

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment to
Rule 25-22.032, F.A.C., Customer
Complaints.

DOCKET NO. 030575-PU
ORDER NO. PSC-03-0969A-NOR-PU
ISSUED: September 2, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

AMENDED NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-22.032, Florida Administrative Code, relating to the Commission's customer complaint handling procedure. This notice is being reissued to reflect corrections to pages 7 and 14 of the attached Notice of Rulemaking.

The attached Notice of Rulemaking will appear in the September 5, 2003 edition of the Florida Administrative Weekly. If timely requested, a hearing will be held at a time and place to be announced in a future notice.

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than September 26, 2003.


DOCUMENT NUMBER-DATE

08120 SEP-28

FILED-COMMISSION CLERK

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By ORDER of the Florida Public Service Commission, this 2nd
day of September, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030575-PU

RULE TITLE:

RULE NO.:

Customer Complaints

25-22.032

PURPOSE AND EFFECT: To streamline the process for handling customer complaints; to put utility companies in more direct contact with their customers for resolution of complaints; to clarify that the complaint procedure is designed to address only those complaints that fall within the Commission's jurisdiction; to delineate information filing deadlines where the rule is currently silent; to implement the e-mail transfer connection program; to allow for a company's use of a customer complaint liaison; to establish a Commission staff complaint review panel; and to allow for extensions of time for filing information in emergency circumstances.

SUMMARY: The rule amendments clarify that the complaint procedure is designed to address only those complaints that fall within the Commission's jurisdiction; it will require that telephone, e-mail and written complaints be forwarded directly to the utility company for resolution in most instances; it will provide response dates to

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Commission staff inquiries for additional information from companies; it reflects the implementation of the e-mail transfer connection program; it allows for the use of a complaint liaison; it establishes the Process Review Team, which will review complaints before they are forwarded to an informal conference; it will ensure that the issues addressed at the informal conference are clearly delineated; and it provides for extensions of time for filing required information in emergency situations.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs was prepared. Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 364.19, 364.0252, 366.05, 367.121, F.S.

LAW IMPLEMENTED: 364.01, 364.0252, 364.03(1), 364.183, 364.185, 364.15, 364.19, 364.337(5), 366.03, 366.04, 366.05, 367.011, 367.111, 367.121, 120.54, 120.569, 120.57, 120.573, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND

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ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Samantha Cibula, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6202.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-22.032 Customer Complaints.

(1) Intent; Application and Scope.

It is the Commission's intent that disputes between regulated companies and their customers be resolved as quickly, effectively, and inexpensively as possible. This rule establishes informal customer complaint procedures that are designed to address disputes, subject to the Commission's jurisdiction, that occur between regulated companies and individual customers accomplish that intent. ~~This rule applies to all companies regulated by the Commission.~~ It provides for expedited processes for customer complaints that can be resolved quickly by the customer and the company ~~without extensive Commission participation.~~ It also

provides a process for informal Commission staff resolution of complaints that cannot be resolved by the company and the customer.

(2) Processing of Complaints

(a) Any customer of a Commission regulated company may file a complaint with the Division of Consumer Affairs whenever the customer has an unresolved dispute with the company regarding electric, gas, telephone, water, or wastewater service that is subject to the Commission's jurisdiction. The complaint may be communicated orally or in writing. The complaint shall include the name of the company against which the complaint is made, the name of the customer of record, and the customer's service address. Upon receipt of a the complaint by telephone, Commission a staff member will determine if the customer has contacted the company. ~~and,~~

(b) In the case of complaints made by telephone, if the customer agrees, Commission staff will put the customer in contact with the company for resolution of the complaint using the telephone transfer-connect system described in subsection (4)(3), or by other appropriate means if the company does not subscribe to the telephone transfer-connect system. If the customer does not agree to be put in contact with the company, then, in the case of ~~for those~~ companies subscribing to the telephone transfer-connect

system, ~~the staff member~~ will submit the complaint to the company for resolution in accordance with the provisions ~~three-day complaint resolution process~~ set forth in subsection (5)~~(4)~~.

(c) For those companies not subscribing to the telephone transfer-connect or to the E-mail transfer system described in subsection (4), ~~the staff member~~ will submit the complaint to the company for resolution in accordance with the provisions of subsection (6)~~(5)~~.

