting by any person in the State who~~  
12 | ~~has requested a copy and pays \$1.00 per copy.~~

13 | ~~(2) The agenda shall list and specify the items to be~~  
14 | ~~considered at the meeting.~~

15 | ~~(3) For good cause stated on the record, the person~~  
16 | ~~designated to preside may make specific changes in the agenda~~  
17 | ~~after it has been made available for distribution. A majority~~  
18 | ~~vote of a quorum of the Commission is required to modify the~~  
19 | ~~presiding officer's decision to make a specific change in the~~  
20 | ~~agenda.~~

21 | ~~(4) Copies of staff recommendations for items on the agenda~~  
22 | ~~may be obtained from the Division of Records and Reporting upon~~  
23 | ~~request and the payment of the applicable copying fee. Parties to~~  
24 | ~~a proceeding are entitled to one copy of the staff recommendation~~  
25 | ~~filed in the proceeding at no cost.~~

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1 Specific Authority: 350.127(2) ~~120.53~~, F.S.  
2 Law Implemented: 120.525, ~~120.53~~, F.S.  
3 History--New 12/21/81, Formerly 25-22.02, Amended 4/18/94, \_\_\_\_\_.  
4 25-22.003 Emergency Meeting.  
5 Specific Authority: 120.53, F.S.  
6 Law Implemented: 120.53, F.S.  
7 History--New 12/21/81, Formerly 25-22.03, Repealed \_\_\_\_\_.  
8 25-22.004 Commission Forms.  
9 Specific Authority: 120.53(1)(b), F.S.  
10 Law Implemented: 120.53(1)(b), F.S.  
11 History--New 6/7/84, Formerly 25-22.04, Amended 4/16/90, 8/21/90,  
12 8/21/90, Repealed \_\_\_\_\_.  
13 25-22.005 Noticing Address Files.  
14 Specific Authority: 120.53, F.S.  
15 Law Implemented: 120.53, F.S.  
16 History--New 8/21/84, Formerly 25-22.05, Amended 7/11/96,  
17 Repealed \_\_\_\_\_.  
18 25-22.008 Practitioners.  
19 Specific Authority: 120.53, F.S.  
20 Law Implemented: 120.53, F.S.  
21 History--New 9/24/81, Formerly 25-22.08, Amended 3/21/94,  
22 Repealed \_\_\_\_\_.  
23 PART II RULEMAKING PROCEEDINGS  
24 25-22.012 Petitions to Initiate Rulemaking Proceedings.  
25 Specific Authority: 120.53, F.S.

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1 Law Implemented: 120.53, F.S.  
2 History--New 12/21/81, Formerly 25-22.12, Repealed .  
3 25-22.013 Commission Action on Petitions to Initiate Rulemaking  
4 Proceedings.  
5 Specific Authority: 120.53, F.S.  
6 Law Implemented: 120.53, F.S.  
7 History--New 12/21/81, Formerly 25-22.13, Repealed .  
8 25-22.014 Rulemaking Materials.  
9 Specific Authority: 120.53, F.S.  
10 Law Implemented: 120.53, F.S.  
11 History--New 12/21/81, Formerly 25-22.14, Repealed .  
12 25-22.015 Rulemaking Proceeding -- No Hearing.  
13 Specific Authority: 120.53, F.S.  
14 Law Implemented: 120.53, F.S.  
15 History--New 12/21/81, Formerly 25-22.15, Repealed .  
16 25-22.016 Rulemaking Proceeding -- Hearing.  
17 Specific Authority: 120.53, F.S.  
18 Law Implemented: 120.53, F.S.  
19 History--New 12/21/81, Amended 10/23/83, Formerly 25-22.16,  
20 Repealed .  
21 25-22.017 Rulemaking Proceeding -- Adoption.  
22 (1) No Change.  
23 (2) Oral argument and petitions for reconsideration are not  
24 appropriate to the rulemaking process. However, any interested  
25 person may petition the Commission after a rule is adopted or

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1 amended, for initiation of rulemaking proceedings pursuant to  
2 Rule ~~28-103.006~~ ~~25-22.012~~, to amend or otherwise modify the  
3 adopted rule or amendment.

4 ~~(3) Where a variance from a rule is requested, the~~  
5 ~~Commission shall treat the request as a petition for a § 120.57,~~  
6 ~~F.S., hearing. Unless waived by all parties, the provisions of §~~  
7 ~~120.57(1), F.S., and Part IV of these rules shall apply whenever~~  
8 ~~the proceeding involves a disputed issue of material fact, in~~  
9 ~~cases where the provisions of § 120.57(1), F.S., do not apply,~~  
10 ~~the provisions of § 120.57(2), (3), F.S., shall be followed.~~

11 Specific Authority: ~~350.127(2)~~ ~~120.53~~, F.S.

12 Law Implemented: ~~120.525, 120.54(3)~~ ~~120.53~~, F.S.

13 History--New 12/21/81, Amended 10/25/83, Formerly 25-22.17,

14 Amended.

15 25-22.018 Emergency Rule Adoption.

16 Specific Authority: 120.53, F.S.

17 Law Implemented: 120.53, F.S.

18 History--New 12/21/81, Formerly 25-22.18, Repealed.

19 PART III DECLARATORY STATEMENTS

20 25-22.020 General.

21 Specific Authority: 120.53, F.S.

22 Law Implemented: 120.53, F.S.

23 History--New 12/21/81, Formerly 25-22.20, Repealed.

24 25-22.021 Purpose and Use of Declaratory Statement.

25 Specific Authority: 120.53, F.S.

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1 Law Implemented: 120.53, F.S.  
2 History--New 12/21/81, Formerly 25-22.21, Repealed.  
3 25-22.022 Disposition.  
4 Specific Authority: 120.53, F.S.  
5 Law Implemented: 120.53, F.S.  
6 History--New 12/20/81, Formerly 25-22.22, Repealed.  
7 **PART IV DECISIONS DETERMINING SUBSTANTIAL INTERESTS**  
8 **Subpart A General Provisions**  
9 25-22.025 Scope and Title of Rules.  
10 Specific Authority: 120.53, F.S.  
11 Law Implemented: 120.53, F.S.  
12 History--New 12/21/81, Formerly 25-22.25, Repealed.  
13 25-22.026 Parties.  
14 Specific Authority: 120.53, F.S.  
15 Law Implemented: 120.53, F.S.  
16 History--New 12/21/81, Formerly 25-22.26, Amended 8/25/91,  
17 Repealed.  
18 25-22.028 Filing, Number of Copies Service of Documents, and  
19 Computation of Time.  
20 (1) Filing. Filing shall be accomplished by submitting the  
21 original document and the appropriate number of copies, as  
22 provided by rule, to the Division of Records and Reporting  
23 (Division). Filing may be made by U.S. Mail, hand delivery, or  
24 courier service. Filings on behalf of companies with gross  
25 annual operating revenues derived from intrastate business in

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1 | excess of \$750,000, Class A water and sewer utilities, and  
2 | parties to proceedings affecting these entities, shall also  
3 | include a copy of the document on diskette in word processing or  
4 | spreadsheet format, whichever is appropriate, when filing  
5 | documents capable of being generated by word processing or  
6 | spreadsheet software. Material for which a request for  
7 | confidential classification is pending under Rule 25-22.006,  
8 | Florida Administrative Code, should not be included in a diskette  
9 | copy. The diskette filing need not recreate document attachments  
10 | not originally generated for the purpose of filing with the  
11 | Commission, such as exhibits attached to a petition. The copy of  
12 | the document on diskette shall be filed within 1 working day of  
13 | the date the original printed document is filed. Information  
14 | about the word processing and spreadsheet software preferred by  
15 | the Commission may be obtained from the Director of the Division.  
16 | Each diskette shall be accompanied by a statement specifying the  
17 | density of the diskette, the operating system and the software  
18 | used to prepare the document on diskette. For purposes of the  
19 | requirement that copies of documents be filed on diskette,  
20 | "document" means all prehearing statements regardless of length,  
21 | and pleadings, post hearing statements of positions on issues or  
22 | briefs, proposed findings of fact and conclusions of law in  
23 | excess of 5 pages exclusive of the service list. ~~The prehearing~~  
24 | ~~officer assigned to the proceeding may grant exceptions to the~~  
25 | ~~requirement for filing documents on diskette on a case by case~~

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1 ~~basis, for good cause shown.~~ In case of a discrepancy between an  
2 original printed document that is filed and the document on  
3 diskette, the filed original document shall prevail. ~~Filing~~  
4 ~~shall be completed upon receipt by the Division, provided,~~  
5 ~~however, that during the course of a hearing before the~~  
6 ~~Commission or a panel thereof, the presiding chairman may accept~~  
7 ~~a document for filing and shall note the filing date and transmit~~  
8 ~~it to the Division.~~ If the filing is made with the presiding  
9 officer during the course of a hearing, as provided by Rule 28-  
10 106.104(1), in this situation the responsible party shall ensure  
11 that a copy of the document is submitted on diskette to the  
12 Division within 5 working days. ~~The date a document is submitted~~  
13 ~~for filing shall be noted by the person making the filing on the~~  
14 ~~first page of the document filed.~~ Where a document is served  
15 upon a party pursuant to these rules, its original and the  
16 appropriate copies, or, in the case of interrogatories or  
17 production of documents, a notice of service, shall be filed with  
18 the Division no later than 5 days after service.

19 (2) Number of Copies. The original and seven copies of all  
20 pleadings shall be submitted to the Division of Records and  
21 Reporting. However, initial pleadings for increases in rates,  
22 except rate increases by water and wastewater utilities, shall be  
23 filed with 20 copies. The requirement for filing 20 copies shall  
24 apply to all exhibits appended to the original petition, prepared  
25 testimony and exhibits, briefs and other supplemental data

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1 | requested by the Commission.

2 |       ~~(2) Service. A copy of all documents filed pursuant to these~~  
3 | ~~rules shall be served on each of the parties no later than the~~  
4 | ~~date of filing. In the event that the parties are so numerous~~  
5 | ~~that this requirement is onerous, the Commission on motion may~~  
6 | ~~limit the number of copies to be served. Service by mail shall be~~  
7 | ~~completed upon mailing.~~

8 | ~~—— (3) Method and Proof of Service.~~

9 | ~~—— (a) When service is required or permitted to be made upon a~~  
10 | ~~party represented by an attorney, service shall be made upon the~~  
11 | ~~attorney unless service upon the party is ordered by the~~  
12 | ~~Commission. Service on the attorney or party shall be made by~~  
13 | ~~hand delivery or by mail to the last known address. Delivery of a~~  
14 | ~~copy within this rule shall mean handing it to the attorney or to~~  
15 | ~~the party, or leaving it at the party's or attorney's usual~~  
16 | ~~office with the clerk or other person in charge, or if there is~~  
17 | ~~no one in charge, leaving it in a conspicuous place within the~~  
18 | ~~office, or if the office is closed, leaving it at the party's or~~  
19 | ~~attorney's usual place of abode with some person of the family~~  
20 | ~~above fifteen years of age and informing that person of the~~  
21 | ~~contents.~~

22 | ~~—— (b) When an attorney or a party certifies in substance:~~  
23 | ~~"I certify that a copy hereof has been furnished to (here insert~~  
24 | ~~name or names) by (delivery) (mail) this \_\_\_\_\_ day of~~  
25 | ~~\_\_\_\_\_, 19\_\_~~

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1 \_\_\_\_\_  
2 Signature<sup>a</sup>

3 ~~the certificate shall be taken as prima facie evidence of service~~  
4 ~~in compliance with this rule.~~

5 ~~— (4) Additional Time after Service by Mail. Whenever a party~~  
6 ~~is required or permitted to do an act within a prescribed time~~  
7 ~~after service of a document, and the document is served by mail,~~  
8 ~~five days shall be added to the prescribed time, except that~~  
9 ~~responses to notices pursuant to Sections 350.113, 364.335, and~~  
10 ~~367.045, F.S., shall be filed within the time specified by~~  
11 ~~statute. Any action required by a Commission order shall be~~  
12 ~~completed on the specified date, if any, in the order.~~

13 ~~— (5) Computation of Time. In computing any period of time~~  
14 ~~prescribed or allowed by these rules, by order of a presiding~~  
15 ~~officer, or by any applicable statute, the day of the act from~~  
16 ~~which the designated period of time begins to run shall not be~~  
17 ~~included. The last day of the period shall be included unless it~~  
18 ~~is a Saturday, Sunday or legal holiday in which event the period~~  
19 ~~shall run until the end of the next day which is neither a~~  
20 ~~Saturday, Sunday, or legal holiday. As used in these rules, legal~~  
21 ~~holiday means those days designated in § 110.117, F.S., and any~~  
22 ~~other day the Agency's offices are closed.~~

23 Specific Authority: 350.01(7), 350.127(2) ~~120.53~~, F.S.

24 Law Implemented: 120.569, 120.57 ~~120.53~~, F.S.

25 History--Formerly 25-2.58, Amended 10/21/81, Formerly 25-22.28.

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1 Amended 2/11/92, \_\_\_\_\_.

2 25-22.029 Point of Entry Into Proposed Agency Action Proceedings.

3 ~~(1) At any time subsequent to the initiation of a proceeding~~  
4 ~~before the Commission, the Commission may give notice of proposed~~  
5 ~~agency action. Proposed agency action shall be made upon a vote~~  
6 ~~of the Commission, and may be reflected in the form of an order~~  
7 ~~or a notice of intended action.~~

8 (1)(2) After agenda conference, the Division of Records and  
9 Reporting shall issue written notice of the proposed agency  
10 action (PAA), advising all parties of record that they have 21  
11 days after issuance of the notice in which to file a request for  
12 a § 120.569 or 120.57 hearing. ~~For good cause shown the~~  
13 ~~Commission may provide that~~ The time for requesting a § 120.569  
14 or 120.57 hearing shall be 14 days from issuance of the notice  
15 for PAA orders establishing a price index pursuant to section  
16 367.081(4)(a), F.S. The Commission will ~~may also serve copies of~~  
17 ~~its notice on interested persons and may~~ require a utility to  
18 serve written notice of the PAA on its customers if the  
19 Commission finds that it is necessary in order to afford adequate  
20 notice.

