

**STATE OF FLORIDA
DIVISION OF ADMINISTRATION HEARINGS**

**FLORIDA POWER & LIGHT COMPANY,
Petitioner,**

vs.

**PUBLIC SERVICE COMMISSION,
Respondent.**

981890-EU

**PETITION FOR ADMINISTRATIVE DETERMINATION
OF THE INVALIDITY OF AN EXISTING RULE**

Petitioner Florida Power & Light Company ("Petitioner" or "FPL"), pursuant to sections 120.56(1) and (3), Florida Statutes, and rule 28-106.201, Florida Administrative Code, files this Petition for Administrative Determination of the Invalidity of an Existing Rule and states:

1. The affected agency is the Florida Public Service Commission ("PSC"), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

2. The specific PSC rule challenged is rule 25-22.036(3), Florida Administrative Code,

which constitutes an invalid exercise of delegated legislative authority. The rule provides as follows:

AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
MAS _____
OPC _____
PAI _____
SEC _____
WAW _____
OTH _____

(3) 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.

DOCUMENT NUMBER-DATE

12204 OCT-78

FPSC-RECORDS/REPORTING

The renumbering of this rule as subsection (3) was accomplished in PSC Docket No. 980500-PU and became effective on May 3, 1999. The rule was originally adopted on December 21, 1981. Although the subsection number of the rule was changed in 1999 from 25-22.036(6) to 25-22.036(3), the rule text was not revised. As will be discussed more fully below, decisions of the Administration Commission relative to this rule in AC Case No. APA-98-007 also are relevant to this Petition. The Final Order in that case was entered on June 25, 1998. The Petitioner received formal notice of the PSC decision to adopt the rule by memorandum from the PSC dated April 26, 1999. The Petitioner received formal notice of the Final Order in AC Case No. APA-98-007 by memorandum from the PSC dated July 2, 1998.

3. Petitioner's address and telephone numbers are: William G. Walker, III, Vice President, Regulatory Affairs, Florida Power & Light Company, 215 South Monroe Street, Ste. 810, Tallahassee, Florida 32301, (850) 224-7517. Petitioner's counsel's address and telephone numbers are: Steel Hector & Davis LLP, 215 S. Monroe St., Ste. 601, Tallahassee, Fla., 32301; 850-222-2300 (phone); 850-222-7510 (fax).

4. The Petitioner's substantial interests are affected by rule 25-22.036(3) in that the PSC is illegally relying on it as authority to initiate and conduct an adjudicatory proceeding intended to affect Petitioner's substantial interests pursuant to sections 120.569 and 120.57, Florida Statutes, and rule chapter 28-106, Florida Administrative Code. See Order Denying Motions for Reconsideration, Docket No. 981890-EU, Order No. PSC-99-1716-PCO-EU, September 2, 1999 (attached as Exhibit 1); see also Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues, Docket No. 981890-EU, Order No. PSC-99-1274-PCO-EU, July 1, 1999 (attached as Exhibit 2).

5. The above-referenced PSC adjudicatory proceeding is for the stated purpose of investigating “planned, aggregate electric utility reserve margins in peninsular Florida.” Order Establishing Procedure, Docket No. 981890-EU, Order No. PSC-99-0760-PCO-EU, April 20, 1999 (attached as Exhibit 3). The proceeding (hereafter “reserve margin docket”) was initiated by the PSC in December 1998, and is styled In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida. Petitioner, a public utility and an electric utility as defined by section 366.02, Florida Statutes, has been designated unilaterally by the PSC as an appropriate party in the reserve margin docket and will be affected by any orders resulting from that docket. See Order Establishing Procedure at 1. The PSC’s orders relative to the reserve margin docket make clear that it will be treated as a contested docket involving disputed issues of material fact and conducted pursuant to sections 120.569 and 120.57, Florida Statutes, and rule chapter 28-106, Florida Administrative Code. Various orders relate to the filing of testimony, the conduct of discovery, a prehearing conference, and scheduled dates for a hearing. E.g., Order Establishing Procedure; Revised Order Establishing Procedure, Docket No. 981890-EU, Order No. PSC-99-1042-PCO-EU, May 21, 1999 (attached as Exhibit 4).

6. FPL, in pleadings before the PSC, has challenged the agency’s authority to conduct the reserve margin docket as an adjudicatory proceeding pursuant to sections 120.569 and 120.57, Florida Statutes, and rule chapter 28-106, Florida Administrative Code. FPL has argued that the docket was opened by Commissioners as a generic investigation and noted that section 120.57 specifically does not apply to agency investigations preliminary to agency action. § 120.57(5), Fla. Stat. Similarly, chapter 28-106, Florida Administrative Code, is inapplicable to agency investigations preliminary to agency action. Rule 28-106.101(2), F.A.C. FPL’s position is that

conversion of the docket from an investigation into a determination of Petitioner's substantial interests violates both the Administrative Procedure Act and the Uniform Rules of Procedure. See Florida Power & Light Company's Motion for Reconsideration of Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues, July 12, 1999 (attached as Exhibit 5); Florida Power & Light Company's Emergency Request for Status Conference and Preliminary Prehearing Conference, June 8, 1999 (attached as Exhibit 6).

7. The PSC has rejected FPL's arguments and responded by relying on rule 25-22.036(3) as legal authority for the reserve margin docket.¹ That reliance is misplaced for the following reasons, all of which constitute the disputed issues of material fact and ultimate facts alleged in this petition:

- a. Section 120.54(5)(a)1. provides that state agencies must comply with the Uniform Rules of Procedure by July 1, 1998. This section also states that "the uniform rules shall be the rules of procedure for each agency subject to this chapter

¹ It is relevant that the PSC did not originally cite rule 25-22.036(3) as authority for its investigation. The Order Establishing Procedure of April 20, 1999 (Exhibit 3) provides that "[t]his Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code." The Order, which includes no reference to rule 25-22.036(3), also cites other provisions of rule chapter 28-106 as authority for various procedural matters relating to the docket. Similarly, the Revised Order Establishing Procedure of May 21, 1999 (Exhibit 4) does not reference rule 25-22.036(3).

Only after FP&L questioned the PSC's authority to conduct the investigation pursuant to sections 120.569 and 120.57, Florida Statutes, and rule chapter 28-106, Florida Administrative Code, did the PSC staff state at the Status Conference and Preliminary Prehearing Conference on June 30, 1999, that authority for the investigation could be found in rule 25-22.036(3). The first reference in any order to the rule is found in the Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues of July 1, 1999 (Exhibit 2), in which the prehearing officer wrote that "Rule 25-22.036(3), Florida Administrative Code, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties."

unless the Administration Commission grants an exception to the agency under this subsection.”

b. The Administration Commission adopted the Uniform Rules of Procedure on April 1, 1997. See chs. 28-101 through 28-110, Florida Administrative Code. On April 15, 1998, the PSC filed with the Administration Commission a Petition for Exceptions from the Uniform Rules of Procedure. A copy of this petition is attached as Exhibit 7. Among the exceptions sought was one for rule 25-22.036(6), which is identical to, but currently denominated as, rule 25-22.036(3). Id. at 13-14. The PSC argued that the exception “is necessary for the agency to operate efficiently.”

c. On June 10, 1998, the PSC advised the Administration Commission that an exception to rule 25-22.036(6) would be unnecessary, as it is among several rules that “are outside the scope of the uniform rules” See Public Service Commission Memorandum from Noreen S. Davis to Teresa Tinker, June 10, 1998. A copy of this memorandum is attached as Exhibit 8.

d. On June 25, 1998, the Administration Commission entered its Final Order concerning the PSC’s petition for exceptions to the uniform rules. The requested exception for rule 25-22.036(6) was denied. The Administration Commission went on to repeat the PSC’s characterization, and found that subsection (6), along with several other subsections, “appl[ies] to applications, complaints, orders, or notices which do not involve, or which precede, proposed or final agency action determining substantial interests.” (Emphasis supplied). See Final Order, AC Case No. APA-98-007, at 3. A copy of this Final Order is attached at Exhibit 9.

e. Following entry of the Administration Commission's Final Order, the PSC revised its procedural rules in chapters 25-21 and 25-22, Florida Administrative Code, to comport with the requirement that the PSC follow the Uniform Rules of Procedure unless specific exceptions have been granted by the Administration Commission. See Public Service Commission Memorandum from Noreen Davis, Director of Legal Services; Mary Anne Helton, Associate General Counsel, and Christiana T. Moore, Associate General Counsel, to Rule Supplement Mailing List, April 26, 1999 (attached as Exhibit 10). Amendments to rule 25-22.036 were part of the revision explained in this memorandum. As previously noted, the only change to rule 25-22.036(6) is that it was renumbered as rule 25-22.036(3). The memorandum from the PSC attorneys explained the rule amendments as follows: "The rules now contained in Chapters 25-21 and 25-22 fall into one of two categories: they are either exceptions to the URP or they are outside the scope of the URP and no exception is necessary."

f. On April 28, 1999, the PSC adopted rule 25-40.001 entitled "Exceptions to the Uniform Rules of Procedure." This rule lists all of the provisions of the Commission's rules that are exceptions to the Uniform Rules; the rule specifically does not list rule 25-22.036(3) as an exception. See rule 25-40.001 (attached as Exhibit 11).

g. Thus, the PSC stated unequivocally to the Administration Commission, and separately to interested persons, that rule 25-22.036(3) is outside the scope of the Uniform Rules of Procedure. The Administration Commission also ruled in its Final

Order that rule 25-22.036(3) covers matters that do not involve or that precede proposed or final agency action determining substantial interests. Additionally, the PSC has adopted by rule a list of exceptions to the Uniform Rules of Procedure that does not include rule 25-22.036(3).

h. Because it is invalid, the PSC cannot now rely on rule 25-22.036(3) as authority for the reserve margin docket, which is improperly a proceeding in which the PSC has stated its intent to determine FPL's substantial interests. As previously noted, an agency may not rely on procedural rules other than the Uniform Rules of Procedure (which include rule chapter 28-106) unless an exception has been specifically granted by the Administration Commission. § 120.54(5)(a)1., Fla. Stat. In the case of rule 25-22.036(3), the request for an exception was specifically denied.²

i. Despite this history and the plain language of section 120.54(5)(a)1., the PSC insists that the provisions of rule chapter 28-106 are "supplemental to, but do not supersede" rule 25-22.036(3). See Exhibit 1 at 6. Such a view is contrary to law. Department of Corrections v. Saulter, 24 Fla. L. Weekly D1951 (Fla. 1st DCA August 20, 1999) (Uniform Rules of Procedure replaced an agency's prior procedural rules "by operation of law" on July 1, 1998, unless an exception had been granted by

² Although the Administration Commission denied the PSC's request for an exception and ruled in its Final Order that rule 25-22.036(3) covers matters that do not involve or that precede proposed or final agency action determining substantial interests, the PSC has kept the rule in part IV of chapter 25-22 Florida Administrative Code, which is entitled "Decisions Determining Substantial Interests."

the Administration Commission). By relying on rule 25-22.036(3), the PSC attempts to exempt itself from the Uniform Rules of Procedure and the procedural protections of the Administrative Procedure Act.

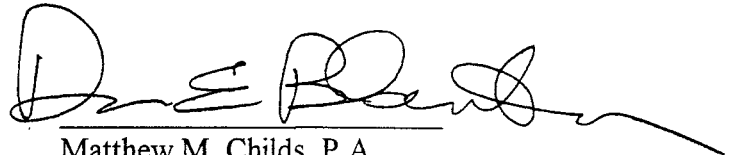
8. Petitioner contends that rule 25-22.036(3) is an invalid exercise of delegated legislative authority as defined in section 120.52(8), Florida Statutes, for the following reasons:

- a. The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in chapter 120, Florida Statutes;
- b. The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;
- c. The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;
- d. The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;
- e. The rule is arbitrary or capricious;
- f. The rule is not supported by competent substantial evidence;
- g. The rule, as construed by the PSC in its Order Denying Motions for Reconsideration (Exhibit 1) and Order Clarifying Scope of Proceeding; Docket Procedures; and Establishing Issues (Exhibit 2), exceeds the specific powers and duties granted by the rule's enabling statutes.

9. The specific rules and statutes requiring that rule 25-22.036(3) be declared an invalid exercise of delegated legislative authority are sections 120.54(5)(a)1., 120.57(5), 120.52(8), and 120.56(1) and (3), Florida Statutes; and rule 28-106.101(2), Florida Administrative Code.

10. Petitioner requests that the Division of Administrative Hearings assign an administrative law judge to conduct a hearing concerning the issues raised by this petition; that the Administrative Law Judge declare rule 25-22.036(3), Florida Administrative Code, to be an invalid exercise of delegated legislative authority; and that the Administrative Law Judge award costs and attorneys fees to the Petitioner pursuant to section 120.595(3), Florida Statutes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donna E. Blanton", with a long horizontal flourish extending to the right.

Matthew M. Childs, P.A.
Donna E. Blanton, Esq.
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(850) 222-2300 (phone)
(850) 222-8410 (facsimile)


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Petition for Administrative Determination of the Invalidity of an Existing Rule was served by Hand Delivery this 7th/₃ day of October, 1999 to the following:

Catherine Bedell, Esq.
Acting General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Room 301
Tallahassee, Florida 32399-0850

Blanca S. Bayó, Director
Records and Reporting³
Florida Public Service Commission
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Robert V. Elias, Esq.
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Room 370
Tallahassee, Florida 32399-0850


Donna E. Blanton

³ Ms. Bayo is served as the PSC representative pursuant to rule 28-106.110, Florida Administrative Code.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation
into the aggregate electric
utility reserve margins planned
for Peninsular Florida.

DOCKET NO. 981890-EU
ORDER NO. PSC-99-1716-PCO-EU
ISSUED: September 2, 1999

RECEIVED
SEP 7 1999

STEEL HECTOR & DAVIS

The following Commissioners participated in the disposition of matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DENYING MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

I. CASE BACKGROUND

On June 30, 1999, a Status Conference and Preliminary Prehearing Conference was held pursuant to Order No. PSC-99-1229-PCO-EU, issued June 22, 1999. During the Conference, several of the parties raised issues challenging the nature of this docket as an investigation being conducted as a formal evidentiary hearing. On July 1, 1999, Order No. PSC-99-1274-PCO-EU (Order) was issued, in which the Prehearing Officer ordered that the docket shall proceed as a formal evidentiary proceeding. In addition, the Order defines the scope of the proceeding, establishes the issues in the docket, and revises the filing dates for utility and intervenor testimony.

On July 9, 1999, Florida Power Corporation (FPC) filed a Motion For Reconsideration Of Order No. PSC-99-1274-PCO-EU and a Request For Oral Argument. On July 12, 1999, Florida Power & Light Company (FPL, or collectively with FPC, the companies) filed a Motion For Reconsideration of the Order and a Request For Oral Argument. On July 20, 1999, Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. and Duke Energy North America, L.L.C. (Duke) filed a Consolidated Response To Motions For Reconsideration. This order addresses the Requests for Oral Argument, Motions for Reconsideration and Consolidated Response.

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II. REQUESTS FOR ORAL ARGUMENT

Rule 25-22.0376(5), Florida Administrative Code, governs requests for oral argument on reconsideration of non-final orders. Rule 25-22.0376(5), Florida Administrative Code, states that "Oral argument on any motion filed pursuant to this rule may be granted at the discretion of the Commission."

FPC's Request states that oral argument "would be beneficial" to the Commission. FPL states that "oral argument would be helpful" to the Commission. In this case, we believe oral argument would aid the Commission in comprehending the issues. Further, given that this is a decision prior to hearing, we have the discretion to allow interested persons to participate. Therefore, we find that Florida Power Corporation's and Florida Power & Light Company's Requests For Oral Argument shall be granted.

III. MOTIONS FOR RECONSIDERATION

It is well settled that an agency may reconsider its order if the order is found to have been based on mistake, inadvertence or a specific finding based on adequate proof of changed conditions. People's Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966). The purpose of a reconsideration proceeding is to bring to the attention of the agency some matter which it overlooked or failed to consider when it rendered its order. Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962). The mere fact that a party disagrees with the order is not a basis for rearguing the case. Id.

A. FPC's Motion For Reconsideration

The gravamen of FPC's Motion, and its argument at the Status Conference, is that the Commission cannot initiate an investigation as a formal evidentiary hearing. According to FPC, investigations may only be initiated by the Commission as informal proceedings. To do otherwise, "...flagrantly violates the directives the Legislature has set forth in the Administrative Procedures Act, ... and the directives of the United Statutes and Florida constitutions,..." (FPC Motion, pg. 9) As authority for its position FPC states that Rule 25-22.036(3), Florida Administrative Code, cannot be the basis for initiating this investigation because this Commission's request for an exception to that rule was denied by the Administration Commission. FPC also relies on Rule 28-106.101(2), Florida Administrative Code, (part of the Uniform Rules

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of Procedure) which excepts agency investigations from application of the rules governing decisions determining substantial interests. Rule 28-106.101, Florida Administrative Code, states in part:

28-106.101 Scope of this Chapter

This chapter shall apply in all proceedings in which the substantial interests of a party are determined by the agency and shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. This chapter applies to all proceedings under Chapter 120 except as follows:...

(2) Agency investigations or determinations of probable cause preliminary to agency action:....

According to FPC, the Commission lacks authority to conduct any investigation as a formal evidentiary proceeding. To conduct this proceeding as an evidentiary hearing, opines FPC, denies the company an adequate opportunity to address the issues raised. This could, claims FPC, expose the utility to a penalty, in violation of its due process right to notice.