(3) Protection from Disconnection.

During the complaint process described in sections (5) - (9), a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, Commission staff will make a reasonable estimate to establish an interim disputed amount until the complaint is closed by Commission staff. If the customer fails to pay the undisputed portion of the bill, the company may discontinue the customer's service pursuant to Commission rules.

(4)(3) Telephone Transfer-connect and E-mail Transfer systems.

(a) Each company subject to regulation by the Commission may provide a telephone transfer-connect (~~warm transfer~~) telephone number by which the Commission may directly transfer a customer to that company's customer service personnel. When the telephone transfer is complete, any further charges for the call shall be the responsibility of the company and not the Commission or the customer. Each company that subscribes to the telephone transfer-connect system must provide customer service personnel to handle transferred calls during the company's normal business hours and at a minimum from Monday through Friday, 9:00 A.M. to 4:00 P.M., Eastern time, excluding all holidays observed by the company. Telephone transfer-connect calls shall not be initially answered by a recorded voice but shall be answered by a person ready to receive information about the complaint.

(b) A company may also provide to the Commission an E-mail address by which the customer may directly E-mail a complaint to the company's customer service personnel from the Commission's Internet Web site. The company shall acknowledge the customer's E-mail to the customer by no later than the working day after the date of receipt.

~~(5)-(4)~~ Complaints resolved within three (3) days by companies participating in the Telephone Transfer-Connect System or the E-mail Transfer System.

Companies that subscribe to the telephone transfer-connect or E-mail transfer system may resolve a customer complaints within three days in the following manner:

(a) The Commission staff member handling the complaint will forward a description of the complaint to the company for response and resolution. The three day period will begin the working day after at 5:00 p.m. on the day the information is sent to the company and end at 5:00 p.m. Eastern time on the third working day, excluding weekends and company holidays. If the company satisfactorily resolves the complaint, the company shall notify Commission the staff member of the resolution in writing by no later than 5:00 p.m. Eastern time on the third day.

(b) ~~The Commission will contact the customer to confirm that the complaint has been resolved.~~ If the customer does not object to the company's resolution to the complaint ~~confirms that the complaint has been resolved,~~ the complaint will not be reported in the total number of complaints shown for that company in the Commission's Consumer Complaint Activity Report. However, the

Commission will retain the information for use in enforcement proceedings, or for any other purpose necessary to perform its regulatory obligations.

(c) If the customer informs ~~the~~ Commission staff member that the complaint has not been resolved, the Commission staff will notify the company and require a full report as prescribed in subsection (6)-(5).

(d) For purposes of this subsection a complaint will be considered "resolved" if the company report indicates that the problem has been corrected or the company report indicates that the company and the customer have agreed to a plan to correct the problem. ~~and the customer indicate that the problem has been corrected, or the company and the customer indicate that they have agreed to a plan to correct the problem.~~

(6)-(5) General Commission Staff Complaint Investigation.
~~Complaints not resolved within three days.~~

If the customer is not placed in direct contact with the company by means of the telephone transfer connect or E-mail transfer system for resolution of his complaint, ~~does not agree to contact the company directly, if the customer is not satisfied with the company's proposed resolution of the complaint, or if the~~

~~company does not subscribe to the transfer-connect system, a~~
Commission staff member will investigate the complaint and attempt to resolve the dispute in the following manner:

(a) ~~Commission~~ The staff member will acknowledge receipt of the complaint to the customer, notify the company of the complaint and request a written response from the company. Notification to the company by Commission staff will be to the primary Commission liaison for each certificate unless the company has provided to the Director of the Division of Consumer Affairs a name, address, telephone and facsimile numbers and E-mail address for a separate point of contact for complaint handling for each certificate. It is preferable for a company to have a single point of contact for complaint handling but a company may identify up to a maximum of three points of contact for complaint handling per certificate. However, if Commission staff directs a complaint to any one of the identified multiple complaint handling contacts, the company shall process the complaint and not return the complaint to Commission staff for redirecting the complaint to other company points of contact. The company shall provide its response to the complaint within fifteen (15) working days.