21 (2)(3) The Commission ~~may publish notice of its proposed~~  
22 ~~agency action in the Florida Administrative Weekly or newspapers~~  
23 ~~of general circulation in the area affected by its action and may~~  
24 will require a utility to publish notice of the decision in  
25 newspapers of general circulation in its service area if the

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1 Commission finds that is is necessary in order to afford adequate  
2 notice. Any such publication may be used in establishing the  
3 date of receiving notice.

4 ~~(3)(4)~~ One whose substantial interests may or will be  
5 affected by the Commission's proposed action may file a petition  
6 for a § 120.569 or 120.57 hearing, in the form provided by Rule  
7 28-106.201, F.A.C. 25-22.036. Any such petition shall be filed  
8 within the time stated in the notice issued pursuant to  
9 subsection ~~(1)(2)~~ of this rule. ~~However, when a person has not~~  
10 ~~been served notice of the decision and notice has been published,~~  
11 ~~such person may file a petition within 14 days after publication~~  
12 ~~of the notice.~~

13 ~~(5) Any person who receives notice and who fails to file a~~  
14 ~~timely request for a § 120.57 hearing shall have waived his or~~  
15 ~~her right to request a hearing on the decision.~~

16 ~~(6) In the absence of a timely request for a § 120.57~~  
17 ~~hearing, and unless otherwise provided by a Commission order, the~~  
18 ~~proposed action shall become effective upon the expiration of the~~  
19 ~~time within which to request a hearing.~~

20 Specific Authority: 350.01(7), 350.127(2) 420-53, F.S.

21 Law Implemented: 120.569, 120.57, 364.05, 366.06, 367.081,

22 367.081(4)(a), 367.0817 420-53, F.S.

23 History--New 12/21/81, Formerly 25-22.29, Amended 7/8/92,

24 \_\_\_\_\_

25 25-22.034 Discovery.

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1 Specific Authority: 120.53, F.S.  
2 Law Implemented: 120.53, F.S.  
3 History--New 12/21/81, Formerly 25-22.34, Repealed.  
4 25-22.035 Miscellaneous Matters.  
5 Specific Authority: 120.53, F.S.  
6 Law Implemented: 120.53, F.S.  
7 History--New 12/21/81, Formerly 25-22.35, 25-22.035, Repealed.  
8 25-22.0355 Assignment of Formal Proceedings.  
9 Specific Authority: 120.53, F.S.  
10 Law Implemented: 120.53, 120.57(1)(a), 350.01, 350.125, F.S.  
11 History: Transferred from 25-2.501 and Amended 12/21/81,  
12 9/20/83, formerly 25-22.355, Repealed.  
13 Subpart B Prehearing Procedures  
14 25-22.036 Initiation of Formal Proceedings.  
15 ~~(1) Applicability. This section shall apply to all §~~  
16 ~~120.57(1) and (2) hearings including a hearing requested by a~~  
17 ~~substantially affected person subsequent to proposed agency~~  
18 ~~action. This rule shall not apply to the extent that a proceeding~~  
19 ~~is governed by rules or statutes that prescribe alternative~~  
20 ~~procedures.~~  
21 ~~(2) Initial Pleading. The initial pleading shall be entitled~~  
22 ~~as either an application, petition, complaint, order, or notice,~~  
23 ~~as set forth in subsections (3), (4), (5), and (6). Where the~~  
24 ~~Commission has issued notice of proposed agency action, the~~  
25 ~~initial pleading shall be entitled "Petition on Proposed Agency~~

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1 Action.

2 (1)+3 Application. An application is appropriate when a  
3 person seeks authority from the Commission to engage in an  
4 activity subject to Commission jurisdiction.

5 ~~(4) Petition. A petition is appropriate when:~~

6 ~~— (a) A person subject to Commission jurisdiction seeks~~  
7 ~~authority to change its rates or service, or seeks some other~~  
8 ~~Commission action not otherwise specified in these rules; or~~

9 ~~— (b) A substantially affected person seeks Commission action~~  
10 ~~to change the rates or service of a person subject to Commission~~  
11 ~~jurisdiction, or seeks some other Commission action not otherwise~~  
12 ~~specified in these rules.~~

13 (2)+5 Complaints. A complaint is appropriate when a person  
14 complains of an act or omission by a person subject to Commission  
15 jurisdiction which affects the complainant's substantial  
16 interests and which is in violation of a statute enforced by the  
17 Commission, or of any Commission rule or order.

18 (3)+6 Orders and Notices. Upon its own motion, the  
19 Commission may issue an order or notice initiating a proceeding.  
20 Such order or notice shall be served upon all persons named  
21 therein. The Commission may also transmit notice of its action to  
22 other persons requesting such notice, and may publish such notice  
23 in appropriate newspapers of general circulation and the Florida  
24 Administrative Weekly.

25 (4)+7 Form and Content.

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1       ~~(a) Generally. Except for orders or notices issued by the~~  
2 ~~Commission, each initial pleading should contain:~~

3       ~~1. The name of the Commission and the Commission's docket~~  
4       ~~number, if known;~~

5       ~~2. The name and address of the applicant, complainant or~~  
6       ~~petitioners, and an explanation of how his or her~~  
7       ~~substantial interests will be or are affected by the~~  
8       ~~Commission determination;~~

9       ~~3. A statement of all known disputed issues of material~~  
10       ~~fact. If there are none, the petition must so indicate;~~

11       ~~4. A concise statement of the ultimate facts alleged, as~~  
12       ~~well as the rules and statutes which entitle the~~  
13       ~~petitioner to relief;~~

14       ~~5. A demand for relief; and~~

15       ~~6. Other information which the applicant, complainant or~~  
16       ~~petitioner contends is material.~~

17       (a)~~(b)~~ Application. An application shall be governed by the  
18 statute or rules applicable to applications for authority. In the  
19 absence of a specific form and content, the application shall  
20 conform to this rule.

21       (b)~~(c)~~ Complaint. Each complaint, in addition to the  
22 requirements of paragraph (a) above shall also contain:

23       1. The rule, order, or statute that has been violated;

24       2. The actions that constitute the violation;

25       3. The name and address of the person against whom the

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1 complaint is lodged;

2 4. The specific relief requested, including any penalty  
3 sought.

4 ~~(d) When a petitioner seeks relief against another person,~~  
5 ~~the petition shall include the name and address of the person~~  
6 ~~against whom relief is sought in addition to the requirements of~~  
7 ~~paragraph (a) of this subsection.~~

8 ~~(e) Petitions for rate relief shall conform to all~~  
9 ~~applicable rules and statutes as to form and content, in addition~~  
10 ~~to the requirements of paragraph (a) of this subsection.~~

11 ~~(f) Petition on Proposed Agency Action. When a petition is~~  
12 ~~filed in response to proposed agency action the petition shall~~  
13 ~~also contain a statement of when and how notice of the~~  
14 ~~Commission's proposed agency action was received.~~

15 ~~(8) Amendments. A petition, application or complaint may be~~  
16 ~~amended prior to the filing of a responsive pleading or the~~  
17 ~~designation of a presiding officer by filing and serving an~~  
18 ~~amended initial pleading in the manner prescribed for filing and~~  
19 ~~serving an original petition, application or complaint. The~~  
20 ~~petitioner, complainant, or applicant may amend its initial~~  
21 ~~pleading after the designation of the presiding officer only upon~~  
22 ~~order of the presiding officer.~~

23 ~~—— (9) Disposition.~~

24 ~~—— (a) Where an application, petition, or complaint has been~~  
25 ~~filed, and Commission action has not yet been proposed, the~~

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1 ~~Commission may:~~

2 ~~1. Deny the petition if it does not adequately state a~~  
3 ~~substantial interest in the Commission determination or~~  
4 ~~if it is untimely;~~

5 ~~2. Issue notice of proposed agency action where a rule or~~  
6 ~~statute does not mandate a hearing as a matter of course, and~~  
7 ~~after the time for responsive pleadings has passed;~~

8 ~~3. Set the matter for hearing before the Commission, or~~  
9 ~~member thereof, or request that a hearing officer from~~  
10 ~~the Division of Administrative Hearings be assigned to~~  
11 ~~conduct the hearing. The assignment of a matter for~~  
12 ~~hearing shall be pursuant to Rule 25 22.0355;~~

13 ~~4. Dispose of the matter as provided in § 120.57(2);~~

14 ~~(b) Where a petition on proposed agency action has been~~  
15 ~~filed, the Commission may:~~

16 ~~1. Deny the petition if it does not adequately state a~~  
17 ~~substantial interest in the Commission determination or~~  
18 ~~if it is untimely.~~

19 ~~2. Grant the petition and determine if a Section 120.57(1)~~  
20 ~~hearing or a Section 120.57(2) hearing is required.~~

21 ~~(c) The Commission shall promptly give written notice to all~~  
22 ~~parties of the action taken on the petition, and shall state with~~  
23 ~~particularity its reasons therefore.~~

24 ~~(d) if the Commission elects to request that a Hearing~~  
25 ~~Officer of the Division of Administrative Hearings be assigned to~~

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1 ~~conduct the hearing, the Commission shall forward the initial~~  
2 ~~pleading, and all materials filed with the Commission, to the~~  
3 ~~Division of Administrative Hearings, and shall notify all parties~~  
4 ~~of its action.~~

5 ~~----- (10) Service of Initial Pleadings. Where a petition seeks~~  
6 ~~relief against a person, or a complaint is filed, a copy of the~~  
7 ~~petition or complaint shall be served on all persons named~~  
8 ~~therein. Where a petition on proposed agency action is filed, a~~  
9 ~~copy shall be served on all parties of record.~~

10 Specific Authority: 350.01(7), 350.127(2) ~~120.53~~ F.S.

11 Law Implemented: 120.569, 120.57, 364.035, 364.05, 364.057,

12 364.335, 364.337, 366.04, 366.06, 366.071, 366.076, 366.8255,

13 367.031, 367.045, 367.071, 367.081, 367.0814, 367.0817, 367.082,

14 367.0822, 367.091, 367.101, 367.171, ~~120.53~~ F.S.

15 History--New 12/21/81, Formerly 25-22.36, Amended

16 25-22.037 Answers and Motions.

17 Specific Authority: 120.53, F.S.

18 Law Implemented: 120.53, F.S.

19 History--New 12/21/81, Formerly 25-22.37, Repealed

20 25-22.0375 Pleadings.

21 Specific Authority: 120.53, F.S.

22 Law Implemented: 120.53, F.S.

23 History--New 12/21/81, Formerly 25-22.375, Repealed

24 25-22.038 Prehearing Officer; Prehearing Statement; Prehearing  
25 Conferences; and Prehearing Order.

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1 Specific Authority: 120.53, F.S.  
2 Law Implemented: 120.53, F.S.  
3 History: Transferred from 25-2.68 and Amended 12/21/81, formerly  
4 25-22.38, Amended 9/3/95, Repealed  
5 25-22.0405 Notices of Public Hearings.

6 (1) ~~The provisions of this rule shall apply to all public~~  
7 ~~hearings conducted by the Commission, except rulemaking hearings~~  
8 ~~held pursuant to Rules 25-22.010 through 25-22.018, F.A.C.~~

9 (2) ~~Notice of such public hearings shall be given by the~~  
10 ~~Commission to the clerk of the board of county commissioners of~~  
11 ~~each county affected, the chief executive officer of each~~  
12 ~~municipality to the area affected, all parties of record and all~~  
13 ~~persons who have requested notice of such proceedings.~~

14 (3) ~~A summary of the subject matter and notice of hearing~~  
15 ~~shall be published by the Commission in the Florida~~  
16 ~~Administrative Weekly. The summary shall be drawn and notice~~  
17 ~~given as required by the provisions of the statute under which~~  
18 ~~relief is sought, if applicable, but shall not be published less~~  
19 ~~than 14 days prior to the hearing.~~

20 (4) ~~The Commission will may require any public utility in a~~  
21 ~~such proceedings to publish additional notices of hearing in~~  
22 ~~newspapers of general circulation in the area affected and to~~  
23 ~~give notice to its customers by mail, if as may be deemed~~  
24 ~~reasonably necessary by the Commission finds that it is necessary~~  
25 ~~in order to afford adequate notice to the customers of the~~

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1 utility.

2 ~~(5) When the Commission determines that the health, safety,~~  
3 ~~or welfare of the public requires an emergency hearing, notice~~  
4 ~~may be accomplished by giving notice to those parties listed in~~  
5 ~~subsection (2) not less than 48 hours prior to the time scheduled~~  
6 ~~for the hearing.~~

7 Specific Authority: 350.127(2), 366.05, 367.121(1)(f), F.S.

8 Law Implemented: 120.569, 120.57, 364.03, 364.035(1), 364.07,  
9 364.14, 364.15, 364.16, 364.27, 366.04, 366.05, 367.081, 367.111,  
10 F.S.

11 History--New 1/27/72, Formerly 25-2.981, Amended 12/21/81,  
12 9/27/83,\_\_\_\_\_.

13 25-22.0406 Notice and Public Information on General Rate Increase  
14 Requests by Electric, Gas and Telephone Companies.

15 (1) - (2) No Change.

