

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Adoption of Rule) DOCKET NO. 920840-OT
25-22.0021, Amendment of)
Rules 25-22.056 and) ORDER NO. PSC-92-1175-NOR-OT
25-22.058, and Repeal of)
Rule 25-22.057, F.A.C.) ISSUED: 10/15/92
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_____)

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to adopt Rule 25-22.0021, and amend Rules 25-22.056 and 25-22.058 and repeal Rule 25-22.057, F.A.C., relating to agenda conference participation, post-hearing filings, oral argument and recommended order, exceptions, replies, staff recommendations.

The attached Notice of Rulemaking will appear in the October 23, 1992 edition of the Florida Administrative Weekly. No hearing will be held because the rules relate exclusively to the Commission's organization, procedure or practice.

Written comments or suggestions on the rules must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399, no later than November 13, 1992.

By ORDER of the Florida Public Service Commission this 15th day of October, 1992.

STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

by: Kay Hegan
Chief, Bureau of Records

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

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RULE TITLE:	RULE NO.:
Post-Hearing Filings	25-22.056
Recommended Order, Exceptions, Replies, Staff Recommendations	25-22.057
Oral Argument	25-22.058
Agenda Conference Participation	25-22.0021

PURPOSE AND EFFECT: The purpose in revising these rules is to simplify the post-hearing procedures, reduce confusion and eliminate duplicate provisions, and revise the procedures to enable the Commission to meet statutory time limits for completing proceedings. Limits on length of documents and certain format requirements are added to streamline post-hearing proceedings and increase efficiency. The oral argument rule, Rule 25-22.058, is amended to add a provision taken from repealed Rule 25-22.057 and to consolidate oral argument provisions into one rule. A new rule regarding agenda conference participation, 25-22.0021, is proposed to add the provisions on that subject that were formerly contained in Rule 25-22.057 and to explain when participation is permitted in certain other situations that were not previously addressed by the rules.

SUMMARY: Rule 25-22.056 will be applicable to documents that

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either must or may be filed after a section 120.57, F.S., hearing has been conducted by a hearing officer, or a panel of the Commission or the full Commission. Restrictions are imposed on the length and format of post-hearing documents and a summary of parties' issue positions must be included. Replies to exceptions to recommended orders are not permitted. Rule 25-22.058 is amended to provide that requests for oral argument on recommended orders and exceptions must be filed within 10 days after filing exceptions. Rule 25-22.0021 is created to address participation in agenda conferences. It provides for participation in discussions of items where a hearing has not been held and restricts participation where a hearing has already been held.

RULEMAKING AUTHORITY: 120.53, F.S.; 120.53(1), F.S.

LAW IMPLEMENTED: 120.53, F.S.; 120.57 F.S.; 120.58, F.S.;
120.58(1)(e), F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

NO HEARING WILL BE HELD BECAUSE THIS RULE RELATES EXCLUSIVELY TO THE COMMISSION'S ORGANIZATION, PROCEDURE OR PRACTICE.

THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service

Commission, 101 East Gaines Street, Tallahassee, Florida 32399.

THE FULL TEXT OF THESE RULES IS:

25-22.056 Post-Hearing Filings.

(1) General Provisions.

(a) If a hearing under section 120.57, F.S., is conducted by a panel of two or more Commissioners or the full Commission, all parties may submit proposed findings of fact, conclusions of law, and recommended orders, and or legal briefs on the issues within a time designated by the presiding officer.

(b) If a hearing under section 120.57, F.S., is conducted by a Commissioner sitting as a hearing officer, all parties may submit proposed findings of fact, conclusions of law, proposed recommended orders, which shall include a statement of the issues, and exceptions, within the time and in the format designated by the hearing officer.

(c) A party who fails to state or reaffirm a position on an issue to the presiding officer or hearing officer at the appropriate time shall be deemed to have waived that issue or position.