B. FPL's Motion For Reconsideration

The gravamen of FPL's Motion, and its argument at the Status Conference, is that the Order Establishing Procedure, Order No. PSC-99-0760-PCO-EU, issued April 20, 1999, was issued pursuant to Rule 28-106.211, Florida Administrative Code, which is applicable only to hearings involving disputed issues of material fact. Hearings involving disputed issues of material fact, FPL opines, do not include agency investigations because of the exception for agency investigations contained in Rule 28-106.101(2), Florida Administrative Code, quoted above. FPL also states that Rule 25-22.036(3), Florida Administrative Code, cannot provide a basis for this proceeding because "[q]uite simply, this rule, was displaced by the Uniform Rules and the Commission's request for an exception was denied by the Administration Commission. It can no longer apply to proceedings affecting substantial interests or be the basis for initiation of such proceedings." (FPL Motion, pg. 6)

C. Duke's Consolidated Response

In its Consolidated Response, Duke traces the procedural history of this docket with particular focus on the extensive involvement of FPC, FPL and Tampa Electric Company. The purpose of Duke's analysis is to illustrate that those parties have actively participated in issue identification and refining the scope of the docket over a period of four months. It is against this background that Duke rebuts the allegations of FPC that the Commission has failed to provide legally sufficient notice of the proceeding in contravention of FPC's Florida and United States Constitutional right to due process. Likewise, Duke rebuts FPL's allegation that this docket cannot proceed as a 'decision determining substantial interests' without violating FPL's due process rights. Citing applicable case law and Florida Statutes¹, Duke opines that the Commission has given "...legally sufficient notice of all actions that it is contemplating taking in this proceeding". (Duke Response, pg. 5) In short, Duke argues that the Motions For Reconsideration should be denied because the Commission has the requisite statutory authority to proceed with the docket, there has been no violation of any parties' due process rights, and the proceeding has been properly commenced.

D. Decision

Neither FPC nor FPL have pled cognizable claims for reconsideration because they merely reargue their case. FPC and FPL argued these same issues in their pleadings requesting the Status Conference and during the extensive oral argument before the Prehearing Officer at the Status Conference. The Order unequivocally states that Rule 28-106.101(2), Florida Administrative Code, does not supersede the Commission's statutory jurisdiction to proceed with an investigation as a formal evidentiary proceeding. The Order also holds that Rule 25-22.036(3), Florida Administrative Code, controls the initiation of this proceeding. The mere fact that FPC and FPL disagree with the

¹
Varney v. Florida Real Estate Commission, 515 So.2d 383 (Fla. 5th DCA 1987); Henry v. State Department of Administration, 431 So.2d 677 (Fla. 1st DCA 1983); Inquiry Concerning Davey, 645 So.2d 398 (Fla. 1994); Wagman v. Florida Board of Medicine, 590 So.2d 12 (Fla. 1st DCA 1991); Section 120.569(2)(c), Florida Statutes.

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Order is not a basis for reconsideration. Diamond Cab Co. v. King,
146 So.2d 889 (Fla. 1962)

FPC and FPL have not met the substantive requirements under the law of reconsideration. In addition, the companies have failed to demonstrate that the Order is based on any mistake of fact or law. The companies' analyses of the Commission's investigatory jurisdiction and their interpretation of the decision of the Administrative Commission is wrong. It cannot seriously be disputed that the Commission may proceed with this investigation as a formal evidentiary proceeding. Section 350.123, Florida Statutes grants the Commission plenary procedural jurisdiction to effectuate its statutory obligations. Section 350.123 states:

The Commission may administer oaths, take depositions, issue protective orders, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence necessary for the purpose of any investigation or proceeding." (emphasis added)

Section 366.05(1), Florida Statutes, authorizes the Commission to "...require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto;..." Clearly, the Commission has the explicit statutory authority to require any public utility to add facilities, including supply resources, when necessary to assure adequate service. To do so, the Commission must necessarily investigate the adequacy of the facilities, in this case, planned reserve margins.

At the Status Conference, FPC and FPL argued vociferously that since passage of the Uniform Rules of Procedure, the Commission may only 'investigate' in an informal proceeding. Therefore, they asserted, discovery could not be permitted, there could be no parties or intervenors, witnesses could not be called to testify and no action or final order could be rendered following the proceeding. (TR Status Conf. Pgs. 14, 15, 17, 19, 23, 25, 29, 38 & 58) The companies' position is in direct conflict with the Commission's manifest authority under Chapters 350 and 366, Florida Statutes.

FPC and FPL also misconstrue the interplay between the Uniform Rules of Procedure and the Commission's Rules of Procedure.

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Contrary to the arguments of the companies, formal evidentiary proceedings (or hearings involving 'disputed issues of material fact') pending before the Public Service Commission are not governed solely by Chapter 28-106. Certain provisions of Chapter 25-22 were retained by the Commission as a result of the rulings of the Administration Commission. Thus, Chapter 28-106 must be read in conjunction with the remaining portions of Chapter 25-22 and the Commission's statutory obligations. One of the provisions retained by the Commission is Rule 25-22.036, *Initiation of Formal Proceedings*, subsection (3). The subsection states that the Commission may, on its own motion, issue an order or notice initiating a proceeding. This is the procedure followed in the instant docket.

FPC's and FPL's argument that because the Commission's request for an exception to subsection Rule 25-22.036(3), Florida Administrative Code, was denied, the Rule no longer provides a point of commencement for a formal proceeding, is an incorrect interpretation of the Administration Commission's decision. The request for an exception was denied because subsection (3) was deemed by the Administration Commission to be outside the scope of Rule Chapter 28-106, Florida Administrative Code. Therefore, an exception was not necessary. Subsection (3) has been retained by the Commission and remains in full force and effect as evidenced by the Commission's recently completed rule revisions. Thus, the provisions of Chapter 28-106, Florida Administrative Code, are supplemental to, but do not supersede, the provisions of Chapter 25-22, Florida Administrative Code, retained by the Commission.

FPC's and FPL's Motions For Reconsideration do not identify a matter of fact or law which the Commission overlooked or failed to consider in rendering the Order. Both Motions For Reconsideration reargue matters previously considered by the Prehearing Officer. In addition, the Motions fail to identify a mistake of fact or law. Therefore, we find that both Motions for Reconsideration shall be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power Corporation's and Florida Power & Light Company's Requests For Oral Argument are granted. It is further

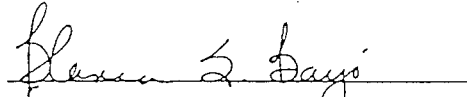
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ORDERED that Florida Power Corporation's Motion For Reconsideration of Order No. PSC-99-1274-PCO-EU, issued July 1, 1999, is denied. It is further

ORDERED that Florida Power & Light Company's Motion For Reconsideration of Order No. PSC-99-1274-PCO-EU, issued July 1, 1999, is denied. It is further

ORDERED that this docket shall remain open pending the hearing currently scheduled for November 2-3, 1999.

By ORDER of the Florida Public Service Commission this 2nd day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into
the aggregate electric utility
reserve margins planned for
Peninsular Florida.

DOCKET NO. 981890-EU
ORDER NO. PSC-99-1274-PCO-EU
ISSUED: July 1, 1999

ORDER CLARIFYING SCOPE OF PROCEEDING;
DOCKET PROCEDURES; AND ESTABLISHING ISSUES

Pursuant to Order No. PSC-99-1229-PCO-EU, issued June 22, 1999, a Status Conference and Preliminary Prehearing Conference was held on June 30, 1999. During the Conference, several of the parties raised issues challenging the nature of this docket as an investigation being conducted as a formal evidentiary hearing, defining the scope of the inquiry of the docket as being limited to methodology for determining a Peninsular Florida aggregate electricity reserve margin, and challenging the interventions granted in this proceeding. I have considered the arguments of the parties and the recommendations of our staff. My findings are set forth below.

First, the argument was made that Rule 28-106.101(2), Florida Administrative Code, exempts 'investigations' from formal evidentiary proceedings. As such, the parties opined, this docket can only proceed as an informal investigation and that therefore discovery is inappropriate and there would be no intervenors or parties in this docket. Upon consideration, I find that the Rule does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at a reasonable cost. Sections 366.05(1), 366.04(5), 366.05(7) and 366.05(8), Florida Statutes, invest the Commission with jurisdiction over the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for the state. In the exercise of its jurisdiction, the Commission has the power to, among other things, require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the public welfare and secure adequate service of facilities. In addition, Rule 25-22.036(3), Florida Administrative Code, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties. The purpose of this proceeding is to afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida. The position advocated by the utilities and the Florida Reliability Coordinating Council would hinder the Public Service Commission's ability to make a well-reasoned decision. As such, this docket shall proceed as a formal evidentiary hearing investigating the electric utility reserve margins.

Section 120.57(1)(b) Florida Statutes, provides that all parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence as well as file appropriate post-hearing pleadings. The current procedure established for this docket affords these rights to all persons whose substantial interests may be affected by the decisions to be made in this proceeding. Moreover, I am sensitive to the due process arguments of the parties regarding decisions affecting substantial interests in the absence of the full panoply of Section 120.57, Florida Statutes rights. In that regard, if an issue has not been fully litigated, there will be an opportunity for further proceedings pursuant to applicable law.

Second, the parties argued that the scope of the investigation is limited to a determination of a methodology for calculating a reserve margin. In support of their argument, the parties cite the minutes of the December 15, 1998, Internal Affairs proceeding relative to the utilities' Ten Year Site Plans. Item 6 of the minutes states: "The Commissioners directed staff to open a docket to consider the appropriate methodology for developing reserve margin." To identify the scope of this docket, the relevant inquiry is the meaning of the word 'methodology'. To determine a reserve margin methodology, the Commission must investigate: (1) the manner in which reserve margins are calculated; (2) the level of reserve margins considered adequate for Peninsular Florida utilities; and (3) the remedial action, if any, which must be taken to assure adequate reserve margins. These fundamental inquiries define the scope of the docket. Given the stated scope of this proceeding, the issues I believe are appropriate are as set forth in the attached List Of Issues. Former issues 1, 2, 10, and 22 (as stated in Staff's May 28, 1999, memorandum to the parties) have been removed from consideration as being outside the scope of the docket. Former issue 18 is subsumed by former issues 16 and 17 and the analysis of minimum and maximum ranges for a reserve margin will be made in those issues, now numbered as issues 14 and 15. Former issue 21 is subsumed by former issue 16 (now numbered issue 14). Because of the complexity of the issues in this docket, and to assure all parties are afforded due process, additional issues will not be added absent a demonstration of good cause.

Additional matters addressed at the Conference were the filing dates of utility and intervenor testimony and the length of time for filing objections to discovery. I find that it is appropriate for utility and intervenor testimony to be filed on the same date. As such, the Order Granting Motion For Extension Of Time, Continuing Hearing, and Revising Revised Order Establishing Procedure, Order No. PSC-99-1215-PCO-EU, issued June 18, 1999, is revised to require utility and intervenor testimony to be filed on

ORDER NO. PSC-99-1274-PCO-EU
DOCKET NO. 981890-EU
PAGE 3

August 16, 1999. Staff testimony and rebuttal testimony shall be filed on August 31, 1999, and September 13, 1999, respectively as set forth in Order No. PSC-99-1215-PCO-EU. In addition, on June 23, 1999, Commission Staff propounded discovery on the parties in this docket. It is recognized that the discovery request is extensive. Therefore, the parties will be permitted a period of 30 days in which to object to or seek clarification of the discovery request instead of the ten days required by the Order Establishing Procedure, Order No. PSC-99-0760-PCO-EU, issued April 20, 1999. This enlargement of time relates only to the June 23, 1999, staff discovery request.

On June 10, 1999, Tampa Electric Company filed a Motion For Extension Of Time To File Testimony. The Motion is rendered moot by Order No. PSC-99-1215-PCO-EU, as revised by this order.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this docket shall proceed as a formal evidentiary proceeding. It is further

ORDERED that the scope of the investigation shall be as set forth in the body of this order. It is further

ORDERED that the issues to be addressed in this docket, unless modified upon a showing of good cause, are as set forth in the List Of Issues attached to this order and by reference made a part hereof. It is further

ORDERED that the filing date for utility and intervenor testimony shall be August 16, 1999. It is further

ORDERED that the period of time in which to object to or seek clarification of the discovery request propounded upon the parties by Commission staff on June 23, 1999, shall be 30 days from the date of service. It is further

ORDERED that Tampa Electric Company's Motion For Extension Of Time To File Testimony is moot.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 1st day of July, 1999.

/s/ Julia L. Johnson
JULIA L. JOHNSON
Commissioner and Prehearing Officer

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This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

LJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

LIST OF ISSUES

- Issue 1 What is the appropriate methodology, for planning purposes, for calculating reserve margins for individual utilities and for Peninsular Florida?
- Issue 2 What is the appropriate methodology, for planning purposes, for evaluating reserve margins for individual utilities and for Peninsular Florida?
- Issue 3 How should the individual components of an individual or peninsular Florida percent reserve margin planning criterion be defined:
- A. Capacity available at time of peak (Ex. QF capacity, firm and non-firm purchases and non-committed capacity). Should equipment delays be taken into account?
 - B. Seasonal firm peak demand. Over what period (hourly, 30 min., 15 min.) should the seasonal firm peak demand be determined? What is the proper method of accounting for the diversity of the individual utilities' seasonal firm peak demands and load uncertainty? Is sufficient load uncertainty data available and being used? How are interruptible, curtailable, load management and wholesale loads treated at the end of their tariff or contract termination period? How should demand and/or energy use reduction options be evaluated and included in planning and setting reserve margins?
 - C. Should a percent reserve margin planning criterion be determined on an annual, seasonal, monthly, daily, or hourly basis?
- Issue 4 How should generating units be rated (MW) for inclusion in a percent reserve margin planning criterion calculation?
- Issue 5 How should individual utility's reserve margins be integrated into the aggregated reserve margin for Peninsular Florida?
- Issue 6 Should there be a limit on the ratio of non-firm load to MW reserves? If so, what should that ratio be?

- Issue 7 Should there be a minimum of supply-side resources when determining reserve margins? If so, what is the appropriate minimum level?
- Issue 8 What, if any, planning criteria should be used to assess the generation adequacy of individual utilities?
- Issue 9 Should the import capability of Peninsular Florida be accounted for in measuring and evaluating reserve margins and other reliability criteria, both for individual utilities and for Peninsular Florida?
- Issue 10 Do the following utilities appropriately account for historical winter and summer temperatures when forecasting seasonal peak loads for purposes of establishing a percent reserve margin planning criterion?
- A. City of Homestead
 - B. City of Lake Worth Utilities
 - C. City of Lakeland
 - D. City of Tallahassee
 - E. Florida Power and Light Company
 - F. Florida Power Corporation
 - G. Florida Municipal Power Agency
 - H. Gainesville Regional Utilities
 - I. Jacksonville Electric Authority
 - J. Kissimmee Utility Authority
 - K. Orlando Utilities Commission
 - L. Reedy Creek Improvement District
 - M. Seminole Electric Cooperative
 - N. Tampa Electric Company
 - O. Utilities Commission of New Smyrna Beach
- Issue 11 Has the Florida Reliability Coordinating Council's 15 percent reserve margin planning criterion, or any other proposed reserve margin criterion, been adequately tested to warrant using it as a planning criterion for the review of generation adequacy on a Peninsula Florida basis? If the answer is no, what planning criterion should be used?
- Issue 12 What percent reserve margin is currently planned for each of the following utilities and is it sufficient to provide an adequate and reliable source of energy for operational and emergency purposes in Florida?
- A. City of Homestead
 - B. City of Lake Worth Utilities
 - C. City of Lakeland

- D. City of Tallahassee
- E. Florida Power and Light Company
- F. Florida Power Corporation
- G. Florida Municipal Power Agency
- H. Gainesville Regional Utilities
- I. Jacksonville Electric Authority
- J. Kissimmee Utility Authority
- K. Orlando Utilities Commission
- L. Reedy Creek Improvement District
- M. Seminole Electric Cooperative
- N. Tampa Electric Company
- O. Utilities Commission of New Smyrna Beach

Issue 13 How does the reliability criteria adopted by the FRCC compare to the reliability criteria adopted by other reliability councils?

Issue 14 Should the Commission adopt a reserve margin standard for individual utilities in Florida? If so, what should be the appropriate reserve margin criteria for individual utilities in Florida? Should there be a transition period for utilities to meet that standard?

Issue 15 Should the Commission adopt a reserve margin standard for Peninsular Florida? If so, what should be the appropriate reserve margin criteria for Peninsular Florida?

Issue 16 Should the Commission adopt a maximum reserve margin criterion or other reliability criterion for planning purposes; e.g., the level of reserves necessary to avoid interrupting firm load during weather conditions like those experienced on the following dates: 01/08/70, 01/17/77, 01/13/81, 01/18/81, 12/19/81, 12/25/83, 01/21/85, 01/21/86 and 12/23/89?

Issue 17 What percent reserve margin is currently planned for Peninsula Florida and is it sufficient to provide an adequate and reliable source of energy for operational and emergency purposes in Peninsula Florida?

Issue 18 Can out-of-Peninsular Florida power sales interfere with the availability of Peninsular Florida reserve capacity to serve Peninsular Florida consumers during a capacity shortage? If so, how should such sales be accounted for in establishing a reserve margin standard?

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ATTACHMENT

Issue 19 Based on the resolution of Issues 1 through 18, what follow-up action, if any, should the Commission pursue?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Investigation into
the aggregate electric utility
reserve margins planned for
Peninsular Florida.

DOCKET NO. 981890-EU
ORDER NO. PSC-99-0760-PCO-EU
ISSUED: April 20, 1999

ORDER ESTABLISHING PROCEDURE

The purpose of this docket is to investigate planned, aggregate electric utility reserve margins in peninsular Florida. This matter is currently set for administrative hearing on September 28 and 29, 1999. Given the purpose of this docket, all electric utilities, as defined by Section 366.02(2), Florida Statutes, with generating assets are appropriate parties in this proceeding.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for September 28 and 29, 1999. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by September 14, 1999. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless

subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 100.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail

or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;

- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on September 8, 1999, at the Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the 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: it 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 issue; 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 could 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.

Unless a matter is not at issue for that party, each 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, it 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 its 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. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|--|-------------------------|
| 1) Utility's direct testimony and exhibits | June 14, 1999 |
| 2) Intervenors' direct testimony and exhibits | July 6, 1999 |
| 3) Staff's direct testimony and exhibits, if any | July 19, 1999 |
| 4) Rebuttal testimony and exhibits | August 2, 1999 |
| 5) Prehearing Statements | August 13, 1999 |
| 6) Prehearing Conference | September 8, 1999 |
| 7) Hearing | September 28 - 29, 1999 |
| 8) Briefs | October 20, 1999 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than

seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the 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. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

ORDER NO. PSC-99-0760-PCO-EU
DOCKET NO. 981890-EU
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By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 20th day of April, 1999.