16 (3)(a) Within 15 days after it has been notified by the  
17 Commission that the Minimum Filing Requirements (MFRs) have been  
18 met, the utility shall place a copy of the MFRs at its official  
19 headquarters and at its business office in each municipality in  
20 which service hearings were held in the last general rate case of  
21 the utility. Within 15 days after the time schedule has been  
22 mailed to the utility, copies of the MFRs shall be placed in the  
23 utility business office in each additional city in which service  
24 hearings are to be held. Upon customer request a copy of the  
25 MFRs shall be placed in a utility business office not located in

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1 a city where a service hearing is to be held. The copies of the  
2 MFRs shall be available for public inspection during the  
3 utility's regular business hours.

4 (b) In addition to the locations listed above, if the  
5 Commission determines that the locations listed above will not  
6 provide adequate access, the Commission will ~~may~~ require that  
7 copies of the MFRs be placed at other specified locations.

8 (4)(a) - (8) No Change.

9 Specific Authority: 350.127(2), 366.05, F.S.

10 Law Implemented: 120.569, 120.57, 364.035(1), 364.01(4),  
11 364.04(3)(4), 364.05(1)(2), 364.19, 366.03, 366.041(1),  
12 366.05(1), 366.06(1), F.S.

13 History--New 9/27/83, Formerly 25-22.406, Amended 5/27/93,  
14 \_\_\_\_\_.

15 25-22.0407 Notice of and Public Information for General Rate  
16 Increase Requests by Water and Wastewater Utilities.

17 (1) - (2) No Change.

18 (3) Within 30 days after the official date of filing  
19 established by the Commission, the utility shall place a copy of  
20 the petition and the MFRs at its official headquarters and at any  
21 business offices it has in the service areas included in the rate  
22 request. Such copies shall be available for public inspection  
23 during the utility's regular business hours. If the utility does  
24 not have a business office in a service area included in its rate  
25 request, the utility shall place a copy of the petition and the

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1 MFRs at the main county library, the local community center or  
2 other appropriate location which is within or most convenient to  
3 the service area and which is willing to accept and provide  
4 public access to the copies. If the Commission determines that  
5 these locations will not provide adequate access, ~~t~~The Commission  
6 will ~~may~~ require that copies of the petition and MFRs be placed  
7 at other specified locations.

8 (4) (a) - (10) No Change.

9 Specific Authority: 350.127(2), 367.121(1) (f), F.S.

10 Law Implemented: 120.569, 120.57, 367.081(2) (a), 367.0814(1),  
11 367.0817, 367.091, 367.121 (1) (a), F.S.

12 History--New 5/27/93, Amended.

13 25-22.041 Continuances.

14 Specific Authority: 120.53, F.S.

15 Law Implemented: 120.53, F.S.

16 History--New 12/21/81, Formerly 25-22.41, Repealed.

17 25-22.042 Dismissal.

18 Specific Authority: 120.53, F.S.

19 Law Implemented: 120.53, F.S.

20 History--New 12/21/81, Formerly 25-22.42, Amended 7/11/96,

21 Repealed.

22 Subpart C Conduct of Formal Hearings

23 25-22.045 Subpoenas.

24 ~~+~~ When the proceeding is before the Commission or member  
25 thereof, subpoenas may be issued by the presiding officer or the

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1 Division of Records and Reporting on subpoena forms supplied by  
2 the Commission. When the proceeding is before an administrative  
3 law judge ~~a hearing officer~~ of the Division of Administrative  
4 Hearings, subpoenas may be issued by the Administrative Law Judge  
5 ~~Hearing Officer~~.

6 ~~(2) A party shall apply in writing for the issuance of~~  
7 ~~subpoenas requiring the attendance of witnesses or production of~~  
8 ~~records, files, and memoranda from any place in the state, at any~~  
9 ~~designated place of hearing before the presiding officer, for the~~  
10 ~~purpose of taking the testimony of such witness or inspection of~~  
11 ~~documents. An application for the subpoena shall state the name~~  
12 ~~and address of the witness for whom the subpoena is to be issued,~~  
13 ~~and the time and place for the witness to appear.~~

14 ~~(3) Any party or person against whom a subpoena is directed~~  
15 ~~may file a motion to quash or limit the subpoena with the agency~~  
16 ~~having jurisdiction of the dispute. The motion shall set forth~~  
17 ~~the grounds relied upon.~~

18 ~~(4) A subpoena may be served by any person authorized by law~~  
19 ~~to serve process or by any person who is not a party and who is~~  
20 ~~of majority age. Service shall be made by delivering a copy~~  
21 ~~thereof to the person named in the subpoena. Proof of service~~  
22 ~~shall be made by affidavit of the person making service if~~  
23 ~~service is not made by an officer authorized by law to do so.~~

24 ~~(5) Service of a subpoena may also be effected by certified~~  
25 ~~mail, in which case the return receipt must be signed by the~~

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1 | ~~person named in the subpoena.~~  
2 | Specific Authority: 350.127(2), F.S.  
3 | Law Implemented: 120.569, 120.57, 350.123, F.S.  
4 | History--Formerly 25-2.100, Amended 12/21/81, Formerly 25-22.45,  
5 | Amended.  
6 | **25-22.046 Witnesses and Witness Fees.**  
7 | Specific Authority: 120.53, F.S.  
8 | Law Implemented: 120.53, F.S.  
9 | History--New 12/21/81, formerly 25-22.46, Repealed.  
10 | **25-22.048 Evidence.**  
11 | Specific Authority: 120.53, F.S.  
12 | Law Implemented: 120.53, F.S.  
13 | History--New 12/21/81, Formerly 25-22.48, Repealed.  
14 | **25-22.049 Recordation.**  
15 | Specific Authority: 120.53, F.S.  
16 | Law Implemented: 120.53, F.S.  
17 | History--New 12/21/81, Formerly 25-22.49, Repealed.  
18 | **Subpart D Post-hearing Procedures**  
19 | **25-22.056 Post-hearing Filings.**  
20 | Specific Authority: 120.53, F.S.  
21 | Law Implemented: 120.53, 120.57, 120.58, F.S.  
22 | History--New 12/21/81, Formerly 25-22.56, Amended 3/21/93,  
23 | Repealed.  
24 | **25-22.059 Final Orders.**  
25 | Specific Authority: 120.53, F.S.

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1 | Law Implemented: 120.53, F.S.

2 | History--New 12/21/81, Formerly ~~25-22.59, Repealed~~

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(2) The Commission shall use the following form in providing notice of the meeting or workshop

**NOTICE OF PUBLIC MEETING OR WORKSHOP**

The Florida Public Service Commission announces a public meeting or workshop to which all persons are invited.

DATE AND TIME \_\_\_\_\_

PLACE: \_\_\_\_\_

PURPOSE: \_\_\_\_\_

A copy of the agenda for any public meeting may be obtained by writing to the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0850.

(3) A meeting, for the purposes of notice herein, is limited to a gathering of Commissioners for the purpose of conducting public business. The term meeting includes Agenda Conference.

(4) A workshop is a gathering where Commissioners may be present or Commission staff or person(s) designated by the commission are meeting with interested persons for a specific purpose as designated in the notice. The term workshop includes gatherings for the specific purpose of rule drafting at which time no official votes are taken or policy adopted.

*Specific Authority: 2011 FS Law Implemented 2011 FS History—New 12-21-81 Formerly 25-22.01*

**25-22.002 Agenda of Meetings.**

(1) The agenda for meetings shall be prepared by the Commission in time to insure that a copy may be received at least seven (7) days before the meeting by any person in the State who has requested a copy and pays \$1.00 per copy.

(2) The agenda shall list and specify the items to be considered at the meeting.

(3) For good cause stated on the record, the person designated to preside may make specific changes in the agenda after it has been made available for distribution. A majority vote of a quorum of the Commission is required to modify the presiding officer's decision.

(4) Copies of staff recommendations for items on the agenda may be obtained from the Division of Records and Reporting upon request and the payment of the applicable copying fee. Parties to a proceeding are entitled to one copy of the staff recommendation filed in the proceeding at no cost.

**25-22.0021 Agenda Conference Participation.**

(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on

interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.

(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.

(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.

*Specific Authority: 2011 FS Law Implemented 2011 FS History—New 1-21-91*

**25-22.003 Emergency Meeting.**

(1) The Commission may hold an emergency meeting for the purpose of acting upon emergency matters affecting the public health, safety or welfare.

(2) Whenever an emergency meeting is scheduled to be held, the Commission shall notify at least one major newspaper of general circulation in the area where the meeting will take place and may also notify all major wire services of the time, date, place and purpose of the meeting. The Commission shall also notify, by telephone, each person who will be affected by the emergency action, if such person has requested notice of such emergency meetings and has filed with the Division of Records and Reporting the name, address and telephone number of a person to contact in the event of an emergency meeting.

(3) Following an emergency meeting, the Commission shall publish in the Florida Administrative Weekly, notice of the time, date and place of the meeting, a statement setting forth the reasons why an emergency meeting was necessary and a statement setting forth the action taken at the meeting.

*Specific Authority: 2011 FS Law Implemented 2011 FS History—New 12-21-81 Formerly 25-22.01*

**25-22.004 Commission Forms.** The Commission maintains certain forms that are required to be filed from time to time. These forms are listed hereafter and may be obtained at no cost by writing to the indicated division at 101 East Gaines Street, Tallahassee, Florida 32399-0850. The Form Number shows the effective date of the latest revision of the form in parentheses.

FORM TITLE	FORM NUMBER	AVAILABLE FROM
Class A&B Water & Wastewater Annual Report	PSC WAW4 (1) 83)	Water and Wastewater
Class C Water & Wastewater Annual Report	PSC WAW5 (1) 83)	Water and Wastewater

25-22.004 AM 10:39

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## PRACTICE AND PROCEDURE

Class D Water & Wastewater Annual Report	PSC/WAW6 (11/83)	Water and Wastewater
Annual Report of Electric Utilities	PSC/EAG2 (11/83)	Auditing and Financial Analysis
Annual Report of Natural Gas Companies	PSC/EAG3 (11/83)	Auditing and Financial Analysis
Action Plan Report	PSC/AFA2 (12/83)	Auditing and Financial Analysis
Implementation Plan Status Report	PSC/AFA3 (12/83)	Auditing and Financial Analysis
Cost/Benefit Analysis of Recommendations	PSC/AFA4 (12/83)	Auditing and Financial Analysis
Executive Summary Supplement to Annual Report of Company	PSC/AFA5 (12/83)	Auditing and Financial Analysis
Subpoena Dices Tecum	PSC/RAR1 (11/83)	Records and Reporting
Witness Subpoena	PSC/RAR2 (11/83)	Records and Reporting
Subpoena for Deposition	PSC/RAR3 (11/83)	Records and Reporting
Application for Admission to Practice	PSC/RAR4 (11/83)	Records and Reporting
Miscellaneous Revenue Invoice Forms	PSC/RAR6 (11/83)	Records and Reporting
Base Rate Area Survey Report (QR1)	PSC/CMU1 (11/83)	Communications
Summary of Service Applications (QR2)	PSC/CMU2 (11/83)	Communications
Summary of Complete Service Orders (New Service) (QR3A)	PSC/CMU3 (11/83)	Communications
Summary of Complete Service Orders (Regrades) (QR3B)	PSC/CMU4 (11/83)	Communications

Summary of Held Applications (New Service) (QR4A)	PSC/CMU5 (11/83)	Communications
Held Applications Aged Over 6 Months (New Service) (QR4B)	PSC/CMU6 (11/83)	Communications
Summary of Held Applications (Regrades) (QR5A)	PSC/CMU7 (11/83)	Communications
Held Applications Aged Over 6 Months (Regrades) (QR5B)	PSC/CMU8 (11/83)	Communications
Station Data (QR6)	PSC/CMU9 (11/83)	Communications
Central Office Data Equipment Usage (QR7A)	PSC/CMU10 (11/83)	Communications
Central Office Data Class of Service Ratio (QR7B)	PSC/CMU11 (11/83)	Communications
Repair Service — Trouble Report (QR8)	PSC/CMU12 (11/83)	Communications
Answer Time — Operator (QR9A)	PSC/CMU13 (11/83)	Communications
Answer Time — Directory Assistance (QR9B)	PSC/CMU14 (11/83)	Communications
Answer time — Repair (QR9C)	PSC/CMU15 (11/83)	Communications
Answer Time — Business Office (QR9D)	PSC/CMU16 (11/83)	Communications
Toil Traffic Results (QR10)	PSC/CMU17 (11/83)	Communications
Repair Service Appointments (QR12A)	PSC/CMU18 (11/83)	Communications
Service Order Appointments (QR12B)	PSC/CMU19 (11/83)	Communications
Minimum Filing Requirements (MFR's)	PSC/CMU20 (11/83)	Communications
Reseller Application for Certificate	PSC/CMU22 (11/83)	Communications
Regulatory Assessment Fee — Telephone	PSC/CMU25 (5/84)	Communications
Regulatory Assessment Fee — Gas	PSC/EAG3 (5/84)	Electric & Gas
Regulatory Assessment Fee — Electric, Investor-Owned	PSC/EAG4 (5/84)	Electric & Gas
Regulatory Assessment Fee — Municipal & REA Electric	PSC/EAG5 (5/84)	Electric & Gas
Quarterly Report for Electric Utilities	PSC/EAG6 (12/83)	Electric & Gas
Rate of Return Report (Electric)	PSC/EAG7 (12/83)	Electric & Gas
Fuel Cost Recovery Forms	PSC/EAG8 (12/83)	Electric & Gas
Forecast of Capital Expenditures	PSC/EAG9 (12/83)	Electric & Gas
Gas Minimum Filing Requirements	PSC/EAG10 (12/83)	Electric & Gas
Electric Minimum Filing Requirements	PSC/EAG11 (12/83)	Electric & Gas
KWH Sales and Customer Data	PSC/EAG12 (12/83)	Electric & Gas
Overhead/Underground Wiring Data	PSC/EAG13 (12/83)	Electric & Gas
Conservation Cost-Effectiveness	PSC/EAG14 (12/83)	Electric & Gas