(b) Unless the Commission staff requests that the company not contact the customer directly, the company shall make direct contact with the customer verbally or in writing and provide to the customer its response to the complaint within 15 working days after the Commission staff sends the complaint to the company. Responses sent by mail must be postmarked within the 15 working day time period. The company shall also provide to the Commission staff, within 15 working days after the Commission staff sends the complaint to the company, a written response to the customer's complaint. However, in the case of those complaints where the company has proposed, under the provisions of subsection (5) of this rule (complaints resolved in 3 days), a resolution with which the customer is not satisfied, the company shall respond within twelve (12) working days of the case being resent to the company.

(c) The company's response to the Commission staff shall explain the company's likely cause of the problem, all actions taken by the company to resolve the customer's complaint, and the company's resolution or proposed resolution of the complaint and shall answer any specific questions raised by Commission staff. The company response shall also include letters or E-mails sent to the customer that contain the company's proposed resolution of the

complaint or statement of position in addressing or resolving the complaint. Upon Commission staff request, other documentation related to the complaint shall be provided to Commission staff. actions in the disputed matter and the extent to which those actions were consistent with applicable statutes and regulations. The response shall also describe all attempts to resolve the customer's complaint. If the company's proposed resolution has not yet been implemented at the time of the response to the Commission staff and customer, the company shall fully set forth in its response the steps that will be taken by the company to resolve the complaint and the dates by which each step will be taken by the company. The company shall promptly notify the customer if it is subsequently unable to take its proposed action as scheduled and shall provide to the customer and, upon request, to Commission staff, a new resolution schedule for the complaint.

(d) Commission staff will not normally further respond to the customer. However, if a customer objects to the company response to the complaint, the customer may request further review of the complaint by Commission staff. Commission staff will then propose a resolution of the complaint. The proposed resolution to the customer may be either oral or written. Upon request of either the

customer or the company, Commission staff shall provide the proposed resolution in writing.

(e) Commission ~~The staff member investigating the complaint~~ may request copies of bills, billing statements, field reports, written documents, or other information in the participants' possession that may be necessary to resolve the dispute. The company shall respond in 7 working days to each subsequent request by staff after the initial company response. If a complete response cannot be provided in the 7 working days, the company shall provide an update regarding the response every 15 working days until the response is completed. Such update shall identify all actions taken since the last report, an explanation of why a complete response cannot be provided, and a time schedule for providing a complete response. Commission ~~The staff member~~ may perform, or request the company to perform, any tests, on-site inspections, and reviews of company records necessary to aid in the resolution of the dispute.

~~(6) During the complaint process, a company shall not discontinue service to a customer because of any unpaid disputed bill. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, the staff member~~

~~will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the cusotmer fails to pay the undisputed portion of the bill the company may discontinue the customer's service pursuant to Commission rules.~~

(7) Process Review Team.

(a) If the customer or the company is not in agreement with Commission staff's proposed resolution, the Division of Consumer Affairs will refer the complaint to a Process Review Team consisting of staff from the Office of the General Counsel, the Division of Consumer Affairs, and the appropriate technical division. This Process Review Team will review the complaint file to determine further handling of the complaint.

(b) If the Process Review Team finds that the subject matter of the complaint may be within the Commission's jurisdiction, that the relief sought can possibly be granted by the Commission, that the basis of the complaint is not an objection to current statutes, rules, company tariffs, or orders of the Commission, and that a violation of an applicable statute, rule, company tariff or order of the Commission may have occurred, the Division of Consumer Affairs shall schedule an informal conference. The fact that an informal conference is scheduled shall not preclude any participant

or Commission staff from later taking a position that the complaint does not fall into one or more of the above categories.

(c) The Process Review Team will recommend that the Office of the General Counsel send a closure letter to the participants if the team finds that:

1. The case involves issues or concerns that fall outside the jurisdiction of the Commission,

2. The relief sought cannot be provided by the Commission,

3. The basis of the complaint is an objection to current statutes, rules, company tariffs, or orders of the Commission, or

4. It does not appear that a violation of applicable statutes, rules, company tariffs, or orders of the Commission occurred.

(d) Once the closure letter has been sent, the case will be closed. The staff member will propose a resolution of the complaint based on the information provided by all participants to the complaint and applicable statutes and regulations. The proposed resolution may be either oral or written. Upon request, either participant shall be entitled to a written copy of the proposed resolution.

(8) Informal Conference.