/s/ Julia L. Johnson
JULIA L. JOHNSON
Commissioner and Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

LJP/RVE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such

ORDER NO. PSC-99-0760-PCO-EU
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review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into
the aggregate electric utility
reserve margins planned for
Peninsular Florida.

DOCKET NO. 981890-EU
ORDER NO. PSC-99-1042-PCO-EU
ISSUED: May 21, 1999

REVISED ORDER ESTABLISHING PROCEDURE

On April 20, 1999, Order No. PSC-99-0760-PCO-EU establishing procedure was issued in this docket. During the May 13, 1999, Commission Workshop on Merchant Plants, substantive issues to be addressed in this generic investigation were discussed. In order to better accommodate the preparation of testimony and to include those relevant discussions in testimony for this case, the following dates have been revised.

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|--|-----------------------|
| 1. Utility's Direct Testimony and Exhibits | July 6, 1999 |
| 2. Intervenors' Direct Testimony and Exhibits | July 19, 1999 |
| 3. Staff's Direct Testimony and Exhibits, if any | August 2, 1999 |
| 4. Prehearing Statements | August 13, 1999 |
| 5. Rebuttal Testimony and Exhibits | August 19, 1999 |
| 6. Prehearing Conference | September 8, 1999 |
| 7. Last Day to Conduct Discovery | September 17, 1999 |
| 8. Hearing | September 28-29, 1999 |
| 9. Briefs Filed | October 20, 1999 |

Based on the foregoing, it is

ORDER NO. PSC-99-1042-PCO-EU
DOCKET NO. 981890-EU
PAGE 2

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the revised dates set forth in the body of this order are hereby approved.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 21st day of May, 1999.

/s/ Julia L. Johnson
JULIA L. JOHNSON
Commissioner and Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

LJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary,

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DOCKET NO. 981890-EU
PAGE 3

procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

To: Matt Childs/Steel Law Firm

Date: 5-21-99

From: Records Fax Server

Page 1 of 4

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Generic Investigation) DOCKET NO. 981890-EI
Into the Aggregate Electric) DATE: JULY 12, 1999
Utility Reserve Margins Planned)
for Peninsular Florida)

MOTION FOR RECONSIDERATION OF ORDER
CLARIFYING SCOPE OF PROCEEDING;
DOCKET PROCEDURES; AND ESTABLISHING ISSUES

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.0376, Florida Administrative Code, and the procedures presented by the Prehearing Officer at the Status Conference and Preliminary Prehearing Conference held on June 30, 1999 hereby files this its Motion for Reconsideration of Order PSC-99-1274-PCO-EU, in support of this Motion for Reconsideration FPL states as follows:

I. Background Of This Docket

This generic investigation docket was initiated pursuant to the directions given by this Commission at its Internal Affairs meeting held on December 15, 1998. There, the Commission directed the Staff to open a docket to consider the "appropriate methodology for developing reserve margin." The style of this docket, Docket No. 981890-EU is:

"In Re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida."

On December 17, 1998, the Commission Staff submitted a form "Request to Establish Docket" with the suggested docket title being:

"Generic Investigation Into The Aggregate Electric Utility Reserve Margins Planned For Peninsular Florida."

Subsequent to the initiation of this docket, the Staff solicited issues addressing reserve margins from participants including not only public utilities in the state of Florida supplying electric service but also from developers of merchant plant facilities. Later, at a meeting initiated by the Staff on March 18, 1999, the Staff by memo communicated the following to all participants in the docket:

"Because merchant power plants may be a solution to Peninsular Florida's questionable planned reserve margin, Staff plans to drop Issues 1-25 which were published in its issue list dated March 1, 1999. We will retain issue 26 (renumbered below as issue 10) and add the following issues relating to merchant power plants. Please be prepared to discuss these issues and any other merchant plant issues at the issue identification meeting on March 18, 1999. Former issue 27 has been revised." (Emphasis added)

Thus, at this stage, the Staff's direction, was to eliminate issues previously circulated addressing the reserve margin methodology and, specific questions on reserve margin calculations. Notably, the "new" issue 1 proposed by the Staff and an apparent substitution for the original concern about reserve margin methodology was the following:

"Should a 10% merchant plant reserve margin be added to the FRCC's 15% reserve margin criterion?"

Nearly a month later, an Order Establishing Procedure (Order No. PSC-99-0760-PCO-EU) was entered on April 20, 1999. A copy of this Order is attached to FPL's Motion for Reconsideration. The Order Establishing Procedure did a number of things which reflected an intent to conduct the proceeding in this docket not as a Generic Investigation but as one determining or affecting the substantial interests of public utilities in Florida. This Order also stated that reliance was placed upon Rule 28-106.211, Fla. Admin. Code for authority for the actions therein taken. This rule is a part of the recently effective "Uniform Rules of Procedure" (adopted by the Administration Commission pursuant to the 1996 revisions to the Administrative Procedure Act). Notably, Rule 28-106.211, on which reliance was placed, appears in Part II entitled "Hearings Involving Disputed Issues of Material Fact" of Chapter 28-106 entitled "Decisions Determining Substantial Interests."

II. FPL's Position In This Docket

FPL is presenting in good faith its concerns as to the direction that this docket might be taking. FPL's position was that the Commission opened a "Generic investigation docket." As such, it was FPL's understanding and belief that the docket was to be conducted as an investigation and not as a proceeding to affect

or determine FPL's substantial interests. Therefore, FPL did not advocate or believe that it was advocating a position that would "hinder the Public Service Commission's ability to make a well reasoned decision" in this docket or elsewhere which the Order Clarifying Scope of Proceeding has concluded.

To the contrary, FPL wished to point out, and wished to protect its interests in doing so, that the Commission had initiated a generic investigation and that, in FPL's belief, to convert the docket from an investigation to a determination of FPL's substantial interests would be a violation of the Administrative Procedure Act, and the Uniform Rules of Procedure. Not only would this action have implications on the due process rights of Florida Power & Light, but would also have implications should there be judicial review as called for by Section 120.68, Florida Statutes.

III. Specific Reconsideration Requested

The Order Clarifying Scope of Proceeding states:

"(1) Rule [28-106.101(2)] does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at reasonable cost; and, that paragraph(2) Rule 25-22.036(3), Fla. Admin. Code, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties."

The Order states the following in support of the decision that "...this docket shall proceed as a formal evidentiary hearing

investigating the electric utility reserve margins."

FPL specifically seeks reconsideration of this decision and the quoted conclusions presented in support thereof.

It was not argued by FPL that 28-106.101(2) "exempts "investigations" from formal evidentiary proceedings." Instead, FPL pointed out that, as previously set out above, Rule 28-106.211, on which the April 20, 1999 Order Establishing Procedure specifically relied for authority, is applicable to and only to Decisions Determining Substantial Interests and then, only where there are to be Hearings Involving Disputed Issues of Material Fact.

This Rule is not applicable to agency investigations. FPL wanted to point out to the Commission in its prior argument that the rule upon which specific reliance for authority was placed could not be relied upon as authority in an investigation because, Rule 28-106.101, states specifically:

"This chapter [chapter 28-106] applies to all proceedings under chapter 120 except as follows: ... (2) agency investigations or determination of probable cause preliminary to agency action; and" (Emphasis added)

In addition, FPL wished to point out that Section 120.57(5), Florida Statutes states:

"This Section [Section 120.57, Fla. Stats.] does not apply to agency investigations preliminary to agency action." (Emphasis added).

Thus, the Order Establishing Procedure in an investigation docket specifically relied upon a rule which by its express terms, does not apply to agency investigations.

In its argument on the direction of this proceeding, FPL did not argue or assert that Rule 25-22.036(3) did not provide authority for the Commission to initiate an investigation. FPL's position was that an investigation had been initiated and it should be conducted as such.

Instead, after FPL's oral argument, the Staff maintained that Rule 25-22.036(3) provided the requisite authority to the Commission to initiate a proceeding on its own motion, to determine FPL's substantial interests. FPL's position was that the Commission had not initiated that kind of proceeding in any event but had it sought to do so, Rule 25-22.036(3), did not provide the necessary authority. FPL pointed out that Rule 25-22.036(3) did not and could not apply to proceedings determining or affecting the substantial interests of a party. Quite simply, this rule, was displaced by the Uniform Rules and the Commission's request for an exception was denied by the Administration Commission. It can no longer apply to proceedings affecting substantial interests or be the basis for initiation of such proceedings.

FPL submits and asks that the Commission reconsider the basis for the conclusion as to how this proceeding will be conducted including the conclusion as to the application of the Florida

Administrative Procedure Act establishing Uniform Rules of Procedure, the applicable Uniform Rules of Procedure adopted by the Administration Commission, the denial of the Public Service Commission's request for an exception to the Uniform Rules of Procedure for its Rule 25-22.036(3), and the confirming representation by the Commission and Commission Staff that Rule 25-22.036(3) [was 25-22.036(6)] only applied to matters preliminary to or independent of the determining of the substantial interests of a party or final action affecting the interest of a party.

IV. Scope of Docket

FPL further respectfully requests reconsideration of the conclusion that the scope of this docket will be:

"...the manner in which the reserve margins are calculated; (2) the level of reserve margins considered adequate for Peninsular Florida utilities and (3) the remedial action, if any, which must be taken to assure adequate reserve margins."

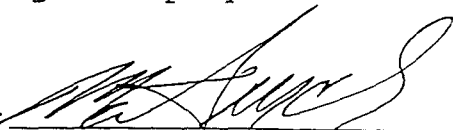
FPL does not believe that these areas are necessarily or by implication within the meaning of the word "a methodology". FPL does not question in this docket the Commission's authority to investigate reserve margins either narrowly or broadly. FPL does maintain however that, as previously stated, this docket is an investigation, an investigation of reserve margin methodology. Although the Commission may choose to expand the scope of the docket, FPL respectfully submits that it has not yet done so, and, that it certainly has not taken action to initiate a proceeding to

affect the substantial interests of public utilities including Florida Power & Light Company as has been stated. If the Commission wishes to pursue this as a generic investigation then the matter would be conducted in an informal way. This permits the Commission to pursue the questions it has and, as it has in other instances, obtain necessary data through Commission data requests. On the other hand, as an informal proceeding, there are no parties, intervenors or formal discovery. FPL believes that this investigation mode is the most appropriate way to proceed at this time and before possible rulemaking or Proposed Agency Action.

WHEREFORE, FPL respectfully requests that this Commission reconsider the Order Clarifying Scope of Proceeding, et seq. [Order No. PSC-99-1274-PCO-EU] as provided by Rule 25-22.0376, Florida Administrative Code (a provision of the Commission's rules of procedure for which an exception or exemption was granted by the Administration Commission) and as discussed at the Status and Preliminary Prehearing Conference held on June 30, 1999.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
Suite 601
215 South Monroe Street
Tallahassee, FL 32301
Attorneys for Florida Power
& Light Company

By: 
Matthew M. Childs, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Investigation into the aggregate electric utility reserve margins planned for Peninsular Florida.	DOCKET NO. 981890-EU ORDER NO. PSC-99-0760-PCO-EU ISSUED: April 20, 1999
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ORDER ESTABLISHING PROCEDURE

The purpose of this docket is to investigate planned, aggregate electric utility reserve margins in peninsular Florida. This matter is currently set for administrative hearing on September 28 and 29, 1999. Given the purpose of this docket, all electric utilities, as defined by Section 366.02(2), Florida Statutes, with generating assets are appropriate parties in this proceeding.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for September 28 and 29, 1999. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by September 14, 1999. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless

ORDER NO. PSC-99-0760-PCO-EU
DOCKET NO. 981890-EU
PAGE 2

subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 100.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail

ORDER NO. PSC-99-0760-PCO-EU
DOCKET NO. 981890-EU
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or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;

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- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on September 8, 1999, at the Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the 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: it 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 issue; 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 could 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.

Unless a matter is not at issue for that party, each 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, it 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 its 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. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

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DOCKET NO. 981890-EU
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To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Controlling Dates

The following dates have been established to govern the key activities of this case.

- 1) Utility's direct testimony and exhibits June 14, 1999
- 2) Intervenors' direct testimony and exhibits July 6, 1999
- 3) Staff's direct testimony and exhibits, if any July 19, 1999
- 4) Rebuttal testimony and exhibits August 2, 1999
- 5) Prehearing Statements August 13, 1999
- 6) Prehearing Conference September 8, 1999
- 7) Hearing September 28 - 29, 1999
- 8) Briefs October 20, 1999

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than

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seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the 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. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

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By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 20th day of April, 1999.

/s/ Julia L. Johnson
JULIA L. JOHNSON
Commissioner and Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

LJP/RVE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such

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DOCKET NO. 981890-EU
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review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Generic Investigation) DOCKET NO. 981890-EI
Into the Aggregate Electric) DATE: JULY 12, 1999
Utility Reserve Margins Planned)
for Peninsular Florida)

REQUEST FOR ORAL ARGUMENT

Florida Power & Light Company ("FPL"), respectfully requests that oral argument be held on its Motion for Reconsideration and, in support thereof states:

1. Rule 25-22.0376, Fla. Admin. Code provides for oral argument "at the discretion of the Commission."
2. FPL submits that oral argument would be helpful in addressing the matters at issue; matters which are of substantial procedural significance.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
Suite 601
215 South Monroe Street
Tallahassee, FL 32301
Attorneys for Florida Power
& Light Company

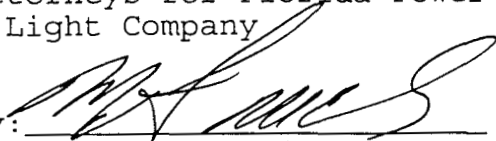
By: 
Matthew M. Childs, P.A.

Exhibit 7

CERTIFICATE OF SERVICE
DOCKET NO. 981890-EU

I HEREBY CERTIFY that a true and correct copy of:
Light Company's Motion for Reconsideration and Request
has been furnished by Hand Delivery*, or Facsimile/Electronic mailing**
this 12th day of July, 1999 to the following. In addition a copy has been
sent by U.S. Mail.

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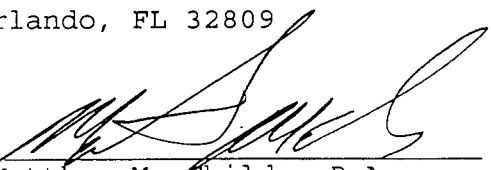
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Cooperative Association
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Jacksonville Electric**
Authority
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Orlando Utilities Commission**
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Orlando, FL 32802

Utility Board of the City**
of Key West
Mr. Larry J. Thompson
Post Office Drawer 6100
Key West, FL 33041

Mr. Robert Williams**
7201 Lake Ellinor Drive
Orlando, FL 32809

By: 
Matthew M. Childs, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Generic Investigation) DOCKET NO. 981890-EI
Into the Aggregate Electric) DATE: JUNE 8, 1999
Utility Reserve Margins Planned)
for Peninsular Florida)

EMERGENCY REQUEST FOR STATUS CONFERENCE AND
PRELIMINARY PREHEARING CONFERENCE

Florida Power & Light Company ("FPL") hereby submits this Emergency Request for a Status Conference and Preliminary Prehearing Conference. In support of this Request FPL states:

1. FPL is subject to the jurisdiction of the Florida Public Service Commission pursuant to Chapter 366, Florida Statutes.
2. In this Docket, as set forth in the two Orders Establishing Procedure, the Commission has scheduled hearings for September 28 and 29, 1999 and the receipt of briefs by October 20, 1999 on matters not yet identified. Instead, the matters are to be identified as late as the prehearing conference on September 8, 1999 but based on testimony filed by the utilities on July 6, 1999; by Intervenors on July 19, 1999; and, by the Staff on August 2, 1999.
3. The process for "identifying issues," the process, and lack thereof, of identifying disputed issues of material fact, and

the resulting designed unlimited discretion to establish on what to vote at the conclusion of this Docket and to control what opportunity is available to provide evidence and confront evidence on proper disputed issues of material fact is and will seriously prejudice FPL and deny FPL its rights to due process of law. The procedures identified for application in this docket are in direct conflict with the Administrative Procedure Act, Chapter 120, Florida Statutes (1998).

4. The scope of and nature of this proceeding conflicts with public directions of the Commission as well as the Administrative Procedure Act. Similarly, the decisions on intervention are procedurally improper and once again serve to prejudice FPL and deny it its rights to due process of law.
5. At no point in this proceeding has FPL been afforded an opportunity to participate in the decision making process concerning the procedure to be followed and the resulting denial of due process of law. Currently, the Commission and Staff have established that FPL will file testimony on July 6, 1999 on issues that have yet to be identified. Under this and other circumstances, FPL submits that a status conference and preliminary prehearing conference are imperative.

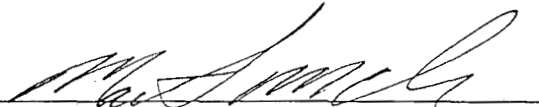
WHEREFORE, FPL submits this Emergency Request for a Status

Conference and Preliminary Prehearing Conference.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP
215 South Monroe Street
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Tallahassee, FL 32301-1804
Attorneys for Florida Power
& Light Company

By:


Matthew M. Childs, P.A.

CERTIFICATE OF SERVICE
DOCKET NO. 981890-EU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Emergency Request for Status Conference and Preliminary Prehearing Conference has been furnished by Hand Delivery,* or Facsimile/Electronic mailing ** this 8th day of June, 1999 to the following. In addition a copy has been sent by U.S. Mail.

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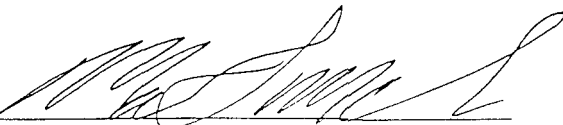
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BEFORE THE ADMINISTRATION COMMISSION
OF THE STATE OF FLORIDA

RECEIVED
APR 15 1998
State of Florida
Administration Commission

IN THE MATTER OF: THE FLORIDA)
PUBLIC SERVICE COMMISSION'S)
REQUEST FOR EXCEPTIONS TO)
UNIFORM RULES OF PROCEDURE)
_____)

AC CASE#

98-007

FILED: April 15, 1998

FLORIDA PUBLIC SERVICE COMMISSION'S
PETITION FOR EXCEPTIONS TO UNIFORM RULES OF PROCEDURE

Pursuant to section 120.54(5)(a), Florida Statutes, the Florida Public Service Commission (PSC) respectfully requests exceptions to the following provisions of the Uniform Rules of Procedure. Notice of this petition shall be published in the April 24, 1998, edition of the Florida Administrative Weekly, and a copy of the notice is attached as Attachment A.