Residential Conservation Service Audit	PSC/EAG15 (12/83)	Electric & Gas
Conservation Cost Recovery Forms	PSC/EAG16 (12/83)	Electric & Gas
Loan Guarantee Quarterly Report	PSC/EAG17 (12/83)	Electric & Gas
Annual Need Forms (Supply Side)	PSC/EAG18 (12/83)	Electric & Gas
Annual Need Forms (Demand Side)	PSC/EAG19 (12/83)	Electric & Gas
Typical Monthly Bills for Electric Service	PSC/EAG20 (12/83)	Electric & Gas
Conservation Progress Reporting Forms	PSC/EAG21 (12/83)	Electric & Gas
FPSC 423 Fuel Forms	PSC/EAG22 (12/83)	Electric & Gas
Quarterly Report of Small Gas Utilities	PSC/EAG23 (12/83)	Electric & Gas
Quarterly Report of Large Gas Utilities	PSC/EAG24 (12/83)	Electric & Gas
Purchase Gas Adjustment Forms	PSC/EAG25 (12/83)	Electric & Gas
Typical Monthly Bills for Gas Service	PSC/EAG26 (12/83)	Electric & Gas
Therm Sales and Customer Data	PSC/EAG27 (12/83)	Electric & Gas
Rate of Return Report (Gas)	PSC/EAG28 (12/83)	Electric & Gas
Application for Staff Assistance	PSC/WAW2 (11/83)	Water & Wastewater
Application for Transfer of Certificate	PSC/WAW7 (11/83)	Water & Wastewater
Application for Amendment of Certificate	PSC/WAW8 (11/83)	Water & Wastewater
Application for Original Certificate	PSC/WAW9 (11/83)	Water & Wastewater
Regulatory Assessment Fee — Water & Sewer	PSC/WAW10 (5/84)	Water & Wastewater
Sales to Nonprofit Agencies	PSC/WAW11 (1/84)	Water & Wastewater
Sales to Government Agencies	PSC/WAW12 (1/84)	Water & Wastewater
Jurisdictional Information	PSC/WAW13 (1/84)	Water & Wastewater
Application for Certificate (Grandfather Rights)	PSC/WAW14 (1/84)	Water & Wastewater
Price Index Adjustments in Rates	PSC/WAW15 (1/84)	Water & Wastewater
Pass-Through Rate Adjustments	PSC/WAW16 (1/84)	Water & Wastewater

Specific Authority 120.3311(b) FS Law Implemented 120.3311(b) FS History—New 6-7-84 Formerly 25-22.04 Amended 4-16-90, 8-21-90, 8-23-90.

**25-22.005 Noticing Address Files.** The Division of Records and Reporting ("the Division") shall maintain a main noticing address file for purposes of distributing Commission agenda, notices of workshops and rulemaking and, where appropriate, other notices and orders. The Division shall also maintain an individual noticing address file for each docket for purposes of distributing Commission notices and orders issued in that docket.

(1) Main File. The main noticing address file shall contain a single name, address and telephone number for each utility subject to Commission jurisdiction, the Public Counsel, the Clerk of each Board of County Commissioners and the chief executive officer of each municipality. This file shall also contain a name, address and telephone number for each person requesting in writing to be included in the file on one or more of the following lists:

- (a) Persons requesting the Commission agenda (subject to payment of subscription fee).
- (b) Persons requesting the weekly report of new dockets (subject to payment of subscription fee).

(c) Persons requesting the weekly summary of Commission orders (subject to payment of subscription fee).

(d) Persons requesting notices of Commission workshops.

(e) Persons requesting notices of proposed rulemaking, and

(f) Persons requesting copies of Commission notices of hearings and orders initiating industry-wide nonrule proceedings. Any person seeking to be on this list shall state with specificity how his substantial interests may be affected by Commission action in the categories of his interest. (For instance, a customer's rates or service may be affected, or a regulated utility's rates or service may be affected). Absent such a showing, a person will not be included on this list.

(2) The three lists described in paragraphs (1)(d)—(f) are further subdivided into the following categories:

- (a) Electric
- (b) Gas
- (c) Telecommunications
- (d) Water and Wastewater
- (e) Railroad
- (f) Practice and Procedure

(3) Any person seeking to be included in the main noticing address file shall file a written request with the Division. The request shall state the name, address and telephone number the person seeks to have placed in the file, as well as the list(s) and category(ies) in which the person desires to be included. Persons entitled to practice before the Commission under Rule 25-22.008 may request inclusion in the file as representatives of their client(s). A request for inclusion in the rulemaking list does not constitute a request for a notice of change to a proposed rule under Section 20.54(1)(a), F.S.

(4) Purge of Main File. During the first quarter of each calendar year the Division shall transmit to all persons listed in the main file under the lists described in (1)(d)—(f) a written request to confirm the name, address and telephone number on file and the types of notices to be received. Any person who fails to confirm the foregoing in writing within 30 days after the date of the Division's request shall be stricken from the main noticing address file.

(5) Addresses of Regulated Companies. Each regulated company, as defined in Section 350.113, F.S., shall, in writing and within 30 days of the effective date of this rule, provide the Division with a single official mailing address to be placed in the main noticing address file. Except in a docket where a company representative has previously provided an alternative address, the Commission is obliged only to transmit its orders, notices and other documents (such as regulatory assessment fee notices and annual report forms) to the official address. The Commission may, solely as a courtesy, transmit documents to additional addresses. Initial pleadings served by parties shall be transmitted to the official address on file. When a regulated company has filed a document in a docket and such

document shows the name and address of counsel or other official representative and that name and address is different from the official mailing address it shall be recorded in the docket mailing address file in lieu of the official address. All documents thereafter served on the regulated company shall be transmitted to that address.

(6) Docket File. Individual docket mailing address files shall be maintained as part of each docket file and contain the name, address and phone number of each party of record, or its representative, and each person requesting copies of notices and orders issued in that docket and qualifying under this subsection.

(a) Any person, other than a party of record seeking to be on an individual docket noticing address file shall file a written request with the Division. Such request shall state the name, address and telephone number the person seeks to have placed in the file and, except for rulemaking dockets, shall state with specificity how his substantial interests may be affected by Commission action in that docket. (For instance, the docket may affect a customer's rates or service or may have a potential impact on other utilities in similar circumstances). Absent such a showing, a person will not be included in the docket noticing address file. Persons entitled to practice before the Commission under Rule 25-22.008 may request inclusion in the file as representatives of their client(s).

(7) Change of Name, Address, Telephone. Each person included in the main noticing address file or in any docket noticing address file shall, in writing, notify the Division (and any parties of record in a docketed matter) of any change in name, address or telephone number. Any notice, order or other document served on the name and address on file prior to the date of receipt of such written notification shall be considered properly served.

(8) The Division Director may grant requests to be placed in the main file under (1)(f) or requests to be placed in a docket noticing address file. The Chairman will rule on all such requests that the Division Director recommends be denied. *Specific Authority: 20.53 F.S. Law Implemented: 20.13 F.S. History—New 4-21-84. Formerly 25-22.03.*

#### 25-22.006 Confidential Information.

##### (1) Definitions.

(a) "Confidential Information" means material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.18, 366.09, or 367.156, F.S.

(b) "Formal proceeding" means a proceeding docketed in the Commission's Division of Records and Reporting.

(c) "Inquiry" means an investigation pursuant to section 350.121, F.S. An inquiry is set in motion by the Commission Chairman, the Executive Director, or the General Counsel to evaluate a complaint, allegation, or to develop information as a basis to initiate action on or dispose of any matter within the Commission's jurisdiction.

such classification to a period not exceeding 18 months. The Commission may approve a longer period if it finds, for good cause, that such longer period is necessary to protect the ratepayers or the business operations of the utility or affected person.

(b) When confidential information is no longer needed for the Commission to conduct its business, the Commission shall order all persons holding such information to return it to the utility or person providing the information.

(c) Confidential information not returned at the conclusion of the period established under paragraph (a) of this subsection, shall no longer be exempt from Section 119.07(1), F.S., unless the utility or affected person shows, and the Commission finds, that the information continues to be confidential. Upon such finding, the duration of confidential classification may be extended for a period of up to 18 months, or for a longer period if the Commission finds, for good cause, that such longer period is necessary to protect the business operations of the utility or affected person. While the Commission is considering an extension under this paragraph, the information in question shall remain exempt from Section 119.07(1), F.S.

(9) **Judicial Review.** When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of Records and Reporting. The material will thereafter receive confidential treatment through completion of judicial review.

*Speech Authority: 350.127 F.S. Law Implemented 350.127, 364.183, 366.091, 367.150 F.S. History: New 11-81, Formerly 25-22.06, Amended 4-26-90.*

**ANNOTATIONS**

**Administrative remedies**

Court found that circuit courts currently ruled that newspapers had available to them adequate administrative remedies under Rule 25-22.008(b), F.A.C., to challenge Commission's determinations of confidentiality under §§ 364.183 and 366.091, F.S. Commission's determinations of confidentiality are reviewable in district courts of appeal under Administrative Procedure Act § 120.08, F.S. Newspapers did not demonstrate that these remedies were not adequate to protect their interests and could not therefore seek remedy in circuit court without first exhausting remedies provided by administrative procedure statutes and rules. Circuit courts' order denying compliance for writ of mandamus was affirmed. *Florida Society of Newspaper Editors Inc. v. Public Service Commission*, App. 1st D.D. 2d, 202 (1989).

**Compliance**

PSC denied Southern Bell's Request for Confidential Classification and Motion for Permanent Protective Order of Information Requested by the Audit Staff. PSC ruled that Southern Bell had failed to comply with the requirements of Rule 25-22.008(b)(4), F.A.C., in that it had not correlated the pages and lines of purportedly confidential material with specific classifications proffered in support of confidential classification of said material. *In re Petition of Citizens of the State of Florida to Investigate Southern Bell*

*Telephone and Telegraph Company's Cost Allocation Procedures* 91 P.S.C. 431 (1991).

**Overbreadth**

*Petition for Confidential Treatment of certain documents denied.* Rule 25-22.008(4), F.A.C., requires the highlighting of specific information asserted as confidential along with held-to-hold justification for a confidential classification. Petitioner merely inserted large "x" upon pertinent pages that seemingly highlighted entire document and rendering petition overbroad. *In Re Fuel and Purchase Power Cost Recovery Clause and Generating Performance Incentive Factor* 90 P.S.C. 10 (12-1990).

**Right to oral argument**

PSC concluded that Rule 25-22.008(3)(c), F.A.C., does not grant an absolute right to oral argument in the proceeding parts. A party is heard on the issue of reconsideration by virtue of its brief and the full record of the matter. *In re Petition of Citizens of the State of Florida to Investigate Southern Bell Telephone and Telegraph Company's Cost Allocation Procedures* 92 P.S.C. 120 (1992).

**25-22.008 Practitioners**

(1) To practice law before the Commission, one must qualify either as a Class A or a Class B practitioner, however, self representation is not precluded by this rule. For the purposes of this Rule:

(a) The Class A practitioner is licensed to practice law in the State of Florida or elsewhere in the United States.

(b) The Class B practitioner is licensed to practice before the Commission as provided by this rule.

(c) The "practice of law" includes, but is not limited to:

- 1. Introduction of evidence.
- 2. Examination and cross-examination of witnesses.
- 3. Determining the qualifications or expertise of witnesses.
- 4. Making both written and oral motions and arguing same.
- 5. Objecting to evidence and arguing thereon.
- 6. Making decisions affecting important legal rights and obligations of clients.
- 7. Filing written pleadings and
- 8. Conducting discovery.

(2) **Class A practitioners**

(a) One licensed to practice law in the State of Florida may practice law before the Commission by making an appearance at the proceeding in which the practitioner is representing the legal interests of his or her client.

(b) One licensed to practice law elsewhere in the United States may practice law before the Commission by obtaining sponsorship of a person licensed to practice law in the State of Florida, making an appearance at the proceeding in which the practitioner is representing the legal interests of his or her client, and certifying that he or she has practiced before utility regulatory bodies in other states or at the federal level.

(3) **Class B practitioners**

(a) A person who wishes to practice before the Commission may do so by applying to the

Commission's Director of Records and Reporting for a Class B certification, completing the application satisfying the Commission via the written application that he or she possesses legal skills and a knowledge of the law and utility regulatory matters which is greater than that possessed by the average person and making an appearance before the Commission as a Class B practitioner.

Specifically, the applicant for a Class B certification must detail:

1. Name, mailing address and street address, business telephone number, employer and occupation.

2. Knowledge of Commission jurisdiction and the relief obtainable from the Commission.

3. Education and experience relative to Chapter 120 F.S., Rules 9.020, 9.110, 9.310 and 9.800 of the Florida Rules of Appellate Procedure, the Florida Rules of Civil Procedure as they relate to discovery in administrative proceedings, rules of evidence including the concept of hearsay and its use in administrative proceedings, relevant chapters of Title 25 of the Florida Administrative Code, and relevant chapters of Florida Statutes governing the Commission.

4. Knowledge of the Standards of Conduct for Administrative Proceedings as contained in Rule 28-5.1056, Florida Administrative Code, and

5. Educational background, training and work experience relative to utility regulation.

(b) The applicant for a Class B certification may specify that he or she wishes to limit practice before the Commission. Under such a circumstance, the Commission will evaluate the applicant's qualifications with regard to the limitation on practice. Where the application is granted under this paragraph, the Commission will issue the Class B certification with appropriate notations as to the limitations imposed.

(c) The Office of the General Counsel will determine the qualifications of any applicant for a Class B certification and may grant the application. Where, however, the Office of General Counsel determines that the application should be denied, its recommendation shall come to the Commission's attention at agenda conference and the Commission shall dispose of the application.

