



Public Service Commission

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RECORDS AND REPORTING

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DATE: MAY 4, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (HELTON) *WAT DES*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HEWITT) *BA DM*
DIVISION OF LEGAL SERVICES (ELIAS) *RUE*

RE: DOCKET NO. 000533-PU - PROPOSED REPEAL OF RULE 25-22.036(3), F.A.C., INITIATION OF FORMAL PROCEEDINGS

AGENDA: 5/16/00 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

RULE STATUS: PROPOSAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\000533PR.RCM

CASE BACKGROUND

Rule 25-22.036(3), Florida Administrative Code, simply provides notice that the Commission may initiate proceedings on its own motion, and states the procedure the Commission may follow in doing so. Nevertheless, in Docket No. 981890-EU - In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida, Florida Power & Light Company (FPL), Florida Power Corporation (FPC), and Tampa Electric Company contested the Commission's reliance on Rule 25-22.036(3), Florida Administrative Code, to initiate the investigation. Prior to the Commission's approval of the stipulation that closed the reserve margin investigation, FPL challenged Rule 25-22.036(3), F.A.C., at the Division of Administrative Hearings (DOAH) pursuant to Section 120.56(3), Florida Statutes. The DOAH Administrative Law Judge dismissed FPL's challenge on the grounds that the gravamen of FPL's complaint was the application of the rule rather than the validity of the rule on its face. FPL has appealed this DOAH order to the

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FPSC-RECORDS/REPORTING

First District Court of Appeal. Briefs have been filed, and Oral Argument is scheduled for July 25, 2000.

A notice of proposed rule development was published in the Florida Administrative Weekly on April 14, 2000. FPL timely requested a workshop, and one was held on May 2, 2000. The workshop was attended by representatives from FPL, FPC, and BellSouth Telecommunications, Inc.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose the repeal of subsection (3) of Rule 25-22.036, F.A.C., Initiation of Formal Proceedings?

RECOMMENDATION: Yes, the Commission should repeal Subsection (3) of Rule 25-22.036, F.A.C., Initiation of Formal Proceedings.

STAFF ANALYSIS: Rule 25-22.036(3), F.A.C., provides:

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.

This rule is unnecessary since Sections 350.123, 364.058, 366.076, and 367.0822, Florida Statutes, give the Commission authority to initiate proceedings on its own motion. The Commission must already comply with the notice requirements in Chapter 120, Florida Statutes. The rule also provides other procedures the Commission may follow when initiating a proceeding. The rule confers no rights nor imposes any duties on any individual. It simply provides information about the procedure the Commission will follow when initiating a proceeding.

The Legislature's policy is that agencies should not retain unnecessary rules or rules that are redundant of statutes. See Section 120.74(1)(c) and (d), Florida Statutes. Because Rule 25-22.036(3) is unnecessary and because it has generated needless litigation, staff recommends that this subsection be repealed.

DOCKET NO. 000533 LU
DATE: May 4, 2000

Statement of Estimated Regulatory Costs: No statement of Estimated Regulatory Costs was prepared because the costs to the agency would be the same regardless of whether the rule existed.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no comments are filed, the rule amendment as proposed should be filed for adoption with the Secretary of State and the docket be closed.

STAFF ANALYSIS: Unless comments are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. Because this rule relates exclusively to the Commission's procedure and practice, the Commission is not required to offer a hearing. Once the rule has been filed, the docket may then be closed.

1 25-22.036 Initiation of Formal Proceedings.

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

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

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

17 (3)(4) Form and Content.

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

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

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

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CODING: Words underlined are additions; words in ~~struck~~
~~through~~ type are deletions from existing law.

- 1 | 2. The actions that constitute the violation;
2 | 3. The name and address of the person against whom the
3 | complaint is lodged;
4 | 4. The specific relief requested, including any penalty
5 | sought.

6 | Specific Authority: 350.01(7), 350.127(2) Fla. Stat.

7 | Law Implemented: 120.569, 120.57, 350.123, 364.035, 364.05,
8 | 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071,
9 | 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814,
10 | 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171 Fla. Stat.

11 | History: New 12-21-81, Formerly 25-22.36, Amended 5-3-99, _____.

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MEMORANDUM

May 4, 2000

TO: DIVISION OF APPEALS (HELTON)

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HEWITT) *CBH DM B*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR PROPOSED
REPEAL OF RULE 25-22.036(3), F.A.C., INITIATION OF FORMAL
PROCEEDINGS

Rule 25-22.036, F.A.C., Initiation of Formal Proceedings, informs the public when it is appropriate for persons to start proceedings for activities affecting them. Section (3) states that the Commission may, upon its on motion, initiate a proceeding.

Proposed repeal of Rule 25-22.036, F.A.C., Initiation of Formal Proceedings, would eliminate unnecessary rule language per legislative guidelines. The Commission has authority in its statutes to initiate proceedings.

The Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, there should be no additional costs and no negative impacts on utilities, small businesses, small cities, or small counties. Therefore, a SERC will not be prepared for the proposed rule repeal.

cc: Mary Andrews Bane
Hurd Reeves

initnsn.cbh

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DIVISION OF APPEALS