I. Introduction.

The Legislature has charged the PSC with the economic and service regulation of telecommunications companies and electric, natural gas, water, and wastewater utilities. Chapters 350, 364, 366, 367, and 368, Florida Statutes. When carrying out its statutory responsibilities, the PSC must consider not only the interests of the regulated entity, but also those of the public. Most matters that come before the PSC have broad policy implications.

The agency head of the PSC is a five-member collegial body. The PSC refers few cases to the Division of Administrative Hearings

(DOAH) for resolution because most issues that come before the PSC are mixed questions of law and fact infused with policy considerations that involve the ongoing regulation of a discrete number of utilities over which it has general ratemaking authority. Instead, the PSC conducts most Chapter 120, Florida Statutes, hearings itself.

The PSC presides over a number of different types of proceedings. For instance, the PSC sets rates in file and suspend rate cases. These complex cases generally involve over 150 issues and a number of intervenors. Not all rates are set in rate cases, as the PSC has a number of different procedures in place to conduct cost recovery and pass-through proceedings on a periodic basis. These types of proceedings can also involve multiple issues and parties. There are also other types of rate proceedings such as staff assisted rate cases, earnings review, service availability, and limited scope proceedings.

In addition, the PSC considers certificate and territorial matters for the different industries that it regulates. The PSC also hears complaints, resolves disputes, and takes action to enforce its statutes, rules, and orders. All of these proceedings may also involve a number of issues and parties.

A case may be heard by a single commissioner, a panel of commissioners, or all five commissioners. When each proceeding is initiated, a commissioner is designated as the prehearing officer

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to handle all prehearing matters. At the hearing, however, the prehearing officer is not necessarily the presiding officer. The presiding officer function for conducting the actual hearing is assigned to the chairman, or the most senior commissioner if the chairman is not on the panel.

The PSC conducts its routine decision making at regularly scheduled public internal affairs meetings and agenda conferences.

During the calendar year 1997, the PSC opened 1,679 dockets and closed 1,775, with an average of over 650 dockets in active status each month. The PSC has tailored its procedural rules to efficiently handle this large case load dealing with multiple complex issues and parties. The exceptions that the PSC seeks below are for agency procedures that have evolved over time for the most efficient PSC operations.

II. Exceptions to Procedures Covered by the Uniform Rules:

The PSC seeks exceptions for the rules listed below for the most efficient operation of the agency.

Uniform Rule: 28-102.001, Notice of Public Meeting, Hearing, or Workshop.

Agency Alternative: 25-22.001(3) and (4), Notice of Meeting or Workshop.

Reasons for Exception: The PSC seeks an exception to keep the additional provisions on noticing found in subsections (3) and (4)

of PSC Rule 25-22.001 that define the terms "meeting" and "workshop."

The terms public meeting and workshop are not defined by either statute or case law. By keeping subsections (3) and (4) of the PSC Rule, there will be no doubt or controversy concerning what constitutes a meeting or workshop that must be noticed by publication in the Florida Administrative Weekly (F.A.W.).

This exception is necessary for the efficient operation of the agency.

Uniform Rule: 28-102.002(2), Agenda of Meetings, Hearings, and Workshops.

Agency Alternative: 25-22.002(3), Agenda of Meetings.

Reasons for Exception: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.002(3) that "[a] majority vote of a quorum of the Commission is required to modify the presiding officer's decision" on specific changes in the agenda.

The Uniform Rule does not address the procedure collegial bodies must follow to change agendas if there is disagreement with the decision of the presiding officer. To avoid doubt or controversy, the commissioners, and those who appear before the PSC, must know what the procedure is for overriding the presiding officer's decision to change the agenda.

The PSC seeks an exception for this additional requirement for

the most efficient operation of the agency.

Uniform Rule: 28-105.003, Disposition.

Agency Alternative: 25-22.022(3), Disposition.

Reasons for Exception: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.022(3) that except for hearings held under Section 120.57, Florida Statutes, "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."

Most agencies can issue declaratory statements without any public deliberation. In contrast, the PSC must vote on the disposition of petitions for declaratory statements at its agenda conferences, at which the PSC normally allows interested persons to speak. However, the PSC's policy has been to not take public comment concerning petitions for declaratory statements. This is because such petitions must be answered based on the facts and circumstances alleged in the petition. Because Section 350.042(1) allows commissioners to hear ex parte communications in declaratory statement proceedings, anyone who wishes to be heard may contact a commissioner with his view prior to the petition being taken up at agenda.

This exception is necessary for the efficient operation of the agency.

Uniform Rule: 28-106.102, Presiding Officer.

Agency Alternative: 25-22.035(1), Miscellaneous Matters.

Reasons for Exception: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.035(1) that "[u]nless 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."

If the PSC did not have this disqualification requirement, parties could delay PSC proceedings by moving to disqualify a commissioner the day a final hearing is scheduled to commence. Such delay could result in the PSC missing statutory deadlines for file and suspend rate cases, staff assisted rate cases, reuse proceedings, need determination proceedings, tariff proceedings, rule waivers, and arbitrations of interconnection and other disputes between telecommunications companies.

This exception is necessary for the efficient operation of the PSC.

Uniform Rule: 28-106.104, Filing.

Agency Alternative: 25-22.028(1), Filing, Service of Documents, and Computation of Time; 25-22.0375(3), Pleadings.

Reasons for Exception: The PSC seeks exceptions to keep the additional filing requirements contained in PSC Rules 25-22.028(1) and 25-22.0375(3). Specifically, the PSC seeks an exception for

the provisions in 25-22.028(1) that require the larger regulated entities and parties to provide computer diskette files for documents larger than five pages. The PSC also seeks an exception so that it can continue to require multiple copies of filings as set forth in PSC Rules 25-22.028(1) and 25-22.0375(3). Finally, the PSC seeks an exception so that it can continue to require the filing of notices of service of interrogatories or production of documents.

The PSC's clerk-type functions are handled by its Division of Records and Reporting (the Division). This office handles a voluminous number of documents, orders, and notices. For example, in 1997, 13,380 documents were filed with the Division, and 1,687 orders and 141 notices were issued. The Division has a sophisticated records management system that enables it to efficiently process this large amount of paper.

A separate docket number is assigned to each proceeding at the PSC. Each document that is filed with the Division, and each order and notice that the Division issues, is assigned a sequential document number. Information describing the document, order, or notice is then logged into the PSC's computerized Case Management System. This system enables all PSC employees, internet users, and visitors using the PSC public computer terminals to have access to information concerning docket filings.

In addition, the PSC requires the larger regulated entities

and parties to provide diskette filings of certain documents filed with the PSC. These computer files are then made part of the computerized Case Management System. They can be retrieved by all PSC employees, as well as by visitors using the PSC public computer terminals. In 1997 alone, 1,237 on-line documents were accessed through the Case Management System. Having these files on computer reduces paper consumption and makes staff recommendations and orders easier to draft because of cut-and-paste word processing capabilities.

When documents are filed with the PSC, the Division forwards the original to the docket file, and copies to a back-up docket file, the commissioners and technical staff members assigned. If the PSC were not able to ask for the additional copies required by Rules 25-22.028(1) and 25-22.0375(3), extra staff would have to be employed to make the requisite numbers of copies needed for internal distribution and to meet the time constraints for production and distribution of those copies. Thus, the cost of agency operations would increase.

The PSC currently requires parties to file a notice of service for interrogatories and production of documents so that all parties and interested persons will be informed of discovery being conducted in a case.

These exceptions are necessary for the PSC to continue to operate efficiently.

Uniform Rule: 28-106.106, Who May Appear; Criteria for Qualified Representatives.

Agency Alternative: 25-22.008(1)-(3)(a)3.; (3)(a)5.-(4); and (6), Practitioners.

Reasons for Exception: The PSC seeks an exception so that it can continue to follow its Rule 25-22.008.

The PSC Rule is different from Uniform Rule 28-106.106 in a number of ways. First, the PSC Rule allows attorneys who are not admitted to the Florida Bar to practice before the PSC. Rule 25-22.008(1)(a) and (2)(b), F.A.C. Rule 25-22.008(2)(b) does require the attorney to have "practiced before utility regulatory bodies in other states or at the federal level." The practice of utility law is a very specialized field, and there are a limited number of such practitioners in Florida. In addition, the PSC regulates Florida operations of large corporations with headquarters and counsel out-of-state. This provision allows substantially affected persons to utilize or seek counsel outside of Florida.

Second, under the Uniform Rule, the client of the qualified representative must seek permission from the presiding officer for the qualified representative to represent the client in each proceeding. On the other hand, the PSC Rule allows a non-attorney to obtain a Class B certificate that is renewable every two years. This practice negates the need for non-attorneys to seek and obtain permission each time they are to represent a client before the PSC.

This streamlined procedure recognizes that the same non-attorney representatives often represent the same clients before the PSC.

Third, the PSC Rule has more stringent requirements for non-attorney representatives to practice before the PSC. For example, PSC Rule 25-22.008(3)(a)2., 3., and 5. requires Class B practitioners to detail their knowledge of the relief available from the PSC; their education and experience relative to Chapter 120, F.S., and Rules 9.020, 9.110, 9.310, and 9.800, Florida Rules of Appellate Procedure; and their educational background, training, and work experience relative to utility regulation.

Fourth, the PSC Rule authorizes the Office of General Counsel to grant Class B applications. Rule 25-22.008(3)(c), F.A.C. Recommendations for denial must be heard by the full Commission. This provision allows the PSC to process applications more expeditiously.

Finally, the PSC Rule allows practitioners to appear as witnesses in PSC proceedings in the limited circumstances spelled out in PSC Rule 25-22.008(6).

The above exceptions are necessary for the efficient operation of the PSC.

Uniform Rule: 28-106.109, Notice to Interested Parties.

Agency Alternative: 25-22.026(3) and (4), Parties.

Reasons for Exception: The PSC seeks an exception to keep the

additional provisions in subsections (3) and (4) of PSC Rule 25-22.026 that delineate the role of PSC staff in evidentiary proceedings.

In the past, parties and hearing officers at DOAH have questioned the role of staff in evidentiary proceedings. These provisions make staff's role clear and avoid any confusion and controversy.

These additional provisions are necessary for the efficient operation of the agency.

Uniform Rule: 28-106.111(2)-(4), Point of Entry into Proceedings and Mediation.

Agency Alternative: 25-22.029, Point of Entry Into Proposed Agency Action Proceedings.

Reasons for Exception: The PSC seeks an exception to subsections (2) through (4) of Uniform Rule 28-106.111 that require a hearing to be requested within 21 days of receipt of notice of the decision and that provide that a right to hearing will be waived if not requested within 21 days.

The Uniform Rule ties the time period within which a request for hearing can be made to receipt of the notice; whereas, PSC Rule 25-22.029 ties the time period to issuance of the notice. During 1997, the PSC issued 576 proposed agency action orders. Under the PSC procedure, the PSC and affected persons are able to track the

time certain when proposed agency action becomes final. Under the Uniform Rule, the only way the PSC could assign a time certain to the finality of proposed agency action would be by sending out notices via certified mail. This procedure would be much more costly, and additional staff would be needed to complete and track the sending and receipt of certified receipt cards.

Moreover, the Uniform Rule does not contemplate the fact that the PSC often issues proposed agency action orders that may affect a broad class of persons. For instance, some rate cases may be decided by proposed agency action. See Sections 366.06(4) and 367.081(8), Florida Statutes. In these types of rate cases, utilities must notify affected customers of the rate increase by distributing a notice no later than with the first bill containing the revised rates.

In addition, PSC Rule 25-22.029(2) provides that the PSC may shorten the time to request a hearing to 14 days from issuance of the order for good cause shown. This shortened time period is needed to meet certain statutory deadlines, such as those associated with issuing a price increase or decrease index pursuant to Section 367.081(4)(a), Florida Statutes, or a leverage formula pursuant to Section 367.081(4)(f), Florida Statutes. See In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S., 97 F.P.S.C.

2:162, 164 (1997) (Protest period shortened to 14 days because of limited time to resolve protests).

Finally, the PSC Rule ties the waiver of hearing rights to "the expiration of the time within which to request a hearing." Rule 25-22.029(6), F.A.C. This provision recognizes that there may be different time periods for requesting a hearing depending on the notice given. The Uniform Rule, on the other hand, states that waiver of hearing rights occurs if a hearing is not requested within 21 days of receipt of the notice.

An exception for the PSC Rule is necessary for the efficient operation of the agency.

Uniform Rule: 28-106.201, Initiation of Proceedings.

Agency Alternative: 25-22.036(1)-(7) and (9)-(10), Initiation of Formal Proceedings.

Reasons for Exception: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings.

Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action.

The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The

rule recognizes there are other ways to seek the determination of substantial interests before the PSC besides filing a petition, and clearly lays out the avenues available to the public. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

This exception is necessary for the agency to operate efficiently.

Uniform Rule: 28-106.202, Amendment of Petitions.

Agency Alternative: 25-22.036(8), Initiation of Formal Proceedings.

Reasons for Exception: The PSC seeks an exception from the Uniform Rule concerning the amendment of petitions.

The Uniform Rule contemplates only petitions may be amended, whereas the PSC Rule contemplates petitions, applications, and complaints may be amended. The PSC amendment provision recognizes that proceedings determining substantial interests may also be initiated at the PSC by complaint and application.

This exception is necessary for the most efficient operation of the agency.

Uniform Rule: 28-106.203, Answer.

Agency Alternative: 25-22.037(1), Answers and Motions.

Reasons for Exception: The PSC seeks an exception from the Uniform

Rule concerning Answers.

The Uniform Rule does not state the time by which an answer must be filed as does the PSC Rule, which requires an answer to be served within 20 days of service of the petition. In addition, the PSC Rule clarifies that an answer to a PSC order or notice must be filed within 20 days unless a different time period is specified by the order or notice.

By specifying a time period, the PSC Rule avoids confusion and abuse. Without the PSC Rule, a respondent could claim the right to file an answer at virtually any time, and challenge the validity of any ruling made before the respondent opted to file a response. The PSC Rule promotes the orderly disposition of matters brought before the agency.

This exception is necessary for the efficient operation of the agency.

Uniform Rule: 28-106.204(1)-(2), Motions.

Agency Alternative: 25-22.037(2), Answers and Motions; 25-22.038(1), Prehearing Officer; Prehearing Statement; Prehearing Conference; and Prehearing Order.

Reasons for Exception: The PSC seeks an exception to subsections (1)-(2) of the Uniform Rule on motions.

PSC Rule 25-22.037(2) (a) requires motions to dismiss, motions to strike, and motions for a more definite statement to be filed

within the time for filing an answer, whereas Uniform Rule 28-106.204(2) requires only motions to dismiss to be filed no later than 20 days after service of the petition on the party. PSC Rule 25-22.037(2)(a) also has the additional provision that if any of these motions in opposition are denied, "an answer or other responsive pleading may be filed within 10-days [sic] after issuance of an order denying the motion." The PSC seeks to keep these additional provisions because they prevent delay and may reduce workload if it can be discerned early on that part of an initial pleading is inadequate.

In addition, PSC Rule 25-22.037(2)(b) requires motions not made during the course of a hearing to be filed with the Division of Records and Reporting (the Division). In contrast, Uniform Rule 28-106.204(1) requires motions to be filed with the presiding officer. As discussed above at pages 6-7, the Division has a complex computerized Case Management System that tracks and stores documents filed with the PSC. The Division's document management controls could be contravened if motions were required to be filed with the presiding officer. At best, this Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC.

In addition, Uniform Rule 28-106.204(1) authorizes the presiding officer to conduct proceedings and enter orders to dispose of motions. This requirement conflicts with current

Commission practice because PSC prehearing matters are handled by the prehearing officer. As discussed above in Part I, the prehearing officer may or may not be the presiding officer at the hearing..

These exceptions to the Uniform Rule on motions are necessary for the most efficient operation of the PSC.

Uniform Rule: 28-106.205, Intervention.

Agency Alternative: 25-22.039, Intervention.

Reasons for Exception: The PSC seeks an exception to the Uniform Rule on intervention.

PSC Rule 25-22.039 requires petitions for intervention to be filed at least five days before the commencement of a hearing, and Uniform Rule 28-106.205 requires such petitions to be filed at least 20 days prior to a final hearing.

Because Uniform Rules 28-106.208 and 28-106.302 require 14 days written notice for hearings determining substantial interests, it is possible that a potential intervenor would not learn of a hearing until the 20-day period to intervene had expired. Also, many customers that intervene in PSC proceedings do so at the end of the intervention period. The PSC is concerned that the 20-day rule could limit customer participation in hearings. Allowing the PSC to keep its five-day rule would probably reduce the number of instances where the PSC would have to determine whether good cause

was shown to intervene after the expiration of the intervention period in the Uniform Rule.

Also, the PSC Rule makes it clear that "[i]ntervenors take the case as they find it." Rule 25-22.039, F.A.C. This provision eliminates any confusion over the impact an intervenor can have on an ongoing proceeding.

The PSC seeks an exception to the Uniform Rule for the most efficient operation of the agency.

Uniform Rule: 28-106.208, Notice of Hearing.

Agency Alternative: 25-22.0405(2) and (4), Notices of Public Hearings.

Reasons for Exception: The PSC seeks an exception from the requirement in the Uniform Rule that the presiding officer is responsible for serving written notice on all parties, and also seeks an exception to keep subsections (2) and (4) of the PSC Rule that provide the PSC will give notice to local government representatives and may require utilities to publish notice in local newspapers.

At the PSC, the ministerial function of serving written notice on parties is already efficiently performed by the Division of Records and Reporting (the Division). This Division has controls in place to ensure that all noticing requirements are met and that all notices are logged in the PSC's computerized Case Management

System. If the Uniform Rule were to control, the PSC's streamlined procedure would become more cumbersome because additional divisions would have to be included in the process.