(d) Each Class B practitioner who is not employed by either the Commission or the Office of the Public Counsel and who desires to participate in a proceeding shall, prior to participating on behalf of a client for the first time before the Commission, file a notice of representation with the Director of Records and Reporting.

1. The notice shall be accompanied by a signed, written statement of the person desiring non-attorney representation stating the person's acceptance and approval of representation by the Class B practitioner in Commission proceedings. The statement shall include a description of the nature and extent of the services the Class B practitioner can and will provide.

2. Class B practitioners must file an updated notice and statement with the Director of Records

and Reporting no later than June 30 of each even-numbered year.

(e) The Commission may revoke or suspend a Class B certification after hearing for good cause, which shall include, but not be limited to, a violation of the Standards of Conduct contained in Rule 28-5.1056, Florida Administrative Code.

(f) Each Class B practitioner shall promptly notify the Director of Records and Reporting of any changes to the practitioner's mailing address, street address or business telephone number.

(g) If a person holding Class B certification does not practice before the Commission or is not employed by the Commission or the Office of the Public Counsel for a period of two consecutive years, the certification shall terminate without further action of the Commission. Not later than June 30 of each even-numbered year, each Class B practitioner who wishes to continue his or her certification shall furnish the Director of Records and Reporting with information sufficient to establish that he or she has appeared before the Commission on behalf of a client during the previous two calendar years.

(4) Self representation, which includes individuals appearing on their own behalf and representation of a corporation or other entity within the meaning of "person" as defined in section 1.01, Florida Statutes, by an officer of the corporation or entity is not precluded by this rule.

(5) Rule 28-5.1056, Florida Administrative Code, entitled "Standards of Conduct for Administrative Proceedings" is incorporated by reference into this rule and applies to practitioners in any Commission proceeding other than practitioners subject to the disciplinary procedures of The Florida Bar.

(6) A practitioner representing a party in an evidentiary proceeding shall not appear as a witness in any hearing in that proceeding except where the Commission determines:

(a) the testimony relates to an uncontested issue;

(b) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(c) the testimony relates to the nature and value of the practitioner's services rendered in the case; or

(d) disqualification of the practitioner would work substantial hardship on the person desiring non-attorney representation.

Specific Authority: 120.31 F.S., Law Implemented: 120.31 F.S., History: New 9-24-81, Formerly: 15-12.008 amended 1-27-84.

#### 15-12.009 Size of Paper Filed with Commission.

(1) Beginning on January 1, 1990, all petitions, pleadings, and motions filed with the Commission and all orders, opinions, and other official documents issued by the Commission shall be on paper measuring 8 1/2 by 11 inches in size. However, the Commission shall use legal size paper when necessary to comply with the filing

requirements of any court or other administrative body.

(2) Correspondence and other documents filed with or issued by the Commission should also be on 8 1/2 by 11-inch paper where possible. Maps, data spreadsheets, and similar documents may be on larger paper.

*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81

## PART II RULEMAKING PROCEEDINGS

**25-22.010 Commencement of Rulemaking Proceedings.** Proceedings held for the adoption, amendment or repeal of a Commission rule shall be conducted according to the provisions of Chapter 120, F.S., and these rules. Rulemaking proceedings shall commence upon the Commission's own initiative or on the petition of a person regulated by the Commission, or on the petition of a person having a substantial interest in a Commission rule. A proceeding shall be deemed to have been initiated upon publication of notice by the Commission in the Florida Administrative Weekly.  
*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81; Formerly 25-22.10

**25-22.011 Notice of Rulemaking, Proceeding and the Proposed Rules.** Except as provided in the Commission's rules on the adoption of emergency rules, notice of its intention to adopt, amend, or repeal a rule shall be given by the Commission as provided in Section 120.54(1), F.S.  
*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81; Formerly 25-22.11

**25-22.012 Petitions to Initiate Rulemaking Proceedings.**

(1) All petitions for initiation of rulemaking proceedings pursuant to Section 120.54(5), F.S., must contain the name and address of the petitioner, specific reasons for the proposed adoption, amendment or repeal, the specific action requested, the date submitted, and the proposed rule or amendment.

(2) Any interested person may file a statement in support of or in opposition to any petition for the initiation of rulemaking proceedings. The interested person shall furnish the petitioner with a copy upon filing of the statement.

(3) Any interested person may submit a reply to the statement in subsection (2), prior to the Commission action. The interested person shall furnish the petitioner and the person(s) filing under subsection (2) with a copy upon filing of the reply.  
*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81; Formerly 25-22.12

**25-22.013 Commission Action on Petitions to Initiate Rulemaking Proceedings.**

(1) Upon receipt of any petition for the initiation of rulemaking pursuant to Section 120.54(5), F.S., the Division of Records and Reporting shall assign the petition an identification number. The Division of Records and Reporting shall publish notice of receipt of the petition in the next available issue of the Florida Administrative

Weekly, and shall send a copy of the petition to the Administrative Procedures Committee.

(2) If the Commission determines that the petitioner is not regulated by the Commission, does not have a substantial interest in the Commission rule, or does not have the interest as stated in the petition, the Commission may forthwith dismiss the petition, and shall notify the petitioner in writing, stating with particularity the reasons for the dismissal.

b. If the Commission determines that rulemaking should not be initiated, it shall deny the petition and issue to the petitioner a written statement setting forth, with particularity, the reasons for such denial.

c. If the Commission determines that the petition should be granted, it shall initiate rulemaking in accordance with Chapter 120, F.S.

(3) Notice of the Commission's disposition of the petition shall be published in the next available issue of the Florida Administrative Weekly.  
*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81; Formerly 25-22.13

### 25-22.014 Rulemaking Materials.

(1) After the publication of notice initiating rulemaking, the Commission shall make available for public inspection and shall provide upon request, copies of the following materials:

(a) The text of the proposed rule or any amendment, or repeal of any existing rule.

(b) A detailed written statement justifying the proposed rule.

(c) A copy of the economic impact statement required by § 120.54, F.S.

(d) A statement comparing the proposed rule with any applicable federal rules, regulations or standards, or a statement that no comparable federal standards exist.

(e) The published notice.

(2) Thereafter, the Commission shall make available for public inspection all written material submitted into the rulemaking record.  
*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81; Formerly 25-22.14

**25-22.015 Rulemaking Proceeding - No Hearing.** When no hearing is requested in writing, and when the Commission chooses not to initiate a hearing on its own, the Commission may direct that the proposed rule be filed with the Department of State no less than twenty-one (21) days following notice.  
*Specific Authority:* 120.33 FS, Law Implemented 120.33 FS History - New 12.21.81; Formerly 25-22.15

### 25-22.016 Rulemaking Proceeding - Hearing.

(1) If the proposed rule does not relate exclusively to organization, practice, or procedure, the Commission shall provide, upon written request, a public hearing for presentation of evidence, argument, and oral statements, within reasonable conditions and limitations imposed by the Commission to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceeding. Written statements may be submitted to the Commission, if it conducts the public

hearing, within seven days following the conclusion of the hearing by any person participating in the proceeding, and such statements shall be made a part of the record.

(2) Unless the Commission orders otherwise, a public hearing shall be held only if an affected person requests a hearing in writing within fourteen (14) days after the date of publication of the notice.

(3) The Commission may take official recognition of any material that is of common and general knowledge, authoritatively well settled and free from uncertainty. If the material is officially recognized by the Commission, it is deemed to be admissible without the necessity of the offering person presenting evidence. This material shall be part of the record and all affected persons shall be given a reasonable opportunity to examine and offer written comments and argument in opposition.

(4) Upon written request of any affected person, the Commission shall cause to be made a transcript of the proceedings, and copies of the transcript of the proceeding shall be available to the public. Cost of preparing the transcript and having the proceeding recorded shall be paid by the requesting person. A copy of the transcript shall be available to the public at cost. However, if the Commission on its own decides to record the proceeding and have a transcript made, a copy of the transcript shall be made available to any person at cost. If the Commission is not going to provide a court reporter, it shall notify each person who has requested a hearing.

(5) The Commission, one or more members thereof, or any staff member designated by the Commission may preside at a hearing held pursuant to Section 120.54(3), F.S. If a single Commissioner or staff member serves as presiding officer at such hearing, any person participating in the proceeding may submit a written statement to the presiding officer for inclusion in the record within seven days following conclusion of the hearing. If the presiding officer determines that time permits, he may distribute a final recommended version of the rule to all persons participating at the hearing and shall accept any exceptions to the final recommended version submitted by such persons within ten days of its distribution, or within such other time as the presiding officer designates. The presiding officer shall prepare a summary of the hearing and recommendation for changes in the proposed rule to the Commission for final action.

(6)(a) At any time prior to the conclusion of a public hearing conducted under the provisions of Section 120.54(3), any person may request a hearing pursuant to § 120.54(16), F.S. In doing so, he must assert that his substantial interests will be affected by rulemaking, and he must affirmatively demonstrate that the rulemaking proceedings do not provide an adequate opportunity to protect his substantial interests. He must request that the hearing be conducted under the provisions of § 120.57 to the extent necessary to provide that opportunity and to protect his substantial interests.

The party shall file a petition with the person conducting the rulemaking proceeding or with the Commission substantiating the matters asserted by the party by setting forth specific facts supportive of the claim that the rulemaking proceedings will not provide an adequate opportunity to protect his substantial interests.

(b) The Commission shall determine the merits of the petition and issue its order granting or denying it. The Commission may hold a hearing for this purpose pending the Commission's determination of the merits of the petition; the rulemaking hearing may continue. A person requesting a § 120.54(16) hearing shall not be deemed to have waived that request by his continued participation in the rulemaking hearing.

(c) If the petition is denied, the rulemaking proceedings shall continue. The denial shall be reduced to writing in the Commission's final order regarding the proposed rule.

(d) When a petition for a hearing under the provisions of Section 120.57 is granted, the rulemaking proceeding shall be suspended. Upon the conclusion of the Section 120.57 proceeding, the rulemaking proceeding shall be resumed.

(e) In no event shall the Commission file the proposed rule for adoption until a petition for a hearing under Section 120.57 has been denied or until the issues raised in the petition have been resolved.

(f) Unless the Commission rejects the request at the time the right is asserted, the Commission shall publish notice in the Florida Administrative Weekly that a petition has been filed. The notice shall contain sufficient information to advise substantially affected persons of the matters asserted in the petition and any proceedings to be held on the petition.

*Source: Authority: 120.54(16), Law Implemented: 120.57  
15, History: New 120.54, Amended: 120.54  
Comments: 120.54*

#### 25-22.017 Rulemaking Proceeding — Adoption.

(1) At a public meeting, the Commission shall consider the record, the proposed rule, timely exceptions to the presiding officer's final recommended version, if permitted, and the recommendation of the presiding officer. The Commission may also question staff and other persons as part of its deliberations prior to adopting, rejecting or modifying the proposed rule.

(2) Oral argument and petitions for reconsideration are not appropriate to the rulemaking process. However, any interested person may petition the Commission after a rule is adopted or amended, for initiation of rulemaking proceedings pursuant to Rule 25-22.012, to amend or otherwise modify the adopted rule or amendment.

(3) Where a variance from a rule is requested, the Commission shall treat the request as a petition for a § 120.57, F.S., hearing. Unless waived by all parties, the provisions of § 120.57(1), F.S., and Part IV of these rules shall apply whenever the proceeding involves a disputed issue of material fact. In cases where the provisions of § 102.57(1)



F. S. do not apply, the provisions of § 120.57(2).  
(3) F. S. shall be followed.

*Specific Authority: 120.53 FS Law Implemented 120.53 FS History—New 12-21-81 Amended 10-25-83 Formerly 25-22.17*

**25-22.018 Emergency Rule Adoption.**

(1) The Commission may adopt an emergency rule if

(a) The Commission finds that immediate danger to the public health, safety and welfare exists which requires immediate Commission action, and

(b) The Commission complies with the requirements of § 120.54(9)(a), F.S.

(2) Unless it defeats the purpose of an emergency rule, the Commission should notify major wire services and notice all affected persons before adopting an emergency rule. The Commission shall permit, upon request, all affected persons to present testimony, evidence, and submit written statements.

(3) Upon the request of any affected person, the commission shall cause a transcript to be made of the proceeding and shall compile a record, consisting of the transcripts, copies of the notice and statement filed with the Department of State pursuant to subsection (1) above, and any other matter or information considered by the Commission in adopting the emergency rule. Cost of preparing the transcripts shall be paid by the requesting person. In any event, a recording shall be made of the proceeding.

(4) Notwithstanding subsections (2) and (3) above, the Commission may use any procedure which is fair under the circumstances in the adoption of an emergency rule as long as it protects the public interest and otherwise complies with applicable statutory provisions.

*Specific Authority: 120.53 FS Law Implemented 120.53 FS History—New 12-21-81 Formerly 25-22.18*

**PART III DECLARATORY STATEMENTS**

**25-22.020 General.**

(1) Any person may seek a declaratory statement as to the applicability of a specific statutory provision or of any rule or order of the Commission as it applies to the Petitioner in his or her particular set of circumstances only. The Commission shall give notice of each petition, briefly stating the question presented, in the manner prescribed by § 120.563, F.S., and shall similarly give notice of the disposition of each petition, briefly explaining the Commission's response. Copies of each petition and disposition thereof shall also be furnished to the Administrative Procedures Committee.

(2) The petition seeking a declaratory statement shall be filed in writing with the Commission and shall provide substantially the following information:

- (a) Petition for Declaratory Statement
- (a) Name of Petitioner \_\_\_\_\_
- (b) Address of Petitioner \_\_\_\_\_
- (c) Name of Agency \_\_\_\_\_

(d) Commission rule, order or statutory provision on which declaratory statement is sought

(e) Description of how this rule, order or statute may or does affect the petitioner in his/her particular set of circumstances only

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

*Specific Authority: 120.53 FS Law Implemented 120.53 FS History—New 12-21-81 Formerly 25-22.20*

**25-22.021 Purpose and Use of Declaratory Statements.** A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of any statutory provision, rule or order as it does or may apply to petitioner in his or her particular circumstances only. The potential impact upon petitioner's interests must be alleged in order for petitioner to show the existence of a controversy, question or doubt.

