

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

UNDOCKETED

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

NOTICE OF PROPOSED RULE DEVELOPMENT
AND COMMISSION WORKSHOP

TO: ALL INTERESTED PERSONS

ISSUED: January 27, 2010

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission has initiated the development of Rule 25-22.033, Florida Administrative Code, to amend provisions relating to communications with parties and interested persons.

The Florida Public Service Commission will hold a rule development workshop at the following time and place:

9:30 a.m., February 10, 2010
Betty Easley Conference Center
Room 148, 4075 Esplanade Way
Tallahassee, Florida 32399-0850

The agenda for the workshop and draft amendments to the rule are attached. Participants may, in type and strike format, provide suggested alternative proposals by February 4, 2010, for discussion at the workshop. Please submit such proposals to Samantha Cibula at scibula@psc.state.fl.us or at 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850. Ms. Cibula may also be contacted at (850) 413-6202.

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 using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

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By DIRECTION of the Florida Public Service Commission, this 27th day of January,
2010.



ANN COLE
Commission Clerk

(S E A L)

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AGENDA

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

**February 10, 2010 – 9:30 a.m.
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399**

- 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 docketed
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 ~~docketed~~ adjudicatory
9 proceedings notification of and the opportunity to participate in certain communications.

10 (2)(4) This rule shall govern ~~communications between~~ Commission employees
11 communications with and parties and interested persons to docketed proceedings before the
12 Commission. This rule shall not apply to ~~in~~ emergency operation center activities, proceedings
13 under Sections 120.54, 120.565, 367.0814, F.S. Florida Statutes, proposed agency action
14 proceedings before the Commission has voted to issue a proposed agency action order, non-
15 rate case tariffs, workshops, or internal affairs meetings, ~~Also exempted are~~ docketed and
16 undocketed audits, field telephone service evaluations, informal consumer complaints, and
17 electric and gas safety inspections, and cases pending in the court system. Nothing in this rule
18 is intended to modify or supersede the procedural requirements for formal discovery under
19 Rules 1.280 through 1.390, the Commission's rules and applicable provisions of the Florida
20 Rules of Civil Procedure, or affect communications regarding discovery requests, procedure,
21 ~~or other matters not concerned with the merits of a case.~~

22 (3) For purposes of this rule, the following definitions shall apply:

23 (a) "Party" or "Parties" are those individuals or entities designated in the docket file of
24 the proceeding or by order of the Commission as an Official Party of Record.

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 **(4)(2) Written Communications – Notice of any W**ritten communications between
4 Commission employees and parties **and interested persons** shall be transmitted to all other
5 parties at the same time as the written communication, whether by U.S. Mail or other means.

6 **(5)(3) Scheduled Meetings and Conference Calls – All parties to the proceeding shall**
7 **be given reasonable notice of the time and place of any scheduled meeting or conference call**
8 **between Commission employees and parties or interested persons.** For purposes of this
9 subsection, a conference call is defined as a telephone call involving three or more persons.
10 **The notice of the meeting or conference call shall be posted on the Commission’s website,**
11 **www.floridapsc.com, prior to the meeting or conference call.**

12 **(6) All written communications between Commission employees and parties in**
13 **proceedings in which the Commission is determining the substantial interests of a party**
14 **pursuant to Sections 120.569 and 120.57, F.S., except discovery requests and discovery**
15 **responses, shall be placed in the docket file to which the communication pertains by the**
16 **person making the communication within 7 days of the date of the communication. If a**
17 **Commission employee orally communicates with a party in such proceedings outside of a**
18 **noticed meeting or conference call, the Commission employee shall summarize in writing the**
19 **oral communication and file the summary in the docket file within 7 days of the date of the**
20 **communication.**

21 **(7) No Commission employee shall contact a party and no party shall contact a**
22 **Commission employee on any matter at issue in a Section 120.569 or 120.57, F.S., proceeding**
23 **during the period of time between the conclusion of the hearing in the proceeding and the**
24 **issuance of the final order in the proceeding unless all parties to the proceeding are included in**

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1 the communication. The prohibitions in this subsection shall not apply to those
2 communications between Commission employees and parties to investigate and assist in the
3 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 at
7 the same time as the written response, whether by U.S. Mail or other means.

8 (9)(5) Prohibited Communications – No Commission employee shall directly or
9 indirectly relay to a Commissioner any communication from a party or an interested person
10 which would otherwise be a prohibited ex parte communication under Section 350.042,
11 F.S. Florida Statutes. Nothing in this subsection shall preclude non-testifying advisory staff
12 members from discussing the merits of a pending case with a Commissioner, provided the
13 communication is not otherwise prohibited by law. However, a staff member who testifies in a
14 case or who has acted in a prosecutorial role in a license revocation or suspension proceeding
15 or a proceeding imposing administrative fines or penalties shall not discuss the merits of that
16 case with any Commissioner during the pendency of that case.

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

18 Law Implemented 120.569, 120.57, 350.042 FS.

19 History–New 3-24-93, Amended.

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