In addition, the Uniform Rule requirement may invite inquiries about hearing dates and times to the office of the commissioner who is the presiding officer. This could create opportunities for abuse of the strict ex parte prohibitions in Section 350.042, Florida Statutes.

As discussed above in Part I, PSC proceedings often impact broad interests. The PSC notice requirements in subsections (2) and (4) concerning local government notification and newspaper publication are designed to ensure that all persons potentially affected by PSC action will have notice of PSC proceedings.

These exceptions are needed for the efficient operation of the agency.

Uniform Rule: 28-106.209, Prehearing Conferences; and 28-106.211, Conduct of Proceedings.

Agency Alternative: 25-22.038, Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

Reasons for Exception: The PSC seeks an exception to Uniform Rules 28-106.109 and 28-106.211 so that the agency can continue to follow PSC Rule 25-22.038.

Under the Uniform Rules, the presiding officer is responsible

for prehearing matters. However, under PSC practice the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the hearing, as discussed above in Part I.

In addition, the PSC Rule explains in detail the prehearing procedures followed by the PSC. These procedures, which have evolved over the years, ensure that the same procedures are used in each hearing. The specifics set forth in PSC Rule 25-22.038 provide all hearing participants with knowledge of PSC prehearing procedures. This allows the PSC to conduct prehearing matters in a consistent, orderly, and efficient fashion.

The PSC seeks an exception to continue to follow PSC Rule 25-22.038 for the more efficient operation of the agency.

Uniform Rule: 28-106.212(1) and (3), Subpoenas.

Agency Alternative: 25-22.045(1), (2), (3), and (5), Subpoenas.

Reasons for Exception: The PSC seeks exceptions to subsections (1) and (3) of the Uniform Rule so that it can continue to follow subsections (1), (2), (3), and (5) of the PSC Rule.

Under the Uniform Rule, only the presiding officer can issue subpoenas. Under the PSC Rule, either the presiding officer or the Division of Records and Reporting (the Division) can issue subpoenas. In practice, however, the Division issues all subpoenas. Since subpoenas must be timely issued, this is the more

practical approach for the PSC since the travel and hearing schedules of presiding officers often prevent quick responses.

In addition, pursuant to the Uniform Rule, motions to quash are to be filed with the presiding officer. The PSC seeks an exception to this requirement so that motions to quash will continue to be filed with the Division. This Division has controls in place to ensure the motion will be disposed of by the appropriate prehearing officer, and that the motion will be logged into the Division's computerized Case Management System discussed above at pages 6-7.

The PSC Rule also provides that subpoenas may be issued for the inspection of documents without deposing anyone. This additional procedure effectuates discovery in PSC proceedings.

Finally, the PSC Rule allows subpoenas to be served by certified mail. This type of service cuts down on costs for hearing participants.

The PSC seeks exceptions for the subpoena provisions discussed above for the most efficient operation of the agency.

Uniform Rule: 28-106.213, Evidence.

Agency Alternative: 25-22.048(3) and (4), Evidence.

Reasons for Exception: The PSC seeks exceptions to keep the additional requirements in subsection (3) concerning the exclusion of irrelevant and repetitious evidence and subsection (4)

concerning prefiled testimony for its Rule 25-22.048.

The last sentence in subsection (3) of the PSC Rule concerning the exclusion of irrelevant and repetitious evidence helps keep hearings manageable and may shorten the time spent in hearing.

In addition, PSC practice is to require prefiled direct testimony, and rebuttal testimony if any, in all proceedings. Often, as in rate cases, prefiled testimony is filed along with the petition. Cross-examination upon the prefiled testimony is conducted live at the hearing. This process acknowledges the technical subject matter of most issues, and expedites the hearing process. Moreover, the prefiled testimony format requirements ensure that the PSC can comply with the transcript requirements in Rules 9.190 and 9.200, Florida Rules of Appellate Procedure, if an order is appealed.

These exceptions are needed for the efficient operation of the agency.

Uniform Rule: 28-106.215, Post-Hearing Submittals.

Agency Alternative: 25-22.056(1)-(3), Post-hearing Filings.

Reasons for Exception: The PSC seeks an exception to keep its Rule 25-22.056(1)-(3) that sets forth the requirements for post-hearing filings.

The PSC Rule is tailored to the post-hearing procedure followed by the PSC. Because either a single commissioner or a

panel may hear a case, subsection (1) specifies the types of post-hearing filings available to parties in either circumstance. In particular, if a panel hears a case, proposed orders like those authorized under the Uniform Rule are not an option. Instead, a party may file a brief and statement of issues and positions.

PSC Rule 25-22.056(1)(d) also limits proposed findings of fact, conclusions of law, statements of issues and positions, and briefs to no more than 60 pages total. In addition, this rule sets out page formatting requirements. Past PSC experience has shown that more than 40 pages is consistently needed because of the number and complexity of issues in many PSC proceedings.

The rule also addresses the procedure to follow when requesting oral argument after a hearing. Rule 25-22.056(1)(e), F.A.C. This provision makes the rights of parties clear.

Subsection (2) of the PSC Rule sets out requirements on proposed findings of fact. The PSC adopted these requirements after the agency had experienced situations in which parties filed inappropriate findings of fact that diverted the PSC's "time and attention away from a careful analysis of the substance of the case." In re: Application of East Central Florida Services, Inc. for an original certificate in Brevard, Orange and Osceola Counties, 92 F.P.S.C. 3:374, 386 (1992) (One party filed 531 proposed findings of fact of which less than one-third were accepted).

Finally, subsection (3) of the PSC Rule sets out the requirements for the statement of issues and positions. Specific requirements concerning this post-hearing filing are necessary because this information is incorporated into the staff recommendation upon which the PSC votes to dispose of a case. The rule is clear that "[a]ny issue or position not included in a post-hearing statement shall be considered waived." Rule 25-22.056(3)(a), F.A.C.

These exceptions to the Uniform Rule are necessary for the efficient operation of the agency.

Uniform Rule: 28-106.216(1), Entry of Recommended Order.

Agency Alternative: 25-22.056(4)(a), Post-hearing Filings.

Reasons for Exception: The PSC seeks an exception for PSC Rule 25-22.056(4)(a) concerning recommended or proposed orders when a hearing is conducted by a single PSC commissioner.

The Uniform Rule is tailored to proceedings referred to DOAH, after which an Administrative Law Judge (ALJ) submits a recommended order to an agency head. The Uniform Rule does not address proceedings where a single commissioner acts as the hearing officer, and then submits his recommended order to the full commission to decide final agency action, which may be the case at the PSC and is contemplated under the PSC rule.

This exception is needed for the efficient operation of the

agency. In addition, Section 350.01(7), Florida Statutes, authorizes the PSC to adopt rules concerning a single commissioner conducting a hearing under Sections 120.569 and 120.57(1).

Uniform Rule: 28-106.217(1) and (2), Exceptions and Responses.

Agency Alternative: 25-22.056(4)(b), Post-hearing Filings.

Reasons for Exception: The PSC seeks an exception to the requirements of subsections (1) and (2) of Uniform Rule 28-106.217 so that the agency can continue to apply the requirements of PSC Rule 25-22.056(4)(b).

Pursuant to Section 120.569(2)(j)1., Florida Statutes, orders must be rendered within 90 days "[a]fter the hearing is concluded, if conducted by the agency." The PSC Rule requires exceptions to be filed within 14 days of service of the order, and not 15 days, as allowed by the Uniform Rule. In addition, the PSC Rule does not allow responses to exceptions. The PSC would not be able to meet the 90-day statutory deadline for rendering orders if the agency followed the Uniform Rule because it holds public meetings to do so only twice every month and recommended orders must be voted on by the full Commission.

This exception is necessary for the efficient operation of the agency. In addition, Section 350.01(7), Florida Statutes, authorizes the PSC to adopt rules concerning a single commissioner conducting a hearing under Sections 120.569 and 120.57(1).

Uniform Rule: 28-106.301, Initiation of Proceedings.

Agency Alternative: 25-22.036(1)-(7) and (9)-(10), Initiation of Formal Proceedings.

Reasons for Exception: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings not involving disputed issues of material fact.

Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action.

The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The rule recognizes there are other ways to seek the determination of substantial interests before the PSC besides filing a petition, and clearly lays out the avenues available to the public. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

This exception is necessary for the agency to operate efficiently.

Uniform Rule: 28-106.302(1), Notice of Proceeding.

Agency Alternative: 25-22.038, Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

Reasons for Exception: The PSC seeks an exception to Uniform Rule 28-106.302(1) which provides that the agency serves written notice on all parties regarding the evidence or memoranda of law to be submitted by the parties. Under PSC practice, the governance of such matters is handled by the prehearing officer assigned to the case. The prehearing officer issues a procedural order which contains the specific details of what should be filed and on what date, and identifies the issues in dispute. This procedure provides all participants in the informal hearing with notice.

The PSC seeks an exception to the Uniform Rule for the more efficient operation of the agency.

Uniform Rule: 28-106.303(1), Motions.

Agency Alternative: 25-22.037(2)(b); Answers and Motions; 25-22.038(1), Prehearing Officer; Prehearing Statement; Prehearing Conference; and Prehearing Order.

Reasons for Exception: The PSC seeks an exception to the requirements in Uniform Rule 28-106.303(1) concerning the presiding officer's responsibilities over motions filed in informal proceedings.

PSC Rule 25-22.037(2)(b) requires motions not made during the course of a hearing to be filed with the Division of Records and Reporting. In contrast, Uniform Rule 28-106.303(1) requires motions to be filed with the presiding officer. As discussed above

at pages 6-7, the PSC's Division of Records and Reporting (the Division) has a complex computerized case management system to track and store documents filed with the PSC. The Division's document management controls may be contravened if motions were required to be filed with the presiding officer. At best, this Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC.

In addition, Uniform Rule 28-106.303 provides the presiding officer shall take action to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer. As discussed above in Part I, the prehearing officer may or may not be the presiding officer at the hearing.

This exception to the Uniform Rule on motions filed in proceedings not involving disputed issues of material fact is necessary for the most efficient operation of the PSC.

Uniform Rule: 28-106.305(1), Conduct of Proceedings.

Agency Alternative: 25-22.038(1), Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

Reasons for Exception: The PSC seeks an exception to Uniform Rule 28-106.305(1) so that the agency can continue to follow PSC Rule 25-22.038(1).

Under the Uniform Rules, the presiding officer issues orders

necessary to effect discovery and addresses other procedural matters in the case. Under PSC practice, the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the informal hearing. The prehearing officer issues a procedural order which provides the specific details of what should be filed, sets critical dates, and identifies the issues in dispute. This procedure provides all participants in the informal hearing with knowledge of the conduct of the informal hearing.

The PSC seeks an exception for the more efficient operation of the agency.

III. Exceptions for Procedures in Addition to the Uniform Rules Authority:

The PSC acknowledges that the Administration Commission published a notice of rule development on March 13, 1998, to amend Uniform Rule 28-108.001 to require exceptions to the Uniform Rules only when an agency's procedural rules fall within the subject matter or scope of the Uniform Rules in Chapters 28-101 through 28-110, F.A.C. The PSC also acknowledges that recent Final Orders entered by the Administration Commission further clarify the types of agency procedural rules that require exceptions. See In re: Petition for Exceptions from the Uniform Rules of Procedure, State of Florida Department of Environmental Protection, AC Case No. APA-

98-003, Final Order No. AC-98-003, dated March 25, 1998 (Exceptions are necessary for procedural rules within the scope or subject matter of the Uniform Rules; exceptions are not necessary for appeals procedures extending beyond the scope of Chapter 28-106, F.A.C.); In re: Petition for Exceptions from the Uniform Rules of Procedure, South Florida Water Management District, AC Case No. APA-98-002, Final Order No. AC-98-005, dated March 25, 1998. Based on these recent directives, the PSC believes that exceptions are necessary for the procedural rules listed below. The PSC, however, reserves the right to seek exceptions for other procedural rules if it determines such exceptions may be necessary based on further directives from the Administration Commission.

Agency Procedure: 25-21.004, Disqualification.

Reason for Procedure: This rule clearly announces the reasons why a commissioner may be disqualified from hearing a case, states the procedure to follow when filing a petition for disqualification, and states how a petition will be disposed of by the PSC. The rule removes doubt or controversy concerning the procedures on disqualification. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.0021, Agenda Conference Participation.

Reason for Procedure: The PSC votes on agency action at public meetings called agenda conferences. The purpose of PSC Rule 25-22.0021 is to clearly set forth the PSC's policy on accepting public comments during the course of these meetings. It gives notice to all regulated entities, parties, and interested persons concerning their right to participate in the agenda conference. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.006, Confidential Information.

Reason for Procedure: PSC Rule 25-22.006 sets out the procedures to follow when requesting that certain information filed with the PSC be considered confidential and exempt from Section 119.07(1), Florida Statutes. For example, the rule prescribes the confidentiality procedures that must be followed when conducting discovery and using confidential information in hearings. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.121, 364.183, 366.093, and 367.156, F.S.

Agency Procedure: 25-22.017(1) and (2), Rulemaking Proceeding -- Adoption.

Reason for Procedure: Subsections (1) and (2) of PSC Rule 25-

22.017 prescribe the procedures the PSC will follow when voting to adopt changes to a proposed rule at an agenda conference. This rule puts the public on notice as to the procedure used by the PSC, and avoids doubt or controversy. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.035(3), Miscellaneous Matters.

Reason for Procedure: Subsection (3) of PSC Rule 25-22.035 provides the Florida Rules of Civil Procedure will govern formal proceedings except where they are superseded by or in conflict with a PSC Rule. If a procedural matter is not governed by a Uniform Rule or a PSC Rule, it will often be addressed in the Florida Rules of Civil Procedure. For instance, neither the Uniform nor PSC Rules address voluntary dismissal of actions. When the issue has arisen at the PSC in the past, the PSC has relied on and followed Rule 1.420, Florida Rules of Civil Procedure. See In re: Petition for approval of contract for the purchase of firm capacity and energy between General Peat Resources, L.P. and Florida Power and Light Company, 94 F.P.S.C. 3:507, 508 (1994) (Florida Rule of Civil Procedure 1.420 was found to be applicable to the petitioner's notice of dismissal pursuant to PSC Rule 25-22.035). This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.0355, Assignment of Formal Proceedings.

Reason for Procedure: PSC Rule 25-22.0355 puts all affected persons on notice as to the procedure that will be followed when assigning a commissioner or DOAH ALJ to formal proceedings. The rule also prescribes the procedure to follow when requesting to have a case assigned to the full Commission. The rule avoids doubt or controversy concerning the assignment of proceedings. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 120.57(1)(a), 350.01, 350.125, and 350.127(2), F.S.

Agency Procedure: 25-22.037(3) and (4), Answers and Motions.

Reason for Procedure: Subsections (3) and (4) of PSC Rule 25-22.037 prescribes the PSC's policy on default and waiver. The rule puts all interested persons on notice as to when waiver or default is considered to have occurred, and thus avoids any doubt or controversy concerning such issues. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.0376, Reconsideration of Non-Final Orders.

Reason for Procedure: PSC Rule 25-22.0376 provides a means for adversely affected parties to seek reconsideration of a non-final order issued by a single commissioner, usually acting as a

prehearing officer. The rule provides the procedure the party must follow to seek reconsideration by the panel assigned to hear the case. The rule avoids doubt or controversy concerning reconsideration of non-final orders. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.0406, Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.

Reason for Procedure: PSC Rule 25-22.0406 prescribes the procedure for noticing customers of electric and gas utilities and telecommunications companies that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of service hearings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 364.035(1), 364.19, 366.05(1), 366.06, F.S.

Agency Procedure: 25-22.0407, Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

Reason for Procedure: PSC Rule 25-22.0407 prescribes the procedure for noticing customers of water and wastewater utilities that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of customer meetings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 367.081, 367.0814(1), 367.0817(1)(h), 367.091, 367.121(1)(f), F.S.

Agency Procedure: 25-22.042, Dismissal.

Reason for Procedure: PSC Rule 25-24.042 puts all parties on notice that failure or refusal to comply with a PSC order subjects the party to dismissal from the action, and if the offending party carries the burden of proof, the proceeding itself may be dismissed. The rule enables the PSC to take affirmative action when a party demonstrates a "persistent inability to comply with Commission orders and rules." In re: Application for certificate to provide interexchange telecommunications service by Health Liability Management Corporation, 97 F.P.S.C. 11:451, 454 (1997). This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.046, Witnesses and Witness Fees.

Reason for Procedure: PSC Rule 25-22.046 sets out the requirements for witness fees, and states that members of the general public may appear as witnesses in PSC proceedings without being a party. The rule avoids doubt or controversy concerning witness fees, and the ability of the general public to participate in proceedings. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.058, Oral Argument.

Reason for Procedure: PSC Rule 25-22.058 puts all parties to a formal proceeding on notice as to when the PSC may grant requests for oral argument. The Florida Supreme Court has recognized that this rule may aid the PSC in determining what agency action to take. U.S. Sprint Communications Co. v. Nichols, 534 So. 2d 698, 700 (Fla. 1988). This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.060, Motion for Reconsideration.

Reason for Procedure: PSC Rule 25-22.060 provides a means for adversely affected parties to seek reconsideration of final orders issued by the PSC. The rule provides the procedure the party must follow to seek reconsideration. As recognized by the Florida

Supreme Court,

A petition for reconsideration is used to bring to an agency's attention specific matters which do not appear to be reflected in its reasoning and decision. By this means the need for judicial review can be obviated, and the expertise of the agency can be expressed within the framework of goals established by the Legislature.

Sentinel Star Express Company v. Florida Public Service Commission, 322 So. 2d 503, 505 (Fla. 1975). This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.075, Transmission Line Permitting Proceedings.

Reason for Procedure: PSC Rule 25-22.075 sets out the procedure to initiate a transmission line permitting proceeding, including special noticing requirements. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.537, F.S. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 403.537, F.S.

Agency Procedure: 25-22.080, Electrical Power Plant Permitting Proceedings.

Reason for Procedure: PSC Rule 25-22.080 sets out the procedure to

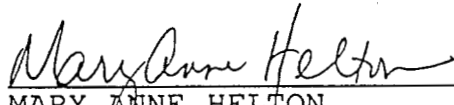
initiate an electrical power plant permitting proceeding, including special noticing requirements and decisional time lines. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.519, F.S. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(1) and 403.519, F.S.