*Specific Authority: 120.53 FS Law Implemented 120.53 FS History—New 12-21-81 Formerly 25-22.21*

**ANNOTATIONS**

**Petition denied**

*Concluding that there was no appearance of controversy or doubt raised by Petitioner's pleading that it could resolve, the PSC declined to issue a declaratory statement in this matter. In Re Request of GTE Florida, Inc. for Declaratory Statement regarding Order No. PSC 93-0084 FOR TL 91EPSC 9-17-1993.*

**25-22.022 Disposition.**

(1) The Commission may hold a hearing to dispose of a petition submitted pursuant to § 120.563, F.S. If a hearing is held, it shall be conducted pursuant to § 120.57 on an expedited basis, or as otherwise agreed upon by the Commission and the parties.

(2) A Commission order shall be rendered as prescribed in § 120.59, F.S.

(3) Except as provided in subsection (1) of this rule, oral argument or rebuttal to staff recommendation regarding the petition are inappropriate to the proceedings under this Part, and the Commission may deny request for same.

*Specific Authority: 120.53 FS Law Implemented 120.53 FS History—New 12-21-81 Formerly 25-22.22*

**ANNOTATIONS**

**Evidentiary hearings**

*Evidentiary hearings are discretionary under F.S. 4 § 120.563 and Rule 25-22.022 and appropriate only when there is a disputed factual issue which must be determined in order to provide the legal interpretation requested. In re Monsanto Company, 86 EPSC 9-21-1986.*

**PART IV DECISIONS DETERMINING SUBSTANTIAL INTERESTS**

**Subpart A. General Provisions**

**25-22.025 Scope and Title of Rules.** This part shall apply in all proceedings in which substantial

interests of a party are determined by the Commission. This part shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. Specifically, this part applies to all proceedings under § 120.57, F.S., as well as those initiated under § 120.60 or 120.54(16), F.S., which are required to be conducted in accordance with § 120.57, F.S. This part does not apply to rulemaking, except as provided by § 120.54(16), F.S. Nor does this part apply to Commission inquiries or investigations or to determinations of probable cause preliminary to Commission action. *Specific Authority: 120.57, F.S., Law Implemented: 120.57, F.S. History—New 12-21-81; Formerly 25-22.27.*

#### 25-22.026 Parties.

(1) Parties in any proceeding conducted in accordance with § 120.57, F.S., are complainants, applicants, petitioners, protestants, respondents, or intervenors. Parties shall be entitled to receive copies of all pleadings, motions, notices, orders and other matters filed in a proceeding, and shall be entitled to all rights afforded under Chapter 120, F.S. According to the nature of the proceeding, the term "party" may include the Commission.

(2) If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may, upon motion of a party, or upon his or her own initiative enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

(3) The Commission staff may participate as a party in any proceeding. Their primary duty is to represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration.

(4)(a) In cases assigned to the Division of Administrative Hearings, the Commission staff's role is to represent the public interest and be neither in favor of nor against any particular party, unless the Commission is enforcing rules or statutes through a show cause or similar proceeding, or unless the Commission is a respondent as the Division of Administrative Hearings. Staff is not a party in interest and has no substantial interests that may be affected by the proceeding. Commission staff's role shall be to assist in developing evidence to ensure a complete record so that all relevant facts and issues are presented to the fact finder. Any position that staff has prior to the hearing is preliminary; final positions are based upon review of the complete record.

(b) When advocating a position, Commission staff may testify and offer exhibits and such evidence shall be subject to cross-examination to the same extent as evidence offered by any other party.

*Specific Authority: 120.57, F.S., Law Implemented: 120.57, F.S. History—New 12-21-81; Formerly 25-22.26. Amended 8-25-91.*

#### 25-22.028 Filing, Service of Documents, and Computation of Time.

(1) Filing. Filing shall be accomplished by submitting the original document and the appropriate number of copies, as provided by rule, to the Division of Records and Reporting (Division). Filing may be made by U.S. Mail, hand delivery, or courier service. Filings on behalf of companies with gross annual operating revenues derived from intrastate business in excess of \$750,000, Class A water and sewer utilities, and parties to proceedings affecting these entities shall also include a copy of the document on diskette in word processing or spreadsheet format, whichever is appropriate, when filing documents capable of being generated by word processing or spreadsheet software. Material for which a request for confidential classification is pending under Rule 25-22.006, Florida Administrative Code, should not be included in a diskette copy. The diskette filing need not recreate document attachments not originally generated for the purpose of filing with the Commission, such as exhibits attached to a petition. The copy of the document on diskette shall be filed within 1 working day of the date the original printed document is filed. Information about the word processing and spreadsheet software preferred by the Commission may be obtained from the Director of the Division. Each diskette shall be accompanied by a statement specifying the density of the diskette, the operating system and the software used to prepare the document on diskette. For purposes of the requirement that copies of documents be filed on diskette, "document" means all prehearing statements regardless of length, and pleadings, post-hearing statements of positions on issues or briefs, proposed findings of fact and conclusions of law in excess of 3 pages exclusive of the service list. The prehearing officer assigned to the proceeding may grant exceptions to the requirement for filing documents on diskette on a case-by-case basis, for good cause shown. In case of a discrepancy between an original printed document that is filed and the document on diskette, the filed original document shall prevail. Filing shall be completed upon receipt by the Division, provided, however, that during the course of a hearing before the Commission or a panel thereof, the presiding chairman may accept a document for filing and shall note the filing date and transmit it to the Division. In this situation the responsible party shall ensure that a copy of the document is submitted on diskette to the Division within 5 working days. The date a document is submitted for filing shall be noted by the person making the filing on the first page of the document filed. Where a document is served upon a party pursuant to these rules, its original and the appropriate copies, or, in the case of interrogatories or production of documents, a notice of service shall be filed with the Division of Records and Reporting no later than 5 days after service.



notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications.

(1) This rule shall govern communications between Commission employees and parties to docketed proceedings before the Commission. This rule shall not apply in proceedings under sections 120.54, 120.565, 367.0814, Fla. Stat., proposed agency action proceedings before the Commission has voted to issue a proposed agency action order, non-rate case tariffs, workshops or internal affairs meetings. Also exempted are docketed and undocketed audits, telephone service evaluations, and electric and gas safety inspections. Nothing in this rule is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable provisions of the Florida Rules of Civil Procedure, or affect communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.

(2) Written Communications — Notice of any written communication between Commission employees and parties shall be transmitted to all other parties at the same time as the written communication, whether by U.S. Mail or other means.

(3) Scheduled Meetings and Conference Calls — All parties to the proceeding shall be given reasonable notice of the time and place of any scheduled meeting or conference call between Commission employees and parties. For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.

(4) Response to Communications — Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

(5) Prohibited Communications — No Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited ex parte communication under section 350.042, Fla. Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a staff member who testifies in a case shall not discuss the merits of that case with any Commissioner during the pendency of that case.

*Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81.*

**25-22.034 Discovery.** Parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay and may impose

appropriate sanctions under Rule 1.380, Florida Rules of Civil Procedure, except that such sanctions may not include contempt or the award of expenses unless specifically authorized by statute. Sanctions may also include dismissal under Rule 25-22.042.

*Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.34.*

**25-22.035 Miscellaneous Matters.**

(1) Presiding Officer. As used herein "presiding officer" means the Commission or a member thereof, who conducts a hearing on behalf of the Commission or a Hearing Officer assigned by the Division of Administrative Hearings, or any other person authorized to conduct administrative hearings. Unless good cause is shown, all motions for disqualification of a presiding officer shall be made at least five days prior to the date scheduled for the final hearing.

(2) Consolidation. If there are separate matters before the presiding officer which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party. Any party to a proceeding may request that it be consolidated with other proceedings, or the presiding officer may on his or her own initiative order separate proceedings to be consolidated.

(3) Procedure. Generally, the Florida Rules of Civil Procedure shall govern in proceedings before the Commission under this part, except that the provisions of these rules supersede the Florida Rules of Civil Procedure where conflict arises between the two.

*Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.35.*

**25-22.0355 Assignment of Formal Proceedings.**

(1) Formal Proceedings may be assigned by the Chairman to panels of two, three or five Commissioners or to a DOAH Hearing Officer or individual Commissioner for hearings as provided in Section 350.01, Florida Statutes.

(a) The assignment of proceedings shall be accomplished at the earliest practicable time but no later than 45 days after a case is docketed in any event.

(b) Assignment of cases to panels of two or three Commissioners shall be done randomly, unless the Chairman determines otherwise for good cause shown in a particular case.

(c) If a Commissioner becomes unavailable after assignment, he shall notify the Chairman, who shall make another assignment as soon as practicable.

(2) When a case is assigned for hearing to a panel of Commissioners, the hearing and deciding panels shall be identical. If a case is assigned to a DOAH Hearing Officer or individual Commissioner for a hearing, the case shall be assigned to the full Commission for decision.

(3) If a proceeding is assigned for hearing to a panel of two or three Commissioners or to a DOAH Hearing Officer or individual Commissioner, upon motion of a Commissioner or upon petition of those persons described in 350.01(7), a majority of the Commission may decide that the full Commission shall hear such a case.

(4) Petitions seeking to have the full Commission sit in a particular case may be filed as authorized by Section 350.01(7).

(a) Applicants, petitioners or eligible parties filing a pleading who desire a hearing before the full Commission shall so specify in their initial pleading.

(b) Other persons eligible to make such a request shall do so within 15 days of notice of filing of the application or petition, or rendition of an order suspending proposed rates or of an order initiating a proceeding, whichever occurs first. In each case, these petitions/requests shall be disposed of by a majority of the Commission. Failure to file pleadings timely, and in the manner specified herein, may be considered just cause for denial of such pleadings.

(5) In cases filed pursuant to the provisions of Subsections 365.05(4), 366.06(3), or 367.08(6), the initial decision whether to suspend all or part of the rates as filed shall be made by the full Commission, since whether a hearing will be required cannot be determined until that decision is made.

(6) Assignment of a proceeding to a panel does not preclude delegation of prehearing conferences or similar procedural matters to a single member of the panel.

*Specific Authority: 2033 FS Law Implemented: 2033  
2037-10a; 350.01; 350.12; FS History - Formerly  
25-230; Amended 12-21-81 & 7-20-83; Formerly  
25-22.137*

#### Subpart B Prehearing Procedures

##### 25-22.036 Initiation of Formal Proceedings.

(1) Applicability. This section shall apply to all § 120.37(1) and (2) hearings including a hearing requested by a substantially affected person subsequent to proposed agency action. This rule shall not apply to the extent that a proceeding is governed by rules or statutes that prescribe alternative procedures.

(2) Initial Pleading. The initial pleading shall be entitled as either an application, petition, complaint, order, or notice, as set forth in subsections (3), (4), (5), and (6). Where the Commission has issued notice of proposed agency action, the initial pleading shall be entitled "Petition on Proposed Agency Action."

(3) Application. An application is appropriate when a person seeks authority from the Commission to engage in an activity subject to Commission jurisdiction.

(4) Petition. A petition is appropriate when:  
(a) A person subject to Commission jurisdiction seeks authority to change its rates or service, or seeks some other Commission action not otherwise specified in these rules; or

(b) A substantially affected person seeks Commission action to change the rates or service of a person subject to Commission jurisdiction, or seeks some other Commission action not otherwise specified in these rules.

(5) **Complaints.** A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

(6) **Orders and Notices.** Upon its own motion, the Commission may issue an order or notice initiating a proceeding. Such order or notice shall be served upon all persons named therein. The Commission may also transmit notice of its action to other persons requesting such notice, and may publish such notice in appropriate newspapers of general circulation and the Florida Administrative Weekly.

(7) **Form and Content.**

(a) **Generally.** Except for orders or notices issued by the Commission, each initial pleading should contain:

1. The name of the Commission and the Commission's docket number, if known;

2. The name and address of the applicant, complainant or petitioner, and an explanation of how his or her substantial interests will be or are affected by the Commission determination;

3. A statement of all known disputed issues of material fact. If there are none, the petition must so indicate.

4. A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief.

5. A demand for relief, and

6. Other information which the applicant, complainant or petitioner contends is material.

(b) **Application.** An application shall be governed by the statute or rules applicable to applications for authority. In the absence of a specific form and content, the application shall conform to this rule.

(c) **Complaint.** Each complaint, in addition to the requirements of paragraph (a) above shall also contain:

1. The rule, order, or statute that has been violated;

2. The actions that constitute the violation;

3. The name and address of the person against whom the complaint is lodged;

4. The specific relief requested, including any penalty sought.

(d) When a petitioner seeks relief against another person, the petition shall include the name and address of the person against whom relief is sought in addition to the requirements of paragraph (a) of this subsection.

(e) Petitions for rate relief shall conform to all applicable rules and statutes as to form and content, in addition to the requirements of paragraph (a) of this subsection.

(f) **Petition on Proposed Agency Action.** When a petition is filed in response to proposed agency action the petition shall also contain a statement of when and how notice of the Commission's proposed agency action was received.

(8) **Amendments.** A petition, application or complaint may be amended prior to the filing of a

responsive pleading or the designation of a presiding officer by filing and serving an amended initial pleading in the manner prescribed for filing and serving an original petition, application or complaint. The petitioner, complainant or applicant may amend its initial pleading after the designation of the presiding officer only upon order of the presiding officer.

