

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

UNDOCKETED

IN RE: RULE 25-22.033, FLORIDA ADMINISTRATIVE CODE, COMMUNICATIONS
BETWEEN COMMISSION EMPLOYEES AND PARTIES

NOTICE OF STAFF RULE DEVELOPMENT WORKSHOP

TO: ALL INTERESTED PERSONS

ISSUED: August 26, 2010

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the staff of the Florida Public Service Commission will hold a rule development workshop at the following time and place:

9:30 a.m. – Friday, September 10, 2010
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0862

One or more Commissioners may be in attendance and participate at this workshop. The agenda for the workshop and draft rule are attached. The person to be contacted in regard to this workshop is Samantha Cibula, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6202, scibula@psc.state.fl.us.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Office of Commission Clerk at (850) 413-6770 at least 48 hours prior to the workshop. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771.

By DIRECTION of the Florida Public Service Commission, this 26th day of August, 2010.



ANN COLE
Commission Clerk

(SEAL)

CM

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FPSC-COMMISSION CLERK

AGENDA

**IN RE: COMMISSION STAFF RULE DEVELOPMENT WORKSHOP ON
RULE 25-22.033, FLORIDA ADMINISTRATIVE CODE,
COMMUNICATIONS BETWEEN COMMISSION EMPLOYEES AND
PARTIES**

**9:30 a.m. – Friday, September 10, 2010
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, FL 32399-0862**

- I. Opening Remarks by Workshop Participants**
- II. Section by Section Discussion of Draft Amendments to Rule 25-22.033, F.A.C.**
- III. Any Additional Comments by Workshop Participants**
- IV. Discussion of Next Steps for the Rulemaking**
- V. Adjournment**

1 **25-22.033 Commission Employee Communications with ~~Communications Between~~**
2 **Commission Employees and Parties and Interested Persons.**

3 (1) The Commission recognizes that Commission employees must exchange
4 information with parties and other persons who have an interest in Commission proceedings.
5 However, the Commission also recognizes that all parties and interested persons to certain
6 ~~adjudicatory~~ proceedings need to be notified and given an opportunity to participate in certain
7 communications. The intent of this rule is not to prevent or hinder in any way the exchange of
8 information, but to provide all parties and interested persons to certain adjudicatory
9 proceedings notification of and the opportunity to participate in certain communications. The
10 provisions of the rule shall not apply to internal agency communications; the Office of the
11 Commission Clerk; communications regarding procedure such as the scheduling of witnesses
12 for depositions and hearings; or Commission employee communications in docketed or
13 undocketed proceedings with state or federal governmental officials, representatives, bodies or
14 agencies that are not identified as a party or interested person in the proceeding or otherwise
15 have a legal interest in the proceeding. Nothing in this rule is intended to modify or supersede
16 the procedural requirements for formal discovery under Rules 1.280 through 1.390, Florida
17 Rules of Civil Procedure.

18 (2) For purposes of this rule, the following definitions shall apply:

19 (a) “Party” or “Parties” are those individuals or entities designated in the docket file of
20 the proceeding or by order of the Commission as an Official Party of Record and includes
21 employees, witnesses, consultants and persons acting in a representative capacity for
22 individuals and entities designated as parties in the docket file. For purposes of providing any
23 notice pursuant to this rule, only those individuals listed in the docket file are required to
24 receive notice.

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

1 **(b) “Interested persons” are those individuals or entities listed in the docket file of the**
2 **proceeding but not designated as an Official Party of Record to the proceeding.**

3 **(c) “Impermissible Communication” means any communication with a party or**
4 **interested person, if written, is not served on all parties, or, if oral, is made without notice to**
5 **all parties or interested persons.**

6 **(3)(1) Subsections (4) through (8) of tThis rule shall govern communications between**
7 **Commission employees ~~communications with and parties and interested persons~~ to docketed**
8 **proceedings before the Commission. Subsections (4) through (8) of tThis rule shall not apply**
9 **toin emergency operation center activities, proceedings under Sections 120.54, 120.565,**
10 **367.0814, F.S.Florida Statutes, proposed agency action (PAA) proceedings-before the**
11 **Commission has voted to issue a proposed agency action order, in which there has not been a**
12 **notice of an interested person or request to intervene filed in the docket or a request for a**
13 **hearing filed in the docket, non-rate case tariffs, workshops, or internal affairs meetings,–Also**
14 **exempted are docketed and undocketed audits, fieldtelephone service evaluations, informal**
15 **consumer complaints, and electric and gas safety inspections, and cases pending in a tribunal**
16 **other than the Commission. Nothing in this rule is intended to modify or supersede the**
17 **procedural requirements for formal discovery under the Commission’s rules and applicable**
18 **provisions of the Florida Rules of Civil Procedure, or affect communications regarding**
19 **discovery requests, procedure, or other matters not concerned with the merits of a case.**