WHEREFORE, the Florida Public Service Commission respectfully requests this Commission for an order granting the exceptions requested above.

Respectfully submitted,

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Associate General Counsel
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FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0862
850-413-6245

Dated: April 15, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by U.S. Mail or hand-delivered this 15th day of April, 1998.

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, FL 32399

Honorable Sandra B. Mortham
Secretary of State
The Capitol
Tallahassee, FL 32399

Honorable Robert Milligan
Comptroller
The Capitol
Tallahassee, FL 32399

Honorable Bill Nelson
Insurance Commissioner
The Capitol
Tallahassee, FL 32399

Honorable Bob Butterworth
Attorney General
The Capitol
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Honorable Frank Brogan
Commissioner of Education
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Honorable Bob Crawford
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MARY ANNE HELTON

PET2.MAH

ATTACHMENT A

FLORIDA PUBLIC SERVICE COMMISSION

The PSC seeks exceptions to the following Uniform Rules of Procedure for the most efficient operation of the agency.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-102.001, Notice of Public Meeting, Hearing, or Workshop.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional provisions on noticing found in subsections (3) and (4) of PSC Rule 25-22.001 that define the terms "meeting" and "workshop" to avoid doubt or controversy concerning what constitutes a meeting or workshop that must be noticed by publication in the Florida Administrative Weekly.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-102.002(2), Agenda of Meetings, Hearings, and Workshops.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.002(3) that "[a] majority vote of a quorum of the Commission is required to modify the presiding officer's decision" on specific changes in the agenda. This provision avoids doubt or controversy concerning the procedure for overriding the presiding officer's decision to change the agenda.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-105.003, Disposition.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception

to keep the additional requirement in PSC Rule 25-22.022(3) that discourages oral argument on declaratory statements at its public agenda conferences. Petitions for declaratory statements must be answered based on the facts and circumstances alleged in the petition. Anyone who wishes to address the merits may contact commissioners prior to agenda conferences pursuant to Section 350.042(1), Florida Statutes.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.102,
Presiding Officer.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.035(1) that "[u]nless 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." This exception will prevent parties from delaying proceedings by moving to disqualify a commissioner the day a final hearing is scheduled to commence.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.104, Filing.
SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to keep the additional filing requirements contained in PSC Rules 25-22.028(1) and 25-22.0375(3). Specifically, the PSC seeks an exception for the provisions in 25-22.028(1) that require the larger regulated entities and parties to provide computer diskette files for documents larger than five pages. The PSC also seeks an exception so that it can continue to require

multiple copies of filings as set forth in PSC Rules 25-22.028(1) and 25-22.0375(3). Finally, the PSC seeks an exception so that it can continue to require the filing of notices of service of interrogatories or production of documents. These additional requirements enable the PSC to maintain its computerized Case Management System in which information concerning document filings and some on-line documents are stored for easy public access. This system also reduces paper consumption. The additional copies enable the PSC to distribute copies of filings to all PSC employees involved in the case without PSC staff having to make the copies. The filing of discovery notices enables all parties and interested persons to be informed of discovery being conducted in a case.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.106, Who May Appear; Criteria for Qualified Representatives.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception so that it can continue to follow its Rule 25-22.008. The PSC Rule allows attorneys who are not admitted to the Florida Bar to practice before the PSC and thus recognizes that the practice of utility law is a very specialized field, that there are a limited number of such practitioners in Florida, and that the PSC regulates Florida operations of large corporations with headquarters and counsel out-of-state. Under the Uniform Rule, the client of the qualified representative must seek permission

from the presiding officer for the qualified representative to represent the client in each proceeding. On the other hand, the PSC Rule allows a non-attorney to obtain a Class B certificate that is renewable every two years. This practice negates the need for non-attorneys to seek and obtain permission each time they are to represent a client before the PSC. The PSC Rule has more stringent requirements for non-attorney representatives to practice before the PSC. The PSC Rule authorizes the Office of General Counsel to grant Class B applications so that applications can be processed expeditiously; recommendations for denial must be heard by the full Commission. Finally, the PSC Rule allows practitioners to appear as witnesses in PSC proceedings in the limited circumstances spelled out in subsection (6).

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.109, Notice to Interested Parties.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional provisions in subsections (3) and (4) of PSC Rule 25-22.026 that delineate the role of PSC staff in evidentiary proceedings. These provisions make staff's role clear and avoid any confusion and controversy concerning staff's participation in proceedings.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.111(2)-(4), Point of Entry into Proceedings and Mediation.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to subsections (2) through (4) of Uniform Rule 28-106.111 that require a hearing to be requested within 21 days of receipt of notice of the decision and that provide that a right to hearing will be waived if not requested within 21 days. The Uniform Rule ties the time period within which a request for hearing can be made to receipt of the notice; whereas, PSC Rule 25-22.029 ties the time period to issuance of the notice. Under the PSC procedure, the PSC and affected persons are able to track the time certain when proposed agency action becomes final. In addition, PSC Rule 25-22.029(2) provides that the PSC may shorten the time to request a hearing to 14 days from issuance of the order for good cause shown. This shortened time period is needed to meet certain statutory deadlines. Finally, the PSC Rule ties the waiver of hearing rights to "the expiration of the time within which to request a hearing." This provision recognizes that there may be different time periods for requesting a hearing depending on the notice given.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.201,
Initiation of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings so that it can continue to follow PSC Rule 25-22.036(1)-(7) and (9)-(10). Under the Uniform Rule, only petitions can initiate an agency

proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action. The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.202, Amendment of Petitions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule concerning the amendment of petitions so that it can continue to follow PSC Rule 25-22.036(8). The Uniform Rule contemplates only petitions may be amended, whereas the PSC Rule contemplates petitions, applications, and complaints may be amended. The PSC amendment provision recognizes that proceedings determining substantial interests may also be initiated at the PSC by complaint and application.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.203, Answer.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule concerning Answers so that it can continue to follow PSC Rule 25-22.037(1). The Uniform Rule does not state the time by which an answer must be filed as does the PSC Rule, which requires an answer to be served within 20 days of service

of the petition. In addition, the PSC Rule clarifies that an answer to a PSC order or notice must be filed within 20 days unless a different time period is specified by the order or notice. By specifying a time period, the PSC Rule avoids confusion and abuse. The PSC Rule promotes the orderly disposition of matters brought before the agency.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.204(1)-(2),
Motions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to subsections (1)-(2) of the Uniform Rule on motions so that it can continue to follow PSC Rules 25-22.037(2) and 25-22.038(1). PSC Rule 25-22.037(2) (a) requires motions to dismiss, motions to strike, and motions for a more definite statement to be filed within the time for filing an answer, whereas Uniform Rule 28-106.204(2) requires only motions to dismiss to be filed no later than 20 days after service of the petition on the party. PSC Rule 25-22.037(2) (a) also has the additional provision that if any of these motions in opposition are denied, "an answer or other responsive pleading may be filed within 10-days [sic] after issuance of an order denying the motion." The PSC seeks to keep these additional provisions because they prevent delay and may reduce workload if it can be discerned early on that part of an initial pleading is inadequate. In addition, PSC Rule 25-22.037(2) (b) requires motions not made during the course of a

hearing to be filed with the Division of Records and Reporting (the Division) instead of the presiding officer as required by the Uniform Rule. The Division has a complex computerized Case Management System that tracks and stores documents filed with the PSC that could be contravened if motions were required to be filed with the presiding officer. The Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC. Finally, Uniform Rule 28-106.204(1) authorizes the presiding officer to conduct proceedings and enter orders to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.205, Intervention.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the Uniform Rule on intervention so that it can continue to follow PSC Rule 25-22.039. Under the PSC rule, petitions to intervene can be filed five days before the commencement of a hearing. The PSC is concerned that the 20-day period in the Uniform Rule could limit customer participation in hearings. Allowing the PSC to keep its five-day rule would probably reduce the number of instances where the PSC would have to determine whether good cause was shown to intervene after the expiration of the intervention period in the Uniform Rule. Also, the PSC Rule

makes it clear that "[i]ntervenors take the case as they find it," and, thus eliminates confusion over the impact an intervenor can have on an ongoing proceeding.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.208, Notice of Hearing.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the requirement in the Uniform Rule that the presiding officer is responsible for serving written notice on all parties, and also seeks an exception to keep subsections (2) and (4) of PSC Rule 25-22.0405 that provide the PSC will give notice to local government representatives and may require utilities to publish notice in local newspapers. At the PSC, the ministerial function of serving written notice on parties is already efficiently performed by the Division of Records and Reporting (the Division). If the Uniform Rule were to control, the PSC's streamlined procedure would become more cumbersome because additional divisions would have to be included in the process. The PSC notice requirements in subsections (2) and (4) concerning local government notification and newspaper publication are designed to ensure that all persons potentially affected by PSC action will have notice of PSC proceedings.

UNIFORM RULES FROM WHICH EXCEPTION IS SOUGHT: 28-106.209, Prehearing Conferences; and 28-106.211, Conduct of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception

to Uniform Rules 28-106.109 and 28-106.211 so that the agency can continue to follow PSC Rule 25-22.038. Under the Uniform Rules, the presiding officer is responsible for prehearing matters.

However, under PSC practice, the governance of prehearing matters is handled by the prehearing officer. In addition, the PSC Rule explains in detail the prehearing procedures followed by the PSC. The specifics set forth in PSC Rule 25-22.038 provide all hearing participants with knowledge of PSC prehearing procedures and allow the PSC to conduct prehearing matters in a consistent, orderly, and efficient fashion.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.212(1) and (3), Subpoenas.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to subsections (1) and (3) of the Uniform Rule so that it can continue to follow subsections (1), (2), (3), and (5) of PSC Rule 25-22.045. Under the Uniform Rule, only the presiding officer can issue subpoenas. Under the PSC Rule, either the presiding officer or the Division of Records and Reporting (the Division) can issue subpoenas. Since subpoenas must be timely issued, this is the more practical approach for the PSC since the travel and hearing schedules of presiding officers often prevent quick responses. In addition, pursuant to the Uniform Rule, motions to quash are to be filed with the presiding officer. The PSC seeks an exception to this requirement so that motions to quash will

continue to be filed with the Division. This will ensure that the motion is tracked and logged in the Division's computerized Case Management System. The PSC Rule also provides that subpoenas may be issued for the inspection of documents without deposing anyone. This additional procedure effectuates discovery in PSC proceedings. Finally, the PSC Rule allows subpoenas to be served by certified mail. This type of service cuts down on costs for hearing participants.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.213, Evidence.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to keep the additional requirements in subsection (3) concerning the exclusion of irrelevant and repetitious evidence and subsection (4) concerning prefiled testimony for its Rule 25-22.048. The exclusion of irrelevant and repetitious evidence helps keep hearings manageable and may shorten the time spent in hearing. The requirement for prefiled direct testimony, and rebuttal testimony if any, acknowledges the technical subject matter of most issues, and expedites the hearing process.

Moreover, the formatting requirements for prefiled testimony ensure that the PSC can comply with the transcript requirements in Rules 9.190 and 9.200, Florida Rules of Appellate Procedure, if an order is appealed.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.215,

Post-Hearing Submittals.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep its Rule 25-22.056(1)-(3) that sets forth the requirements for post-hearing filings that are tailored to the post-hearing procedure followed by the PSC. Because either a single commissioner or a panel may hear a case, subsection (1) specifies the types of post-hearing filings available to parties in either circumstance. PSC Rule 25-22.056(1)(d) also limits proposed findings of fact, conclusions of law, statements of issues and positions, and briefs to no more than 60 pages total. Past PSC experience has shown that more than 40 pages is consistently needed because of the number and complexity of issues in many PSC proceedings. Subsection (2) of the PSC Rule sets out requirements for proposed findings of fact to curb the filing of inappropriate proposed findings of fact. Finally, subsection (3) of the PSC Rule sets out the requirements for the statement of issues and positions. The rule is clear that "[a]ny issue or position not included in a post-hearing statement shall be considered waived."

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.216(1),
Entry of Recommended Order.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception for PSC Rule 25-22.056(4)(a) concerning recommended or proposed orders when a hearing is conducted by a single PSC commissioner.

The Uniform Rule is tailored to proceedings referred to the (Division of Administrative Hearings) DOAH, after which an Administrative Law Judge (ALJ) submits a recommended order to an agency head. The Uniform Rule does not address proceedings where a single commissioner acts as the hearing officer, and then submits his recommended order to the full commission to decide final agency action, which may be the case at the PSC and is contemplated under the PSC rule.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.217(1) and (2), Exceptions and Responses.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the requirements of subsections (1) and (2) of Uniform Rule 28-106.217 so that the agency can continue to apply the requirements of PSC Rule 25-22.056(4)(b). The PSC would not be able to meet the 90-day statutory deadline for rendering orders in Section 120.569(2)(j)1., Florida Statutes, if the agency followed the Uniform Rule because it holds public meetings to do so only twice every month and recommended orders must be voted on by the full Commission.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.301, Initiation of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings not involving disputed issues of material fact so that it can

continue to follow PSC Rule 25-22.036(1)-(7) and (9)-(10). Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.302(1),
Notice of Proceeding.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rule 28-106.302(1) so that it can continue to follow PSC Rule 25-22.038. Under PSC practice, the governance of such prehearing matters is handled by the prehearing officer assigned to the case. The prehearing officer issues a procedural order which contains the specific details of what should be filed and on what date, and identifies the issues in dispute.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.303(1),
Motions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the requirements in Uniform Rule 28-106.303(1) concerning the presiding officer's responsibilities over motions filed in informal proceedings so that it can continue to follow PSC Rules 25-22.037(2)(b) and 25-22.038(1). The PSC rules require motions to be filed with the Division of Records and Reporting (the Division) instead of with the presiding officer. The Division's

document management controls may be contravened if motions were required to be filed with the presiding officer, and would add additional layers of bureaucracy to the internal document controls followed by the PSC. In addition, Uniform Rule 28-106.303 provides the presiding officer shall take action to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.305(1),
Conduct of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rule 28-106.305(1) so that the agency can continue to follow PSC Rule 25-22.038(1). Under the Uniform Rules, the presiding officer issues orders necessary to effect discovery and addresses other procedural matters in the case. Under PSC practice, the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the informal hearing.

The PSC seeks to keep the following procedural rules that would be in addition to the Uniform Rules of Procedure for the most efficient operation of the agency.

AGENCY PROCEDURE: 25-21.004, Disqualification.

REASON FOR PROCEDURE: This rule clearly announces the reasons why a commissioner may be disqualified from hearing a case,

states the procedure to follow when filing a petition for disqualification, and states how a petition will be disposed of by the PSC. The rule removes doubt or controversy concerning the procedures on disqualification.

AGENCY PROCEDURE: 25-22.0021, Agenda Conference Participation.

REASON FOR PROCEDURE: The PSC votes on agency action at public meetings called agenda conferences. The purpose of PSC Rule 25-22.0021 is to clearly set forth the PSC's policy on accepting public comments during the course of these meetings. It gives notice to all regulated entities, parties, and interested persons concerning their right to participate in the agenda conference.

AGENCY PROCEDURE: 25-22.006, Confidential Information.

REASON FOR PROCEDURE: PSC Rule 25-22.006 sets out the procedures to follow when requesting that certain information filed with the PSC be considered confidential and exempt from Section 119.07(1), Florida Statutes.

AGENCY PROCEDURE: 25-22.017(1) and (2), Rulemaking Proceeding -- Adoption.

REASON FOR PROCEDURE: Subsections (1) and (2) of PSC Rule 25-22.017 prescribe the procedures the PSC will follow when voting to adopt changes to a proposed rule at an agenda conference.

This rule puts the public on notice as to the procedure used by the PSC, and avoids doubt or controversy.

AGENCY PROCEDURE: 25-22.035(3), Miscellaneous Matters.

REASON FOR PROCEDURE: Subsection (3) of PSC Rule 25-22.035 provides that the Florida Rules of Civil Procedure will govern formal proceedings, except where they are superseded by or in conflict with a PSC Rule. If a procedural matter is not governed by a Uniform Rule or a PSC Rule, it will often be addressed in the Florida Rules of Civil Procedure.

AGENCY PROCEDURE: 25-22.0355, Assignment of Formal Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.0355 puts all affected persons on notice as to the procedure that will be followed when assigning a commissioner or DOAH ALJ to formal proceedings. The rule also prescribes the procedure to follow when requesting to have a case assigned to the full Commission. The rule avoids doubt or controversy concerning the assignment of proceedings.

AGENCY PROCEDURE: 25-22.037(3) and (4), Answers and Motions.

REASON FOR PROCEDURE: Subsections (3) and (4) of PSC Rule 25-22.037 prescribes the PSC's policy on default and waiver. The rule puts all interested persons on notice as to when waiver or default is considered to have occurred, and thus avoids any doubt or controversy concerning such issues.

AGENCY PROCEDURE: 25-22.0376, Reconsideration of Non-Final Orders.

REASON FOR PROCEDURE: PSC Rule 25-22.0376 provides a means for adversely affected parties to seek reconsideration of a non-final order issued by a single commissioner, usually acting as a

prehearing officer. The rule provides the procedure the party must follow to seek reconsideration by the panel assigned to hear the case. The rule avoids doubt or controversy concerning reconsideration of non-final orders.

AGENCY PROCEDURE: 25-22.0406, Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.

REASON FOR PROCEDURE: PSC Rule 25-22.0406 prescribes the procedure for noticing customers of electric and gas utilities and telecommunications companies that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of service hearings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing.

AGENCY PROCEDURE: 25-22.0407, Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

REASON FOR PROCEDURE: PSC Rule 25-22.0407 prescribes the procedure for noticing customers of water and wastewater utilities that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of customer meetings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to

detailed information concerning the rate filing.

AGENCY PROCEDURE: 25-22.042, Dismissal.

REASON FOR PROCEDURE: PSC Rule 25-24.042 puts all parties on notice that failure or refusal to comply with a PSC order subjects the party to dismissal from the action, and if the offending party carries the burden of proof, the proceeding itself may be dismissed. The rule enables the PSC to take affirmative action when a party demonstrates a "persistent inability to comply with Commission orders and rules." In re: Application for certificate to provide interexchange telecommunications service by Health Liability Management Corporation, 97 F.P.S.C. 11:451, 454 (1997).