(9) **Disposition.**

(a) Where an application, petition, or complaint has been filed, and Commission action has not yet been proposed, the Commission may:

1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely;

2. Issue notice of proposed agency action where a rule or statute does not mandate a hearing as a matter of course, and after the time for responsive pleadings has passed;

3. Set the matter for hearing before the Commission, or member thereof, or request that a hearing officer from the Division of Administrative Hearings be assigned to conduct the hearing. The assignment of a matter for hearing shall be pursuant to Rule 25-22.0355.

4. Dispose of the matter as provided in § 120.57(2).

(b) Where a petition on proposed agency action has been filed, the Commission may:

1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely;

2. Grant the petition and determine if a Section 120.57(1) hearing or a Section 120.57(2) hearing is required;

(c) The Commission shall promptly give written notice to all parties of the action taken on the petition, and shall state with particularity its reasons therefor.

(d) If the Commission elects to request that a Hearing Officer of the Division of Administrative Hearings be assigned to conduct the hearing, the Commission shall forward the initial pleading, and all materials filed with the Commission, to the Division of Administrative Hearings, and shall notify all parties of its action.

(10) **Service of Initial Pleadings.** Where a petition seeks relief against a person, or a complaint is filed, a copy of the petition or complaint shall be served on all persons named therein. Where a petition on proposed agency action is filed, a copy shall be served on all parties of record.  
*Specific Authority: 120.57 FS, Law Implemented: 120.57 FS, History—New 12-21-81, Formerly 25-22.36.*

**25-22.037 Answers and Motions.**

(1) **Answer.** A respondent or intervenor may file an answer within twenty (20) days of service of the petition. An answer to an order or notice by the Commission which asserts a violation of a statute, rule or order, or instituting a formal proceeding, may be filed within the time stated in the order or notice, or in the absence of a stated time, within twenty (20) days of issuance of the order or notice.

(2) Motions. Motions may be filed in opposition to the proceeding, or for other purposes during the proceeding.

(a) Motions in opposition to an order, notice, complaint or petition, which may be filed by any party, include motions to dismiss, to strike, and for a more definite statement. Such motions shall be filed within the time provided for filing an answer. In the event such a motion is denied, an answer or other responsive pleading may be filed within 10 days after issuance of an order denying the motion. Any ruling on such a motion by a presiding officer other than the Commission shall be incorporated in a recommended order, and will be finally disposed of only by the Commission.

(b) All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. In proceedings before the Commission, the original written motion shall be filed with the Division of Records and Reporting. In proceedings before the Division of Administrative Hearings, the original written motion shall be filed with the presiding officer. The presiding officer shall conduct such proceedings and make such orders as are deemed necessary to dispose of issues raised by motions. Every written motion may be accompanied by, or included in, a written memorandum stating the grounds upon which the motion is based. Other parties to a proceeding may, within seven (7) days after service of a written motion, file written memoranda in opposition.

(3) Waiver. Except in cases where a default would occur, the failure of a party to file a timely answer or motion in response to an order, notice, or other initial pleading shall constitute an admission of all facts set forth in the order, notice or initial pleading.

(4) Default. Where an order of initial pleading has been served on a party, and such order or initial pleading seeks a penalty or other specific relief against a person subject to Commission jurisdiction, failure to file a timely answer or motion in response thereto shall constitute a default. The Division of Records and Reporting, upon determining that a default has occurred, shall so indicate in the docket file, and shall return all papers filed by the defaulting party, except those seeking to set aside the default. A default will be set aside only upon a showing of a failure to serve the order or initial pleading, fraud, or lack of subject matter jurisdiction or other good cause as determined by the Commission.

*Specific Authority 120.53 FS Law Implemented 120.53 FS History—New 12-21-81, Formerly 25-22.37*

#### 15-22.0375 Pleadings.

(1) Pleadings shall substantially conform to the Florida Rules of Civil Procedure as to content, form, size, signatures, and certifications.

(2) Pleadings shall refer to the docket number assigned by the Division of Records and Reporting.

(3) Pleadings shall be served on all parties and the original and seven copies of all pleadings shall be submitted to the Division of Records and

Reporting. However, initial pleadings for increases in rates, except rate increases by water and wastewater utilities, shall be filed with twenty (20) copies. The requirement of twenty (20) copies shall apply to all exhibits appended to the original petition, prepared testimony and exhibits, briefs and other supplemental data requested by the Commission.

*Specific Authority 120.53 FS Law Implemented 120.53 FS History—New 12-21-81, Formerly 25-22.37*

#### 15-22.038 Prehearing Conferences.

(1) Generally. For the purpose of this rule, the words "prehearing officer" shall refer to a Commissioner designated to preside at the hearing, a hearing officer designated by the Division of Administrative Hearings to preside at the hearing, or a member of a commission panel assigned to the case that has been designated by the Chairman as a prehearing officer. Where the commissioner designated as the prehearing officer becomes unavailable, the following persons may act as prehearing officer in the following order of availability: any member of the panel assigned to the proceeding, in order of seniority or the commission chairman. A commissioner acting as prehearing officer may, in his or her discretion, refer any matter to the panel assigned to the case for a decision.

(2) Orders of Prehearing Officers. A party who is adversely affected by any such order or notice may seek reconsideration by the prehearing officer, or review by the Commission panel assigned to the proceeding, by filing a motion in support thereof within ten (10) days of service of the notice or order. Unless raised within this time, any error claimed with reference to discovery, scheduling, prehearing requirements, or the prehearing order will be waived, absent good cause shown.

(3) Prehearing Statement. A prehearing officer may issue an order requiring each party to file a prehearing statement. Such order shall provide a date by which time such prehearing statement is due and shall further state that the failure of party to file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission, as well as the ability to present testimony in favor of his or her position. An order requiring a prehearing statement may address or rule upon any matter which may aid in the orderly disposition of the proceeding. In an order requiring a prehearing statement, the prehearing officer may require each party:

(a) to identify all known witnesses that may be called and indicate the subject matter of their testimony;

(b) to identify all known exhibits, identify their contents, and indicate whether they may be identified on a composite basis;

(c) to provide a statement of its basic position in the proceeding;

(d) to provide a statement of each question of fact the party considers at issue;

(e) to provide a statement of each question of law the party considers at issue.

(f) to provide a statement of each policy question the party considers at issue.

(g) to provide a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f).

(h) to provide a statement of issues that have been stipulated to by the parties.

(i) to provide a statement of all pending motions or other matters the party seeks action upon.

(j) to provide a statement as to any requirement set forth in the prehearing order that cannot be complied with, and the reasons therefor.

(k) to include such other matters in the prehearing statement as will aid the Commission in achieving an orderly disposition of the proceeding.

(4) Prehearing Conferences, etc. A prehearing officer may require the parties to hold such conferences, exchange such information, and submit such pleadings as will aid in the organization of the proceeding and the efficient disposition of the merits of the proceeding. The requirement imposed by the prehearing officer with respect to the exchange of information shall be consistent with Rule 25-22.038.

(a) Upon seven (7) days' written notice, the prehearing officer may conduct, or request the parties to hold, one or more prehearing conferences for the purpose of hearing arguments on pending motions, clarifying and simplifying issues, discussing the possibility of settlement of the issues, examining exhibits and documents, exchanging names and addresses, and resolving other procedural matters.

(b) Within a reasonable time after designation to the case, the prehearing officer shall set a date for a final prehearing conference and shall issue notice of the same.

(c) All parties and the prehearing officer shall attend the final prehearing conference, at which time the participants shall advise the prehearing officer as to the issues known to be in dispute, as well as the parties' positions thereon.

(d) The prehearing officer may issue a prehearing order as set forth in (5) below.

(5) Prehearing Order. The prehearing officer may issue a prehearing order which sets forth the issues in the case, as well as the positions of the parties, and addresses such other matters as may aid in the conduct of the hearing and the efficient and fair disposition of the proceeding. Issues raising primarily questions of fact shall be stated separately from issues raising solely legal questions.

(a) The prehearing order shall control the conduct of the parties in the case to the extent the matter is addressed in the order. Except for good cause, an objection to any aspect of the prehearing order shall be raised at the start of or prior to hearing.

(b) Where an order has been issued that requires prehearing statements to list issues and positions, the prehearing officer has conducted a final prehearing conference wherein issues and positions were discussed, and a prehearing order has been issued which sets forth the issues in the

case and the parties' positions thereon, the following shall apply:

1. Any party who failed to attend a final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.

2. Any issue not raised by a party prior to the issuance of a prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that he or she was unable to identify the issue because of the complexity of the matter, discovery or other prehearing procedures were not adequate to fully develop the issues, due diligence was exercised to obtain facts touching on the issue, information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue, and introduction of the issue would not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

3. Unless a matter is not at issue for that party, a party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue.

(6) When an issue and position have been properly identified any party may adopt that issue and position in his or her post-hearing statement.

*Specific Authority: 2011 FS Law Implemented 2011 FS History—Formerly 25-22.05 Amended 2-21-01 Formerly 25-22.18*

#### ANNOTATIONS

##### Standard of review

*PSC rejected Southern Bell's argument that Rule 25-22.038(2), F.A.C. grants an entitlement to a de novo review of a Prehearing Officer's order. The appropriate standard of review of a Prehearing Officer's order is the same as that applied for a motion for reconsideration. In re Petition on behalf of Citizens of the State of Florida to initiate investigation into integrity of Southern Bell Telephone Company's repair service activities and reports 92 PSC 3-247 (1992).*

**25-22.039 Intervention.** Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Commission Rule 25-22.036(7)(a), and must

7. A statement that written comments regarding utility service or the proposed rates and charges should be addressed to the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to the proceeding.

8. A statement that complaints regarding service may be made to the Commission's Division of Consumer Affairs at the following toll-free number 1-800-342-3552.

9. A statement that the Commission will be reviewing the utility's service availability charges in the pending case and that the Commission may adjust those charges.

10. The docket number assigned by the Commission's Division of Records and Reporting.

(d) The customer meeting notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(e) If the proposed agency action order issued in the case is protested and any hearings are subsequently held, the utility shall give notice in accordance with subsections (6) and (7) above.

(10) After the Commission issues an order granting or denying a rate change, the utility shall notify its customers of the order and any revised rates. The customer notification shall be approved by Commission staff and be distributed no later than with the first bill containing any revised rates.  
*Specific Authority 350 (27)(2), 367 (2)(1)(f) FS Law Implemented 367.081, 367.084(1), 367.091 FS History—New 5-27-93*

**25-22.0408 Notice of Requests for New or Revised Service Availability Charges or Policies and Notice of Requests for Allowance for Funds Prudently Invested (AFPI) Charges.**

(1) This rule applies to all requests for new or revised service availability charges or policies and to all requests for allowance for funds prudently invested (AFPI) charges made by water and wastewater utilities, including those requests made in conjunction with a request for a general rate increase.

(2) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall place a copy of the application at its official headquarters and at any business offices it has in the service areas included in the request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in the request, the utility shall place a copy of the application at the main county library, the local community center or other appropriate location which is within or most convenient to the service area and which is willing to accept and provide public access to said copies. The Commission may require that copies of the application be placed at other specified locations.

(3)(a) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall have

published a notice of application in a newspaper of general circulation in the service areas included in the petition.

(b) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall mail or hand deliver a notice of application to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application is filed.

(c) The Commission may require such other notice as it finds reasonably necessary.

(d) The notice of petition shall include the following:

1. The date the notice was issued.  
2. A statement that the utility has filed a petition for new or revised service availability charges or policies or AFPI charges with the Commission.

3. A statement that the requested service availability charge or AFPI charge is to pay for growth in the utility system and the requested charges are to be paid by new, not existing customers.

4. A statement of the locations where copies of the application are available for public inspection and the times during which inspection may be made.

5. A comparison of the present and proposed policy and charges.

6. The utility's address, telephone number and business hours, and

7. A statement that any comments concerning the policy or charges should be addressed to the Director of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870.  
*Specific Authority 350 (27)(2), 367 (2)(1)(f) FS Law Implemented 367.101, 367.111, 367.091 FS History—New 5-27-93*

**25-22.041 Continuances.** The presiding officer may grant a continuance of a hearing for good cause shown or upon stipulation of all parties. Requests for continuance shall be made in writing or upon oral motion at the hearing. Except in cases of emergency, requests for continuance must be made at least five (5) days prior to the date noticed for the hearing.

*Specific Authority 120.53 FS Law Implemented 120.53 FS History—New 12-21-81; Formerly 25-22.41*

**25-22.042 Dismissal.**

(1) The failure or refusal of a party to comply with any lawful order may be cause for dismissing the party from the proceeding.

(2) The presiding officer shall serve upon all parties written notice of any recommended order entered pursuant to Subsection (1). Not later than fourteen (14) days after service of notice, the party against whom such an order is entered may file a motion requesting that the recommendation for or dismissal be set aside and stating the ground relied upon. If a dismissal is entered against the party who has the burden of proof, the proceeding will be dismissed. If a dismissal is entered against a party



who does not ~~have the burden~~ of proof, the party shall ~~not be allowed~~ to participate in the proceeding as a party.

*Specific Authority 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.42*

**Subpart C. Conduct of Formal Hearings**

**25-22.045 Subpoenas.**

(1) When the proceeding is before the Commission or member thereof, subpoenas may be issued by the presiding officer or the Division of Records and Reporting on subpoena forms supplied by the Commission. When the proceeding is before a hearing officer of the Division of Administrative Hearings, subpoenas may be issued by the Hearing Officer.

(2) A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing before the presiding officer, for the purpose of taking the testimony of such witness or inspection of documents. An application for the subpoena shall state the name and address of the witness for whom the subpoena is to be issued, and the time and place for the witness to appear.

(3) Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena with the agency having jurisdiction of the dispute. The motion shall set forth the grounds relied upon.

(4) A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if service is not made by an officer authorized by law to do so.

(5) Service of a subpoena may also be effected by certified mail, in which case the return receipt must be signed by the person named in the subpoena.