(a) If the Process Review Team identifies a complaint for an informal conference, Division of Consumer Affairs staff will notify the company and provide to the customer a Dispute Resolution form (PSC/CAF10) via certified mail. The customer shall return the completed Dispute Resolution Form (PSC/CAF10) to the Division of Consumer Affairs postmarked within 15 working days after the date of its being sent to the customer. If the completed Dispute Resolution Form (PSC/CAF10) is not received from the customer with a postmark within the required 15 working days, the customer's complaint will be closed at that point. If the Dispute Resolution Form is completed and returned by the customer, Commission staff will provide a copy to the company.

(b) A customer's completed Dispute Resolution Form (PSC/CAF10) shall consist of:

1. A statement describing the facts that give rise to the complaint and, to the extent known, an explanation of why the basis of the complaint may be a violation of the applicable statutes, rules, company tariffs, or orders of the Commission. The statements filed by the customer should not raise any new issues not addressed in the initial complaint.

2. A statement of the issues to be resolved.

3. Any dollar amount in dispute.

4. A statement of the relief requested.

~~If a participant objects to the proposed resolution, the participant may request an informal conference on the complaint.~~

~~(a) The request for an informal conference shall be in writing and filed with the Division of Consumer Affairs within 30 days after the proposed resolution is sent to the participants.~~

~~(b) When the request for an informal conference is received, the Director of the Division of Consumer Affairs will assign a Commission staff member to process the request for an informal conference. The staff member will advise the participants to complete Form X (PSC/CAF Form X), incorporated by reference herein, and return the form to the Commission within fifteen (15) days. A copy of Form X may be obtained from the Division of Consumer Affairs. At a minimum, the participants shall provide the following information on the form:~~

~~1. A statement describing the facts that give rise to the complaint,~~

~~2. A statement of the issues to be resolved; and~~

~~3. A statement of the relief requested.~~

~~The informal conference shall be limited to the complaint and the statement of facts and issues identified by the participants in the form. The Commission staff will notify the requesting participant that the request for an informal conference will be denied if the requesting participant's form is not received within the 15 days.~~

(c) Staff handling the informal conference may permit any participant to file additional information, documentation, or arguments; however, such additional information, documentation or arguments shall be limited to the issues from the customer's original complaint which are identified in the customer's Dispute Resolution request form (PSC/CAF10).

~~(c) The Director of the Division will review the statements and either appoint a staff member to conduct the informal conference, or make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis upon which relief may be granted.~~

(d) When an informal ~~if a~~ conference is scheduled granted, the presiding staff member appointed to conduct the conference shall not have participated in the investigation or proposed resolution of the complaint. The appointed staff shall be comprised of a representative of the Division of Consumer Affairs staff, an

attorney from the Office of the General Counsel, and a staff member from appropriate technical staff. The representative from the Division of Consumer Affairs will preside at the informal conference.

(e) ~~After consulting with the participants, the~~ After receiving the Dispute Resolution Form from the customer, Commission staff member will send a written notice to the participants setting forth the unresolved issues, the procedures to be followed at the informal conference, and the dates by which written materials are to be filed ~~and the time and place for the conference.~~ A company may at this time respond to information contained on the customer's Dispute Resolution Form. Each participant may be represented at the informal conference by an attorney or other representative or may represent himself. Each participant shall be responsible for his own expenses in the handling of the complaint. The conference may be held no sooner than ten days following a notice, unless all participants agree to an earlier date. The conference may be held by telephone conference, video teleconference, or in person, no sooner than ten days following the notice.

(f) At the conference, the participants shall have the opportunity to present information, orally or in writing, in

support of their positions. During the conference, ~~the staff member~~ may encourage the parties to resolve the dispute. The Commission staff will be responsible for tape-recording, but not transcribing, the informal conference. A participant may arrange for transcription at his own expense.

~~(g) The staff member may permit any participant to file additional information, documentation, or arguments. The opposing participant shall have an opportunity to respond.~~

(gh) If a settlement is not reached within 20 working days following the informal conference and if the complaint is not withdrawn, or the last post-conference filing, whichever is later, ~~the staff member~~ shall submit a recommendation to the Commission for consideration at the next available Commission Agenda Conference. Copies of the recommendation shall be sent to the participants by the Office of the General Counsel.