AGENCY PROCEDURE: 25-22.046, Witnesses and Witness Fees.

REASON FOR PROCEDURE: PSC Rule 25-22.046 sets out the requirements for witness fees, and states that members of the general public may appear as witnesses in PSC proceedings without being a party. The rule avoids doubt or controversy concerning witness fees, and the ability of the general public to participate in proceedings.

AGENCY PROCEDURE: 25-22.058, Oral Argument.

REASON FOR PROCEDURE: PSC Rule 25-22.058 puts all parties to a formal proceeding on notice as to when the PSC may grant requests for oral argument. The Florida Supreme Court has recognized that this rule may aid the PSC in determining what agency action to

take. U.S. Sprint Communications Co. v. Nichols, 534 So. 2d 698, 700 (Fla. 1988).

AGENCY PROCEDURE: 25-22.060, Motion for Reconsideration.

REASON FOR PROCEDURE: PSC Rule 25-22.060 provides a means for adversely affected parties to seek reconsideration of final orders issued by the PSC. The rule provides the procedure the party must follow to seek reconsideration. The Florida Supreme Court has recognized the value of this rule. See Sentinel Star Express Company v. Florida Public Service Commission, 322 So. 2d 503, 505 (Fla. 1975).

AGENCY PROCEDURE: 25-22.075, Transmission Line Permitting Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.075 sets out the procedure to initiate a transmission line permitting proceeding, including special noticing requirements. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.537, F.S.

AGENCY PROCEDURE: 25-22.080, Electrical Power Plant Permitting Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.080 sets out the procedure to initiate an electrical power plant permitting proceeding, including special noticing requirements and decisional time lines. In addition, the rule specifies that a motion for

reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.519, F.S.

THE ADMINISTRATION COMMISSION IS EXPECTED TO HEAR THE PSC'S PETITION FOR EXCEPTIONS AT THE MAY 12, 1998, CABINET MEETING.

ATTACHMENT B

DRAFT

BEFORE THE ADMINISTRATION COMMISSION
OF THE STATE OF FLORIDA

IN THE MATTER OF: THE FLORIDA
PUBLIC SERVICE COMMISSION'S
REQUEST FOR EXCEPTIONS TO
UNIFORM RULES OF PROCEDURE

AC CASE# _____

FILED: _____

FINAL ORDER

A Petition of the Florida Public Service Commission, seeking exceptions to the Uniform Rules of Procedure, came for hearing before the Administration Commission on May 22, 1998. After hearing, upon motion duly made, seconded, and adopted, the Administration Commission hereby grants the exceptions requested in the Petition for the reasons set forth therein. The Florida Public Service Commission's Petition for Exceptions to Uniform Rules of Procedure is incorporated in this Final Order.

DONE and ORDERED this ____ day of _____, 1998, in Tallahassee, Florida.

Robert B. Bradley, Secretary
Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by U.S. Mail or hand-delivered this _____ day of _____, 1998.

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, FL 32399

Honorable Sandra B. Mortham
Secretary of State
The Capitol
Tallahassee, FL 32399

Honorable Robert Milligan
Comptroller
The Capitol
Tallahassee, FL 32399

Honorable Bill Nelson
Insurance Commissioner
The Capitol
Tallahassee, FL 32399

Honorable Bob Butterworth
Attorney General
The Capitol
Tallahassee, FL 32399

Honorable Frank Brogan
Commissioner of Education
The Capitol
Tallahassee, FL 32399

Honorable Bob Crawford
Commissioner of Agriculture
The Capitol
Tallahassee, FL 32399

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Governor's Legal Office
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and General Counsel
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Department of State
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Robert Vandiver, General Counsel
Mary Anne Helton, Associate
General Counsel
Florida Public Service Comm'n
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

ROBERT B. BRADLEY
SECRETARY
ADMINISTRATION COMMISSION

State of Florida



Public Service Commission

RECEIVED
JUN 11 1998
Administration
State of Florida
Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: June 10, 1998
TO: Teresa Tinker, Administration Commission
FROM: Noreen S. Davis, Public Service Commission *nsd*
RE: PSC Requests for Exceptions to the Uniform Rules

Listed below are the various points we discussed yesterday in our telephone conversation.

I. The PSC withdraws its request for exceptions to the uniform rules for the following PSC rules:

- 25-220008(1), 1(a), 1(c) and (2) - Class A Practitioners
- 25-22.026(3) and (4) - Role of Staff
- 25-22.029(1) - Point of Entry Introductory Language
- 25-22.035(1) - Disqualification
- 25-22.035(3) - Rules of Civil Procedure
- 25-22.00355 - Assignment of Formal Proceedings
- 25-22.046 - Witness Fees
- 25-22.048(3) - Evidence

II. We propose that these requested exceptions are not necessary as the PSC rules are outside the scope of the uniform rules:

- 25-22.0405
- 25-22.029(3)
- 25-22.036 (1-7), (9-10)

You agreed to look at the first two items to determine if they were outside the scope of the uniform rules. You also would look at the third item to determine if that rationale is applicable to all portions of the rule listed.

III. We request the following clarifications be added to the draft order:

- A. It is appropriate to place the content of withdrawn Rule 25-22.0355, Assignment of Formal Proceedings, in the PSC's Statement of Agency Organization and Operation.

Teresa Tinker
June 10, 1998
Page 2

- B. (Regarding the denial of Rule 25-22.037(4) in paragraph 4(c) 10 of the June 5 draft order:)

Rule 28-106.111(4) contemplates a default in the event no written request for hearing or mediation is filed within the 21 day time period. Receipt is accomplished by adding 5 days to the time period pursuant to Rule 25-106.103.

- C. (You stated the decision was made to move forward with amendment of the uniform rules regarding the 5 day deadline for intervention and for amendment of petition. We suggest changing the language in para. d. on page 5 of the draft order:)

The requests for exceptions for Rules 25-22.036(8) (amendment of petitions) and 25-22.039, F.A.C. (intervention) are denied for duplication of the uniform rules. However the Commission will place a proposal on the next agenda to amend the uniform rules to require leave of the presiding officer to amend a petition once a responsive pleading is filed and to permit a 5 day prior to hearing deadline for intervention.

- D. (You stated that our request for exception for the PSC's subpoena rule, 25-22.045, would be granted, pending the completion of your research. We would suggest changing the language in para. (7) on page 4 of the draft order:)

The request for an exception for Rule 25-22.045, F.A.C. is granted for the most efficient operation of the agency.

NSD/mc

RECEIVED-PPSC

MEMORANDUM

98 JUL -2 PM 4:34

July 2, 1998

RECORDS AND REPORTING

TO : DIVISION OF RECORDS AND REPORTING

FROM : MARY ANNE HELTON, DIVISION OF APPEALS *MAH*

RE : DOCKET NO. 980500-PU

Attached is the Final Order of the Administration Commission disposing of the Commission's Petition for Exceptions to the Uniform Rules. It should be filed in the above-referenced docket file.

Attachment

- cc: Blanca Bayó
- Martha Carter Brown
- Noreen Davis
- Bob Elias
- Kay Flynn
- Lila Jaber
- Ralph Jaeger

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REGULATORY AFFAIRS
TALLAHASSEE

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STATE OF FLORIDA
ADMINISTRATION COMMISSION

98 JUN 25 11 04 AM

In Re: Petition for Exceptions from the
Uniform Rules of Procedure,
FLORIDA PUBLIC SERVICE
COMMISSION

AC Case No. APA-98-007

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission ("Commission") on June 24, 1998, in Tallahassee, Florida, pursuant to Section 120.54(5)(a)2, Florida Statutes ("F.S."), and Chapter 28-108, Florida Administrative Code ("F.A.C."), upon the Petition for Exceptions from the Uniform Rules of Procedure filed by the Florida Public Service Commission ("PSC"). Having considered the Petition and any arguments of counsel, and being otherwise fully advised in the premises, it is ORDERED and ADJUDGED that:

1. Chapter 28-102, F.A.C.: An exception from Rule 28-102.001, F.A.C., is hereby granted for Rule 25-22.001(3) and (4), F.A.C. (defining "meetings" and "workshops"). An exception from Rule 28-102.002(2), F.A.C., is granted for Rule 25-22.002(3), F.A.C. (changes to agenda). An exception from Chapter 28-102, F.A.C., is granted for Rule 25-22.0021, F.A.C. (agenda conference participation). The foregoing exceptions are based on the most efficient operation of the agency.

2. Chapter 28-103, F.A.C.: An exception from Chapter 28-103, F.A.C., is granted for Rule 25-22.017(1) and (2), F.A.C. (rule adoption), on the basis of the most efficient operation of the agency.

3. Chapter 28-105, F.A.C.: The request for an exception for Rule 25-22.022(3), F.A.C. (oral argument in proceedings for declaratory statements), is denied for lack of justification.

4. Chapter 28-106, F.A.C.:

a. The PSC has **withdrawn** its request for exceptions for Rules 25-22.008(1), (1)(a), (1)(c), and (2) (class A practitioners), 25-22.026(3) and (4) (role of staff in proceedings), 25-22.029(1) (point of entry into proceedings), 25-22.035(1) and (3) (disqualification, Florida Rules of Civil Procedure), 25-22.0355 (assignment of formal proceedings), 25-22.046 (witnesses, fees), and 25-22.048(3) (evidence), F.A.C. It is appropriate to place the content of withdrawn Rule 25-22.0355 in the PSC's Statement of Agency Organization and Operation.

b. An exception from Chapter 28-106, F.A.C., is granted for Rule 25-22.006, F.A.C. (confidential information), and Rules 25-22.0376 and 25-22.060, F.A.C. (reconsideration of orders), as necessary to implement statutes, Sections 350.01(5), 364.183, 366.093, 367.156, and 368.108, F.S., and for the most efficient operation of the agency. Exceptions are granted from Rule 28-106.104 for PSC Rules 25-22.028(1) (filing requirements) and 25-22.0375(3) (filing of pleadings), and from Chapter 28-106 for PSC Rule 25-22.058, F.A.C. (oral argument), based on the most efficient operation of the agency.

c.(1). The PSC's request for an exception for Rule 25-21.004, F.A.C. (disqualification), is denied and is unnecessary, as this matter is adequately addressed in Sections 120.569(2)(a) and 120.665, F.S.

(2) The request for an exception for Rule 25-22.029(2) and (4), F.A.C. (point of entry), is granted to allow 21 days after issuance of the notice in which to file a request for a 120.57 hearing and the shortening of the petition deadline from 21 to 14 days for the establishment of a price index pursuant to Section 367.081(4)(a), F.S., on the basis of statute and most efficient operation of the agency. The request for an exception for Rule 25-22.029(2) and (4-6) is in all other respects denied on account of duplication of the uniform rules.

(3) The request for an exception for Rule 25-22.036(1-7) and (9-10), F.A.C. (initiation of proceedings), is denied. Sections (3), (5), (6), (7)(b), (7)(c), and (7)(e) of Rule 25-22.036 apply to applications, complaints, orders, or notices which do not involve, or which precede, proposed or final agency action determining substantial interests. The remaining provisions of this rule are adequately covered by statute and the provisions of Rules 28-106.111, 28-106.201, and 28-106.301, F.A.C.

(4) The request for an exception for Rule 25-22.037(1) and (2), F.A.C. (answers and motions), is denied for lack of justification. The provision for motions is adequately covered by Rules 28-106.204 and 28-106.303, F.A.C.

(5) The request for an exception for Rule 25-22.038, F.A.C. (prehearing matters), is denied and is unnecessary, as the PSC may issue prehearing orders of a nature provided in its rule by the authority of Rules 28-106.209, 28-106.211, and 28-106.305, F.A.C.

(6) The request for an exception for Rule 25-22.042, F.A.C. (dismissal for failure to comply with orders), is denied and is unnecessary, since the PSC may utilize the provisions of Rules 28-106.206 and 28-106.211, F.A.C.

(7) The request for an exception for Rule 25-22.045(2-3) and (5), F.A.C. (subpoenas) is denied and is unnecessary, as the PSC may issue subpoenas pursuant to Rule 28-106.212, F.A.C. The request for an exception for Rule 25-22.045(1) is granted on the basis of most efficient operation of the agency.

(8) The request for an exception for Rule 25-22.048(4), F.A.C. (format for evidence), is denied and is unnecessary, by reason that the PSC may utilize the provisions of Rules 28-106.209, 28-106.211, and 28-106.305, F.A.C.

(9) The request for an exception for Rule 25-22.056, F.A.C. (post-hearing filings), is denied for duplication of Rule 28-106.215, F.A.C., and conflict as to waiver of positions the 14 day deadline for filing exceptions to the recommended order. The request is otherwise unnecessary, since these matters may be addressed pursuant to Rules 28-106.209, 28-106.211, 28-106.215, 28-106.305, and 28-106.307, F.A.C.

(10) The request for an exception for Rule 25-22.037(3) and (4), F.A.C. (answers and motions), is denied on account of the default provision for failure to respond to a petition for hearing. An exception to implement the show cause and penalty provisions of Sections 350.127(1), 364.285, 366.095, 367.161, and 368.111, F.S., is unnecessary, since such provisions may be implemented pursuant to Rule 28-106.111(4), F.A.C. Rule 28-106.111(4) contemplates a default in the event no written request for hearing or mediation is filed within the 21 day time period.

d. The request for exception for Rule 25-22.036(8) (amendment of petitions) is denied for duplication of the uniform rules. However, by separate action of the Commission on this date, the Commission has authorized the Secretary to initiate rulemaking proceedings to amend

the uniform rules to require leave of the presiding officer to amend a petition once a responsive pleading is filed. The request for exception for Rule 25-22.039, F.A.C. (intervention) is granted, and the Commission has authorized the Secretary to initiate rulemaking proceedings to amend the uniform rule to permit a 5 day prior to hearing deadline for intervention. Upon completion of successful rulemaking and final rule adoption, the exception for Rule 25-22.039, F.A.C., will be moot.

e. The requests for exceptions for Rules 25-22.008(1)(b) and (3) (class B practitioners) and 25-22.008(4) and (6), F.A.C. (self-representation, practitioner as witness), are denied for lack of statutory authority and for lack of sufficient justification. The subjects of counsel and qualified representatives are adequately addressed in Rules 28-106.105 and 28-106.106, F.A.C. The requests for exceptions for Rules 25-22.029(3) (publication of notice of proposed agency action) and 25-22.0405 (notices of public hearings), F.A.C., are granted to allow the PSC to require a utility to provide notice on the basis of most efficient operation of the agency; the remaining portion of 25-22.029(3) is denied as such notices are required by statute or to the extent that the PSC may, on its own, opt to provide additional notice.

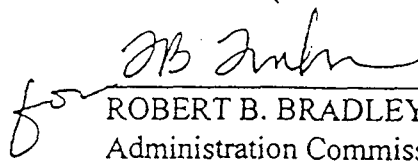
f. The requests for exceptions for Rules 25-22.0406(1)-(6) and 25-22.0407(1)-(7) and (9) (notice and public information) are denied and are unnecessary to the extent that such provisions apply to notice requirements which precede proposed or final agency action determining substantial interests. The requests for exceptions for Rules 25-22.0406(7)-(8) and 25-22.0407(8) and (10) are granted for the most efficient operation of the agency.

5. Chapter 28-107, F.A.C.: Exceptions from Chapter 28-107, F.A.C., are hereby granted for Rules 25-22.075 (transmission lines) and 25-22.080 (electric power plants), F.A.C., on the basis of statute and the most efficient operation of the agency.

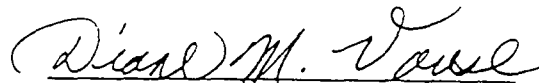
NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of this Final Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Planning and Budgeting, Executive Office of the Governor, the Capitol, Room 2105, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days of the day this Final Order is filed with the Clerk of the Commission.

DONE and ORDERED this 24th day of June, 1998.


for _____
ROBERT B. BRADLEY, Secretary
Administration Commission

FILED with the Clerk of the Administration Commission on this 25th day of June, 1998.


CLERK, Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was delivered to the following persons by United States Mail or hand delivery this 25th day of June, 1998.

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, Florida 32399

Honorable Sandra Mortham
Secretary of State
The Capitol
Tallahassee, Florida 32399

Honorable Bob Milligan
Comptroller
The Capitol
Tallahassee, Florida 32399

Honorable Bill Nelson
Insurance Commissioner
The Capitol
Tallahassee, Florida 32399

Honorable Bob Butterworth
Attorney General
The Capitol
Tallahassee, Florida 32399

Honorable Frank Brogan
Commissioner of Education
The Capitol
Tallahassee, Florida 32399

Honorable Bob Crawford
Commissioner of Agriculture
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David Schwartz, Esquire
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Liz Cloud, Bureau Chief
Bureau of Administrative Code
Department of State
401 South Monroe Street
Tallahassee, Florida 32399-0250


ROBERT B. BRADLEY, Secretary
Administration Commission



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: April 26, 1999
TO: Rule Supplement Mailing List
FROM: Noreen Davis, Director of Legal Services
Mary Anne Helton, Associate General Counsel
Christiana T. Moore, Associate General Counsel
RE: The Commission's Procedural Rules

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As you know, the Florida Legislature substantially revised the Florida Administrative Procedures Act in 1996. One of the major changes was to require the uniform rules of procedure (URP) to be the rules of procedure for each agency unless the Administration Commission grants an exception. Section 120.54(5)(a)1., Florida Statutes.

The Administration Commission adopted the URP on April 1, 1997. See Chapters 28-101 through 28-110, Florida Administrative Code. On June 24, 1998, the Administration Commission granted the Commission only some of the exceptions that the agency sought. In re: Petition for Exceptions from the Uniform Rules of Procedure, Florida Public Service Commission, AC Case No. APA-98-007, Final Order No. APA 98-007. The Commission began complying with the URP on July 1, 1998, as required by Section 120.54(5)(a)1., Florida Statutes.

Chapters 25-21 and 25-22, Florida Administrative Code, which set out the Commission's procedural rules, have been amended to reflect this change in law. The rules now contained in Chapters 25-21 and 25-22 fall into one of two categories: they are either exceptions to the URP or they are outside the scope of the URP and no exception is necessary.