*Specific Authority 120.53 FS, Law Implemented 120.53 FS, History—Formerly 25-2100, Amended 12-21-81, Formerly 25-22.43*

**25-22.046 Witnesses and Witness Fees.**

(1) All witnesses shall be sworn and subject to examination and cross-examination.

(2) The presiding officer may allow members of the general public to appear as witnesses at a hearing, and to present oral or written communications without the necessity of being a party or intervenor. The presiding officer may set fair and reasonable conditions on such appearances, and the communications shall be subject to cross-examination, challenge and rebuttal.

(3) Witness fees shall be paid by the party at whose instance the witness is summoned. Witness fees shall be tendered at the time of service of a subpoena. Except in the case of state employees, the fees allowed shall be the same as those allowed

by the circuit courts of the state. State employees shall be entitled to ~~compensation~~ at the rate provided under Section 112.061, F.S. This section shall not limit the fees of expert witnesses.

*Specific Authority 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.46*

**25-22.048 Evidence.**

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to present evidence relevant to the issues; to cross-examine opposing witnesses; to impeach any witness in accordance with § 90.608, F.S., regardless of which party first call that witness to testify; and to rebut the evidence presented against it.

(3) Any relevant evidence shall be admitted if it is the sort of evidence which is normally admissible in civil trials in Florida or which reasonably prudent persons are accustomed to relying upon in the conduct of their affairs. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Irrelevant and unduly repetitious evidence may be excluded.

(4)(a) Evidence may be submitted in the form of written testimony. Such testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines and a sufficient left margin to allow for binding. A presiding officer may require all parties to prefile testimony and shall provide reasonable notice to the parties of the date testimony shall be prefiled. This rule shall not limit the presentation of reports or written analyses, where reasonable.

(b) Upon providing copies of written testimony to all parties of record, a witness may enter that testimony into the record as though read, at which time the witness shall become subject to cross-examination and his or her testimony shall become subject to evidentiary rules set out in subsection (3) of this rule.

*Specific Authority 120.53 FS, Law Implemented 120.53 FS, 120.371(b)(4), 120.381(b), 167.121(1)(g), FS, History—New 12-21-81, Formerly 25-22.48*

**25-22.049 Recordation.** The Commission shall have the responsibility of preserving the testimony at formal proceedings and hearings. Proceedings shall be reported by certified court reporter or by recording instruments. Any party to a hearing may, at its own expense, provide a certified court reporter if the Commission does not. If the Commission decides not to have the proceedings reported by a court reporter, it shall provide the parties with adequate notice of its decision. The presiding officer may provide a certified court reporter. At hearings during which the services of a court reporter have been retained any party who wishes a written transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation shall become the official transcript.

*Specific Authority 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.49*

**Subpart D Post-hearing Procedures**

**25-22.056 Post-Hearing Filings**

(1) General Provisions

(a) If a hearing under section 120.57, F.S., is conducted by a panel of two or more Commissioners or the full Commission, all parties may submit proposed findings of fact, conclusions of law, and legal briefs on the issues within a time designated by the presiding officer.

(b) If a hearing under section 120.57, F.S., is conducted by a Commissioner sitting as a hearing officer, all parties and staff may submit proposed

findings of fact, conclusions of law, proposed recommended orders which shall include a statement of the issues, and exceptions to the proposed or recommended order, within the time and in the format designated by the hearing officer.

(c) A party who fails to state or reaffirm a position on an issue to the presiding officer or hearing officer at the appropriate time shall be deemed to have waived that issue or position.

(d) A party's proposed findings of fact, conclusions of law, statement of issues and positions, and brief shall together total no more



than 60 pages and shall be filed at the same time. The hearing officer or, if the hearing has been conducted by a panel or the full Commission, the prehearing officer, may modify the page limit for good cause shown. Lettering shall be distinct and printed in type of no more than 10 characters per inch. The text must be double spaced with 1-inch margins except for quoted material which may be indented and single spaced.

(e) Requests for oral argument shall be filed in accordance with Rule 25-22.038, F.A.C.

(2) Proposed Findings of Fact. A party may submit proposed findings of fact. The hearing officer or Commissioners assigned to the proceeding will rule upon each finding of fact, as required by section 120.59(2), F.S., when filed in conformance with this rule.

(a) Proposed findings of fact shall be entitled as such, and must be presented on a document separate from all other post-hearing documents.

(b) Each proposed finding of fact shall be separately stated, numbered consecutively, and shall be a succinct statement not to exceed 3 sentences in length. Proposed findings of fact shall not contain mixed questions of fact and law. Each proposed finding of fact shall cite to the record, identifying the page and line of the transcript or exhibit that supports the particular finding. All proposed findings of fact which relate to a particular issue shall be grouped together and shall identify the issue number to which they relate. Any written statement that is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than proposed finding of fact.

(3) Statement of Issues and Positions. In any proceeding where a prehearing order has been issued, and such prehearing order contains a statement of the issues as well as the positions of the parties thereon, all post-hearing statements and other documents filed pursuant to this rule shall conform to the form and content of the statement of the issues and positions.

(a) Each party to a proceeding shall file a post-hearing statement of issues and positions which shall include a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the party's post-hearing statement may simply restate the prehearing position, however, if the prehearing position is longer than 50 words it must be reduced to no more than 50 words. The 50-word limit may be modified for good cause shown. In the event that a new issue is identified by a party in a post-hearing statement, that new issue shall be clearly identified as such, and a statement of position thereon shall be included. Any issue or position not included in a post-hearing statement shall be considered waived.

(b) A party is not required to file post-hearing documents in addition to the post-hearing statement, unless otherwise required by the presiding officer. If a brief is filed, each argument must be identified by the issue number to which it relates. In the event that a party fails to file a

post-hearing statement in conformance with (3)(a), and no other post-hearing memorandum is filed which conforms to this rule, that party shall have waived all issues and may be dismissed from the proceeding.

(4) Post-Hearing Filings When Hearing is Conducted by a Hearing Officer. If a hearing under section 120.57, F.S., is held before a Commissioner sitting as a hearing officer, the following provisions shall apply in addition to (1)(b) through (3) of this rule. Subsection (b) of the following provisions also applies when the hearing has been conducted by the Division of Administrative Hearings.

(a) Recommended or Proposed Order. The hearing officer shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended or proposed order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law separately stated, and recommendation for final Commission action.

(b) Exceptions. Parties and staff may file exceptions to the recommended or proposed order with the Division of Records and Reporting within 14 days of service of the order, and shall serve copies of any such exceptions upon all parties of record and staff. Such exceptions shall fully set forth the error claimed and the basis in law and fact therefore, with exceptions to findings of fact supported by citations to the record. A party's failure to serve or file timely written exceptions shall constitute a waiver of any objections to the recommended or proposed order.

*Specific Authority: 120.53(1), FS; Law Implemented: 120.53, 120.57, 120.58, FS; History: New 12/21/81; Formerly 25.22.34, amended 5-23-91.*

#### ANNOTATIONS

##### Application

*Under Rule 25-22.056 the hearing officer is granted the authority to establish the deadline for submitting exceptions to decisions not made by the entire Commission. The terminology used within this section is consistent with the Florida Statutes and there are no inconsistencies with Rule 25-22.056(1)(b) and 25-22.056(4)(b). Legal Environmental Assistance Foundation, Inc. v. Florida Public Service Commission, 15 FLR 3337 (1991).*

##### Proposed findings

*Filing of proposed findings of fact and conclusions of law was found to substantially conform to requirements of Rule 25-22.056, F.A.C. and thus did not warrant reconsideration of adoption thereof where title of brief clearly indicated presence of "proposed findings" and even though such proposed findings were not presented in documents separate from all other post-hearing memoranda as required by rule did not result in any harm or prejudice to opposing party. Facts that prehearing officer did not originally invite proposed findings was inconsequential since parties have statutory right under Chapter 120, F.S. to submit proposed findings of fact and conclusions of law in § 120.57, F.S. proceedings in re investigation into Affiliated Coal/Plus Fuel Supply Relationships of Florida Power Corporation, Phase II FPC - Issues Motion for Reconsideration, 90 FPSC 183 (1990).*

*Rules relating to oral arguments before and decisions of the Commission*

The challenges to Rules 25-22.056(1)(a), (b), 25-22.056(4), and 25-22.058, F.A.C. as alleged invalid exercises of delegated legislative authority are found to be invalid under Section 120.533, F.S. The contended inconsistencies within Rule 25-22.056(1)(b) and 25-22.056(4)(b), dealing with time limitations in filing recommended orders, are unsubstantiated. These rules deal with different areas of time limitation restrictions. Rule 25-22.058(1) and (2) does not violate Florida Statute because the opportunity for oral argument before the Commission is not mandated. Rule 25-22.058(3) guarantees the right to request oral argument and it is presumed the Commission will act consistent with existing law. *Legal Environmental Assistance Foundation, Inc. v. Florida Public Service Commission*, 93 FPSC 9493 (1993).

**25-22.057 Recommended Order, Exceptions, Replies, Staff Recommendations.**

Specific Authority 120.53 FS Law Implemented 120.53 FS History—New 12-21-81, Formerly 25-22.37 Repealed 3-23-93

**25-22.058 Oral Argument.**

(1) The Commission may grant oral argument upon request of any party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.

(3) Requests for oral argument on recommended or proposed orders and exceptions pursuant to section 120.58(1)(e), F.S., must be filed no later than 10 days after exceptions are filed. Specific Authority 120.53 FS Law Implemented 120.53 120.58(1)(e) FS History—New 12-21-81, Formerly 25-22.58 Amended 3-23-93

**ANNOTATIONS**

*Rules relating to oral arguments before and decisions of the Commission*

The challenges to Rules 25-22.056(1)(a), (b), 25-22.056(4), and 25-22.058, F.A.C. as alleged invalid exercises of delegated legislative authority are found to be invalid under Section 120.533, F.S. The contended inconsistencies within Rule 25-22.056(1)(b) and 25-22.056(4)(b), dealing with time limitations in filing recommended orders, are unsubstantiated. These rules deal with different areas of time limitation restrictions. Rule 25-22.058(1) and (2) does not violate Florida Statute because the opportunity for oral argument before the Commission is not mandated. Rule 25-22.058(3) guarantees the right to request oral argument and it is presumed the Commission will act consistent with existing law. *Legal Environmental Assistance Foundation, Inc. v. Florida Public Service Commission*, 93 FPSC 9493 (1993).

**Waiver**

Request for oral argument must be filed with pleading upon which argument is requested, otherwise it is waived. Appellate filed its pleading, petition for hearing, on October 22, 1986. Request for oral argument was not filed until February 10, 1987. Thus it was proper for Commission to deny appellants request because it was inconsistent with requirements of rule U.S. Spring Communications Co. v. Nichols Fla. 334 So. 2d 698 (1988).

**25-22.059 Final Orders.**

(1) If a hearing is conducted by the Commission, a final order shall be entered within ninety (90) days after the hearing or receipt of the hearing transcript, whichever is later. The final order shall include a caption, time and place of the hearing, appearances entered at the hearing, statement of the issues, findings of fact, conclusions of law, and statement of final Commission action.

(2) If the final hearing has been conducted by other than the Commission, the Commission shall issue its final order within ninety (90) days of receipt of the recommended order. The recommended order shall be considered at a public meeting. This proceeding shall not be a de novo review, but shall be confined to the record submitted to the Commission together with the recommended order.

(3) If a party files exceptions to a recommended order or submits proposed findings of fact to the Commission, the final order shall include an explicit ruling on each exception and each proposed finding of fact, provided however, the Commission will not rule upon proposed findings of fact unless submitted in conformance with Rule 25-22.056(2). The Commission is not required to make explicit rulings on subordinate, cumulative, immaterial or unnecessary proposed facts, and such proposed facts may be rejected in the final order by a statement that they are irrelevant or immaterial, or that competent substantial evidence supports the presiding officer's findings of facts which were contrary to those filed in the exceptions.

Specific Authority 120.53 FS Law Implemented 120.53 FS History—New 12-21-81, Formerly 25-22.59

**25-22.060 Motion for Reconsideration.**

(1) Scope and General Provisions

(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. The Commission will not entertain any motion for reconsideration of any order which disposes of a motion for reconsideration. The Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, regardless of the form of the Notice and regardless of whether or not the proposed action has become effective under Rule 25-22.029(6).

(b) A party may file a response to a motion for reconsideration and may file a cross motion for reconsideration. A party may file a response to a cross motion for reconsideration.

(c) A final order shall not be deemed rendered for the purpose of judicial review until the

Rules 25-22.003, 25-22.004, 25-22.005, 25-22.008,  
25-22.012, 25-22.013, 25-22.014, 25-22.015, 25-  
22.016, 25-22.018, 25-22.020, 25-22.021, 25-  
22.022, 25-22.025, 25-22.026, 25-22.034, 25-  
22.035, 25-22.0355, 25-22.037, 25-22.0375, 25-  
22.038, 25-22.041, 25-22.042, 25-22.046, 25-  
22.048, 25-22.049, 25-22.056, 25-22.059, 25-  
22.001, 25-22.002, 25-22.017, 25-22.028, 25-  
22.029, 25-22.036, 25-22.0405, 25-22.0406, 25-  
22.0407, 25-22.045  
Docket No. 980500-PU

#### SUMMARY OF RULE

The rules being amended are procedural rules which need to be retained for the efficient operation of the agency and to benefit practitioners so they can readily ascertain the required procedures. The rules being repealed are no longer necessary because they are either covered by the Uniform Rules of Procedure or the information will now be located in the Statement of Agency Organization and Operation.

#### SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

#### FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

It is necessary to conform the Commission rules of organization, practice and procedure to Chapter 120, Florida Statutes, the Uniform Rules of Procedure and the exceptions granted thereto.

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