20 **(4) Commission employees shall not engage in impermissible communications.**

21 **(4)(2) Written Communications—Notice of any written communication between**
22 **Commission employees and parties shall be transmitted to all other parties at the same time as**
23 **the written communication, whether by U.S. Mail or other means.**

24 **(5)(3) Scheduled Meetings and Telephone Conference Calls – All parties, interested**

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1 persons, and the Office of Public Counsel shall be given reasonable notice of the time and
2 place of any ~~scheduled~~ meeting or telephone conference call between Commission employees
3 and parties or interested persons. The notice of the meeting or telephone call shall be posted
4 on the Commission's Web site, www.floridapsc.com, within a reasonable time prior to the
5 meeting or telephone call. ~~For purposes of this subsection, a conference call is defined as a~~
6 ~~telephone call involving three or more persons.~~

7 (6) All written communications between Commission employees and parties, except
8 discovery requests and discovery responses, shall be placed in the docket file to which the
9 communication pertains by the person making the communication within 3 working days of
10 the date of the communication. If the written communication occurs less than 3 days before a
11 hearing or decision making point in the proceeding, the written communication shall be placed
12 in the docket file and provided to all parties as promptly as is reasonable under the
13 circumstances. A party or Commission employee sending the original written communication
14 shall provide a copy of the written communication to all parties at the same time and, if
15 possible, in the same manner. If a Commission employee orally communicates with a party
16 outside of a noticed meeting or telephone call, the Commission employee shall summarize in
17 writing the oral communication and file the summary in the docket file within 3 working days
18 of the date of the communication.

19 (7) No Commission employee shall contact a party and no party shall contact a
20 Commission employee on any matter at issue in a proceeding conducted pursuant to Section
21 120.569 or 120.57, F.S., during the period of time between the conclusion of the hearing when
22 the record is closed and the issuance of the final order in the proceeding unless the contact is
23 in writing and pertains to a settlement agreement or the identification of a mathematical error
24 in a recommendation and all parties to the proceeding are included in the communication and

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1 the written communication is immediately placed in the docket file. The prohibitions in this
2 subsection shall not apply to those communications between Commission employees and
3 parties to investigate and assist in the resolution of informal consumer complaints.

4 (8)(4) Response to Communications – Any party to a proceeding may prepare a written
5 response to any communication between a Commission employee and another party or
6 interested person. Notice of any such Written responses shall be transmitted to all parties
7 provided to all parties at the same time and, if possible, in the same manner.

8 (9) All notices of meetings and conference calls pertaining to changes in rates which
9 occur outside of a docketed proceeding or during a proposed agency action proceeding exempt
10 under subsection (3) of this rule shall be provided to the Office of Public Counsel and posted
11 on the Commission's Web site within a reasonable time prior to the meeting or conference
12 call. For purposes of this subsection, a conference call is defined as a telephone call involving
13 three or more persons.

14 (10)(5) Prohibited Communications between Commissioners and Commission
15 employees – No Commission employee shall directly or indirectly relay to a Commissioner
16 any communication from a party or an interested person which would otherwise be a
17 prohibited ex parte communication under Section 350.042, F.S. Florida Statutes. Nothing in
18 this subsection shall preclude non-testifying advisory Commission employees ~~staff members~~
19 from discussing the merits of a pending case with a Commissioner, provided the
20 communication is not otherwise prohibited by law. However, a Commission employee ~~staff~~
21 ~~member~~ who testifies in a case or who has acted in a prosecutorial role in a license revocation
22 or suspension proceeding or a proceeding imposing administrative fines or penalties shall not
23 discuss the merits of that case with any Commissioner during the pendency of that case. In all
24 proceedings conducted pursuant to Section 120.569 or 120.57, F.S., a Commissioner or a

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1 Commissioner's direct reporting employee shall not communicate with a Commission
2 employee on the merits of the proceeding during the period of time between the conclusion of
3 the hearing when the record is closed and the filing of the staff recommendation.

4 (11) The provisions of this rule shall apply to all Commission employees unless
5 specifically exempted by this rule.

6 Specific Authority 350.01(7), 350.127(2) FS.

7 Law Implemented 120.569, 120.57, 350.042 FS.

8 History—New 3-24-93, Amended _____.

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