Enclosed is a rule supplement notice and order form. This supplement contains the new version of Chapters 25-21 and 25-22. The rules in this supplement must be used in conjunction with the URP. In addition, you will probably find Rule 25-40.001 helpful since it lists the rules in the URP for which the Commission has been granted an exception. Take note, however, that because of particular requirements of Section 120.54(5) the rules outside the scope of the URP that are still included in Chapters 25-21 and 25-22 are not included in the table in Rule 25-40.001.

Following the rule supplement notice is a cross-reference table that lists every uniform rule and every Commission procedural rule on the books prior to July 1, 1998. The table shows which Commission rules were kept because the rule is either an exception to or is outside the scope of the uniform rules. The table also shows which uniform rules had no Commission counterpart. In addition, the table shows which Commission rules were repealed since the Commission must now follow the URP or the statute requires no rule for implementation.

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Finally, Rule 28-101.001, Florida Administrative Code, required the Commission to develop a Statement of Agency Organization and Operation. Most of the information contained in the Commission's statement was formerly located in Chapter 25-21. This statement can be found on the Commission's web site under the "publications" link in the "general" category. The web site address is <http://www2.scri.net/psc/index.html>. You may also obtain a copy from the Division of Records and Reporting.

Please feel free to call Noreen Davis [(850) 413-6086], Mary Anne Helton [(850) 413-6096], or Chris Moore [(850) 413-6098] if you have any questions concerning the Commission's implementation of the uniform rules.

cc: Blanca Bayó, Director of Records and Reporting
David E. Smith, Director of Appeals
William Talbott, Executive Director
Robert D. Vandiver, General Counsel

UNIFORM RULE	DISPOSITION	COMMISSION RULE
CHAPTER 28-101 ORGANIZATION		
28-101.001 Statement of Agency Organization and Operation.	PSC Statement of Agency Organization and Operation adopted 12/98.	25-21.001-.043 [Repealed] Rules Governing Internal Organization & Operation. 25-22.0355 [Repealed] Assignment of Formal Proceeding.
CHAPTER 28-102 AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS		
28-102	Exception granted to retain PSC rule.	25-22.0021 Agenda Conference Participation.
28-102.001 Notice of Public Meeting, Hearing, or Workshop.	Exception granted to retain part of PSC rule so that the Commission can define meeting and workshop.	25-22.001 Notice of Meeting or Workshop.
28-102.002 Agenda of Meetings, Hearings, and Workshops.	Exception granted to retain part of PSC rule so that the Commission can continue to follow its procedures for changing the agenda.	25-22.002 Agenda of Meetings.
28-102.003 Emergency Meetings.	Follow uniform rule.	25-22.003 [Repealed] Emergency Meeting.
CHAPTER 28-103 RULEMAKING		
28-103	Exception granted to retain part of PSC rule regarding rule adoption.	25-22.017(1) and (2) Rulemaking Proceeding-- Adoption.
28-103.001 Advance Notice of Agency Rulemaking Proceedings.	Follow uniform rule.	No counterpart.
28-103.002 Rule Development Workshops.	Follow uniform rule.	No counterpart.
28-103.003 Negotiated Rulemaking.	Follow uniform rule.	No counterpart.

28-103.004 Public Hearing.	Follow uniform rule.	25-22.016(1)-(5) [Repealed] Rulemaking Proceeding -- Hearing.
28-103.005 Evidentiary Proceeding During Rulemaking.	Follow uniform rule.	25-22.016(6) [Repealed] Rulemaking Proceeding -- Hearing.
28-103.006 Petitions to Initiate Rulemaking.	Follow uniform rule.	25-22.012 [Repealed] Petitions to Initiate Rulemaking Proceedings.
CHAPTER 28-104 VARIANCE OR WAIVER		
28-104.001 Purpose; Construction	Follow uniform rule.	No counterpart.
28-104.002 Petition for Variance or Waiver.	Follow uniform rule.	No counterpart.
28-104.003 Comments on Petition.	Follow uniform rule.	No counterpart.
28-104.004 Petition for Emergency Variance or Waiver.	Follow uniform rule.	No counterpart.
28-104.005 Time for Consideration of Emergency Petition.	Follow uniform rule.	No counterpart.
28-104.006 Request for Information.	Follow uniform rule.	No counterpart.
CHAPTER 28-105 DECLARATORY STATEMENTS		
28-105.001 Purpose and Use of Declaratory Statement.	Follow uniform rule.	25-22.021 [Repealed] Purpose and Use of Declaratory Statement.
28-105.002 The Petition.	Follow uniform rule.	25-22.020 [Repealed] General.
28-105.003 Agency Disposition.	Follow uniform rule.	25-22.022 [Repealed] Disposition.

CHAPTER 28-106 DECISIONS DETERMINING SUBSTANTIAL INTERESTS		
PART I GENERAL PROVISIONS		
28-106.101 Scope of This Chapter.	Follow uniform rule.	25-22.025 [Repealed] Scope and Title of Rules.
28-106.102 Presiding Officer.	Follow uniform rule.	25-22.035(1) [Repealed] Miscellaneous Matters.
28-106.103 Computation of Time.	Follow uniform rule.	25-22.028(4)-(5) [Repealed] Filing, Service of Documents, and Computation of Time.
28-106.104 Filing.	Exception granted to retain PSC rule on filing requirements. Exception granted to retain subsection (3) of PSC Rule 25-22.0375 on number of copies.	25-22.028(1) Filing, Number of Copies. Transferred to 25-22.028(2) Filings; Number of Copies
28-106.105 Appearances.	Follow uniform rule.	25-22.008 [Repealed] Practitioners.
28-106.106 Who May Appear; Criteria for Qualified Representatives.	Follow uniform rule.	25-22.008 [Repealed] Practitioners.
28-106.107 Standards of Conduct for Qualified Representatives.	Follow uniform rule.	25-22.008 [Repealed] Practitioners.
28-106.108 Consolidation.	Follow uniform rule.	25-22.035(2) [Repealed] Miscellaneous Matters.
28-106.109 Notice to Interested Parties.	Follow uniform rule.	25-22.026 [Repealed] Parties.
28-106.110 Service of Papers.	Follow uniform rule.	25-22.028(2)&(3) [Repealed] Filing, Service of Documents, and Computation of Time.

28-106.111 Point of Entry into Proceedings and Mediation.	Exceptions granted for part of PSC rule so that the Commission can continue to close protest periods for PAA orders 21 days from issuance of the order. In addition, PSC can continue to shorten protest period to 14 days, but only for PAA orders establishing a price index pursuant to Section 367.081(4)(a), F.S.	25-22.029 Point of Entry Into Proposed Agency Action Proceedings.
PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT		
28-106.201 Initiation of Proceedings.	Retain part of PSC Rule 25-22.036 as being outside scope of uniform rule. Follow uniform rule and PSC rule.	25-22.036 Initiation of Formal Proceedings.
28-106.202 Amendment of Petitions.	Follow uniform rule.	25-22.036(8) [Repealed] Initiation of Formal Proceedings.
28-106.203 Answer.	Follow uniform rule.	25-22.037(1) [Repealed] Answers and Motions.
28-106.204 Motions.	Follow uniform rule.	25-22.037(2) [Repealed] Answers and Motions.
28-106.205 Intervention.	Exception granted to retain PSC rule. Intervention petitions may still be filed up to five days before the commencement of a hearing.	25-22.039 Intervention.
28-106.206 Discovery.	Follow uniform rule.	25-22.034 [Repealed] Discovery.
28-106.207 Venue.	Follow uniform rule.	No counterpart.
28-106.208 Notice of Hearing.	Exception granted so that Commission can continue to require a utility to provide notice. In addition, the Commission can continue to require notice as required by statute and can also continue to provide additional notice on its own. Exception granted to retain portion of former 25-22.029(3) so that the Commission can require a utility to publish a PAA order.	25-22.0405 Notices of Public Hearings. 25-22.029(2) Point of Entry into PAA Proceeding.

28-106.209 Prehearing Conferences.	Follow uniform rule. Information can be put in procedural orders.	25-22.038 [Repealed] Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.
28-106.210 Continuances.	Follow uniform rule.	25-22.041 [Repealed] Continuances.
28-106.211 Conduct of Proceedings.	Follow uniform rule. Information can be put in procedural orders.	25-22.038 [Repealed] Prehearing Officer; Prehearing Statement; Prehearing Conference; and Prehearing Order.
28-106.212 Subpoenas.	Exception granted to retain part of PSC rule. The Commission may delegate the responsibility to issue subpoenas to the agency clerk. Follow uniform rule and the PSC rule.	25-22.045 Subpoenas.
28-106.213 Evidence.	Follow uniform rule.	25-22.048 [Repealed] Evidence.
28-106.214 Recordation.	Follow uniform rule.	25-22.049 [Repealed] Recordation.
28-106.215 Post-Hearing Submittals.	Follow uniform rule. Post-hearing requirements can be put in procedural orders.	25-22.056(1)-(3) [Repealed] Post-hearing Filings.
28-106.216 Entry of Recommended Order.	Follow uniform rule. Post-hearing requirements can be put in procedural orders.	25-22.056(4)(a) [Repealed] Post-hearing Filings.
28-106.217 Exceptions and Responses.	Follow uniform rule. Post-hearing requirements can be put in procedural orders. Exceptions can be filed within 15 days and not the 14 days in PSC rule.	25-22.056(4)(b) [Repealed] Post-hearing Filings.
PART III PROCEEDINGS AND HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT		
28-106.301 Initiation of Proceedings.	Follow uniform rule.	No counterpart.
28-106.302 Notice of Proceeding.	Follow uniform rule.	No counterpart.

28-106.303 Motions.	Follow uniform rule.	No counterpart.
28-106.304 Continuances.	Follow uniform rule.	No counterpart.
28-106.305 Conduct of Proceedings.	Follow uniform rule.	No counterpart.
28-106.306 Recordation.	Follow uniform rule.	No counterpart.
28-106.307 Post-Hearing Submittals.	Follow uniform rule.	No counterpart.
PART IV MEDIATION		
28-106.401 Scope.	Follow uniform rule.	No counterpart.
28-106.402 Contents of Request for Mediation.	Follow uniform rule.	No counterpart.
28-106.403 Allocation of Costs and Fees.	Follow uniform rule.	No counterpart.
28-106.404 Contents of Agreement to Mediate.	Follow uniform rule.	No counterpart.
28-106.405 Standards of Conduct for Mediators.	Follow uniform rule.	No counterpart.
CHAPTER 28-107 LICENSING		
28-107	Exception granted to retain PSC rule.	25-22.075 Transmission Line Permitting Proceedings.
	Exception granted to retain PSC rule.	25-22.080 Electrical Power Plant Electrical Proceeding.
28-107.001 General.	Follow uniform rule.	No counterpart. -
28-107.002 Application for License.	Follow uniform rule.	No counterpart.
28-107.003 Denial of License.	Follow uniform rule.	No counterpart.

28-107.004 Suspension, Revocation, Annulment, or Withdrawal.	Follow uniform rule.	No counterpart.
28-107.005 Emergency Action.	Follow uniform rule.	No counterpart.
CHAPTER 28-108 EXCEPTION TO UNIFORM RULES OF PROCEDURE		
28-108.001 Petition for Exception to Uniform Rules of Procedure.	Follow uniform rule.	No counterpart.
28-108.002 Final Disposition on Petition for Exception.	Follow uniform rule.	No counterpart.
CHAPTER 28-109 CONDUCTING PROCEEDINGS BY COMMUNICATIONS MEDIA TECHNOLOGY		
28-109.001 General.	Follow uniform rule.	No counterpart.
28-109.002 Definitions As Used in This Rule Chapter.	Follow uniform rule.	No counterpart.
28-109.003 Application and Construction.	Follow uniform rule.	No counterpart.
28-109.004 Government in the Sunshine.	Follow uniform rule.	No counterpart.
28-109.005 Notice.	Follow uniform rule.	No counterpart.
28-109.006 Evidence, Testimony, and Argument.	Follow uniform rule.	No counterpart.

CHAPTER 28-110 BID PROTESTS		
28-110.001 Purpose and Scope.	Follow uniform rule.	No counterpart.
28-110.002 Definitions.	Follow uniform rule.	No counterpart.
28-110.003 Notice of Protest.	Follow uniform rule.	No counterpart.
28-110.004 Formal Written Protest.	Follow uniform rule.	No counterpart.
28-110.005 Bond.	Follow uniform rule.	No counterpart.
No counterpart.	Repeal PSC rule. Rule deemed unnecessary since the matter is already adequately addressed by Sections 120.569(2)(a) and 120.665, F.S.	25-21.004 [Repealed] Disqualification
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-21.050 Acceptance of Gifts.
No counterpart.	Repeal PSC rule. Forms are incorporated in substantive rules.	25-22.004 [Repealed] Commission Forms.
No counterpart.	In PSC Statement of Agency Organization and Operations.	25-22.005 [Repealed] Noticing Address Files.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.006 Confidential Information.
No counterpart.	Repeal PSC rule.	25-22.013 [Repealed] Commission Action on Petitions to Initiate Rulemaking Proceedings.
No counterpart.	Repeal PSC rule.	25-22.014 [Repealed] Rulemaking Materials.
No counterpart.	Repeal PSC rule.	25-22.015 [Repealed] Rulemaking Proceeding -- No Hearing.
No counterpart.	Exception granted for part of PSC rule.	25-22.017 Rulemaking Proceeding -- Adoption.

No counterpart.	Repeal PSC rule.	25-22.018 [Repealed] Emergency Rule Adoption.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.030 Injunctions.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.032 Customer Complaints.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.033 Communications Between Commission Employees and Parties.
No counterpart to 25-22.035 (3) re FRCP.	Repeal PSC rule.	25-22.035 [Repealed] Miscellaneous Matters.
No counterpart to 25-22.037(3): Waiver or 25-22.037(4): Default.	Repeal PSC rule. An exception to implement the show cause and penalty provisions of Sections 350.127(1), 364.285, 366.095, 367.161, and 368.111, F.S., is unnecessary, since such provisions may be implemented pursuant to Rule 28-106.111(4), F.A.C. Rule 28-106.111(4) contemplates a default in the event no written request for hearing or mediation is filed within the 21 day time period.	25-22.037(3) and (4) [Repealed] Answers and Motions.
No counterpart.	Exception granted to keep PSC rule.	25-22.0376 Reconsideration of Non-Final Orders.
No counterpart.	Keep PSC rule. Exception granted for (7) and (8); (1)-(6) outside scope of uniform rules.	25-22.0406 Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.
No counterpart.	Keep PSC rule. Exception granted for (8) and (10); (1)-(7) and (9) outside scope of uniform rules.	25-22.0407 Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

No counterpart.	Keep PSC rule.	25-22.0408 transferred to 25-30.4345 Notice of Requests for New or Revised Service Availability Charges or Policies and Notice of Requests for Allowance for Funds Prudently Invested (AFPI) Charges.
No counterpart.	Repeal PSC rule. PSC may utilize provisions of Rules 28-106.206 and 28-106.211, F.A.C.	25-22.042 [Repealed] Dismissal.
No counterpart.	Repeal PSC rule.	25-22.046 [Repealed] Witnesses and Witness Fees.
No counterpart.	Exception granted to keep PSC rule.	25-22.058 Oral Argument.
No counterpart.	Repeal PSC rule.	25-22.059 [Repealed] Final Orders.
No counterpart.	Exception granted to keep PSC rule.	25-22.060 Motion for Reconsideration.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.061 Stay Pending Judicial Review.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.070 Ten-Year Site Plans -- Definitions.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.071 Submission and Review of the Ten-Year Site Plans.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.072 Contents of Ten-Year Site Plans.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.076 Contents of Petition.
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No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.082 Selection of Generating Capacity.

No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.090 Natural Gas Transmission Pipeline Permitting Proceedings.
No counterpart.	Keep PSC rule--outside scope of uniform rules.	25-22.091 Contents of Petition.
No counterpart.	Keep PSC rule--required by s. 120.53.	25-22.100 Authority.
No counterpart.	Keep PSC rule---required by s. 120.53.	25-22.101 Purpose.
No counterpart.	Keep PSC rule---required by s. 120.53.	25-22.103 Orders Indexed.
No counterpart.	Keep PSC rule--required by s. 120.53.	25-22.1035 Designation of Official Reporter.
No counterpart.	Keep PSC rule--required by s. 120.53.	25-22.104 Numbering of Orders.
No counterpart.	Keep PSC rule--required by s. 120.53.	25-22.105 System for Indexing Orders.
No counterpart.	Keep PSC rule--required by s. 120.53.	25-22.107 Plan for Making Orders and Index Available to the Public.

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<p>28-106.104</p> <p>Filing.</p>	<p>25-22.028</p> <p>Filing, Number of Copies.</p>

28-106.205 Intervention.	25-22.039 Intervention.
28-106.208 Notice of Hearing.	25-22.029 Point of Entry into PAA Proceeding. 25-22.0405 Notices of Hearings.
28-106.212 Subpoenas.	25-22.045 Subpoenas.
CHAPTER 28-107 LICENSING	25-22.075 Transmission Line Permitting Proceedings. 25-22.080 Electrical Power Plant Permitting Proceedings.

*Specific Authority 120.54(5)(a)3. FS. Law Implemented
120.54(5)(a)3. FS. History—New 4-28-99.*

CHAPTER 25-40
EXCEPTIONS TO THE UNIFORM RULES
OF PROCEDURE

25-40.001 Exceptions to the Uniform Rules
of Procedure.

25-40.001 Exceptions to the Uniform Rules of
Procedure. The following provisions of the
Commission's rules are exceptions to the uniform
rules of procedure:

UNIFORM RULE	COMMISSION RULE THAT IS AN EXCEPTION
CHAPTER 28-102 AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS	25-22.0021 Agenda Conference Participation.
28-102.001 Notice of Public Meeting, Hearing, or Workshop.	25-22.001 Notice of Meeting or Workshop.
28-102.002 (2) Agenda of Meetings, Hearings, and Workshops.	25-22.002 Agenda of Meetings.
CHAPTER 28-103 RULEMAKING	25-22.017 Rulemaking Proceeding -- Adoption.