~~(i) If the Director denies the request for an informal conference, the participants shall be notified in writing. Within 20 days of giving notice, the staff shall submit a recommendation for consideration at the next available Agenda Conference. Copies of the recommendation shall be sent to the participants.~~

(hj) The Commission will address the matter by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes.

~~(9) At any point during the complaint proceedings, a participant has the right to be represented by an attorney or other representative. For purposes of this rule a representative may be any person the party chooses, unless the Commission sets the matter for hearing. If the Commission sets the matter for hearing, the participants may be represented by an attorney or a qualified representative as prescribed in Rule 28-106.106, Florida Administrative Code, or may represent themselves. Each participant shall be responsible for his own expenses in the handling of the complaint.~~

(9)(10) Settlement.

At any time the participants may agree to settle their dispute. If a settlement is reached, the participants or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on all both participants, and that the participants waive any right to further review or action by the Commission. If the complaint has been docketed, the Division of

Consumer Affairs shall submit the settlement to the Commission for approval. If the complaint has not been docketed, the Division of Consumer Affairs will acknowledge the statement of settlement by letter to the participants.

(10)~~(11)~~ Record Retention, Reports, and Auditing.

(a) All companies shall retain ~~notes or~~ documentation relating to each Commission complaint for two years after the date beginning when the complaint was closed by the Commission first received.

(b) All companies that participate in the telephone-transfer connect, E-mail transfer or three day complaint resolution options shall file with the Commission's Division of Consumer Affairs, by the fifth working day of each month beginning 60 days after the effective date of this rule and monthly thereafter, a report in tabular form that summarizes the following information for the preceding calendar month:

1. The ~~total~~ number of calls handled via telephone transfer-connect, including the date received, customer's name, a brief description of the complaint, and whether ~~or not~~ the complaint was addressed;

2. The number of complaints handled via E-mail transfer, including the date received, the customer's name, the Commission

assigned tracking number, a brief description of the complaint, and whether the complaint was addressed.

32. The number of complaints handled under the three day complaint resolution procedure, including the date received, the customer's name, the Commission assigned filing number, a brief description of the complaint,⁷ and whether the complaint was resolved.

(c) Companies shall provide access to the Commission to all such records for audit purposes. ~~The Commission shall have access to all such records for audit purposes.~~

(11) Extensions of Time.

(a) In the event of a storm named by the National Hurricane Center, a tornado recorded by the National Weather Service, a flood, a telephone cable cut, a severe gas or water main break, a major electrical outage, an extreme weather disturbance or fire causing activation of the county emergency operation center, acts of terrorism, or work stoppage, any of which substantially affects its operations and resources, a company may file a notice which will automatically extend by three working days the time for filing responses, forms, reports and other submissions required by this rule. Such notice shall be submitted in writing to the Director of

the Division of Consumer Affairs and shall state a reason for the three day extension. The utility will send one written request that will apply to all complaints or reports pending or received during the extension period. When the company does provide complaint responses or reports containing information on complaints affected by an extension of time, the extension must be noted on the complaint or report. For complaints, the three day extension shall apply to any complaints pending at the time such notification is given and to new complaints received during the extension period. A company may also seek an additional extension of time upon application to the Director of the Division of Consumer Affairs. The request for additional extension of time must be accompanied by a statement of good cause and shall specify the date by which the information will be filed. "Good cause" means a demonstration that the company has worked diligently to prepare the information and that the additional time period requested to complete and submit the information is both reasonable and necessary given the company's particular circumstances.

(b) If the company participates in the transfer connect system described in subsection (4), and the circumstances described in paragraph (11)(a) affect the operation of the transfer connect

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system, the company may establish an alternative, temporary means of transmitting customer concerns from the Commission to the company for handling within the transfer connect program.

Specific Authority 350.127(2), 364.19, 364.0252, 366.05, 367.121, FS.

Law Implemented 364.01, 364.0252, 364.03(1), 364.183, 364.185, 364.15, 364.19, 364.337(5), 366.03, 366.04, 366.05, 367.011, 367.111, 367.121, 120.54, 120.569, 120.57, 120.573, FS.

History--New 01-03-89, Amended 10-28-93, 06-22-00, XX-XX-XX.

NAME OF PERSON ORIGINATING PROPOSED RULE: Richard Tudor

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: August 19, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: May 9, 2003, Vol. 29, No. 19.