(d) A party's proposed findings of fact, conclusions of law, statement of issues and positions, and brief shall together total no more than 60 pages and shall be filed at the same time. The hearing officer or, if the hearing has been conducted by a

panel or the full Commission, the prehearing officer, may modify the page limit for good cause shown. Lettering shall be distinct and in at least 11-point type. The text must be double spaced with 1-inch margins except for quoted material which may be indented and single spaced.

(e) Requests for oral argument shall be filed in accordance with Rule 25-22.058, F.A.C.

(2) Proposed Findings of Fact. A party may submit proposed findings of fact, and the hearing presiding officer or Commissioners assigned to the proceeding will rule upon each finding of fact one, as required by section § 120.59(2), F.S., when filed in conformance with this rule.

(a) Proposed findings of fact shall be entitled as such, and must be presented on a document separate from all other post-hearing documents memoranda.

(b) Each proposed finding of fact shall be separately stated, numbered consecutively, and shall be a succinct statement may not to exceed 3 sentences in length be contained in extensive narrative form, or contain mixed questions of fact and law. Each proposed finding of fact shall cite to the record, identifying the transcript page and line that supports the particular finding. All proposed findings of fact which relate to a particular issue shall be grouped together and shall

identify the issue number to which they relate. Any written statement that is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than proposed finding of fact.

(3) Statement of issues and positions. In any proceeding where a prehearing order has been issued, and such prehearing order contains a statement of the issues as well as the positions of the parties thereon, all post-hearing statements and other documents filed pursuant to this rule memoranda shall conform to the form and content of the statement of the issues and positions.

(a) Each party to a proceeding shall file a post-hearing statement of issues and positions which shall include a summary of each position of no more than 50 words, set off with asterisks. In the absence of such a summary statement, the prehearing position on that issue will be used in the staff recommendation. In the event that a new issue is identified by a party in a post-hearing statement, that new issue shall be clearly identified as such, and a statement of position thereon shall be included. Any issue or position not included in a post-hearing statement shall be considered waived. If a party's position has not changed since the issuance of the prehearing order, the party's post-hearing statement may simply restate the

prehearing position.

(b) A party is not required to file a post-hearing documents memorandum in addition to the post-hearing statement, unless otherwise required by the presiding officer. If a brief is filed, each argument must be identified by the issue number to which it relates. In the event that a party fails to file a post-hearing statement in conformance with (3)(a), and no other post-hearing memorandum is filed which conforms to this rule, that a party so-failing shall have waived all issues and may be dismissed from the proceeding.

(4) Post-Hearing Filings When Hearing is Conducted by a Hearing Officer. If a hearing under section 120.57, F.S., is held before a Commissioner sitting as a hearing officer, the following provisions shall apply in addition to (1)(b) through (3) of this rule. Subsection (b) of the following provisions also applies when the hearing has been conducted by the Division of Administrative Hearings.

(a) Recommended Order. The hearing officer shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for

final Commission action.

(b) Exceptions. Parties and staff may file exceptions to the recommended order with the Division of Records and Reporting within 14 days of service of the recommended order, and shall serve copies of any such exceptions upon all parties of record and staff. Such exceptions shall fully set forth the error claimed and the basis in law and fact therefore, with exceptions to findings of fact supported by citations to the record. A party's failure to serve or file timely written exceptions shall constitute a waiver of any objections to the recommended order.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53, 120.57, 120.58, F.S.

History: New 12/21/81, formerly 25-22.57, Amended _____.

25-22.057 Recommended Order, Exceptions, Replies, Staff Recommendations.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.57, Repealed _____.

25-22.058 Oral Argument.

(1) The Commission may grant oral argument upon request of any party to a section§ 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested.

The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it raised by exceptions or responses. Failure to file a timely request for oral argument shall constitute waiver thereof.

(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.

(3) Requests for oral argument on recommended orders and exceptions pursuant to section 120.58(1)(e), F.S., must be filed no later than 10 days after exceptions are filed.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, 120.58(1)(e), F.S.

History: New 12/21/81, formerly 25-22.58, Amended _____.
25-22.0021 Agenda Conference Participation.

(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.

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(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted.

(3) Nothing in this rule shall preclude the Commission from taking action during the course of a hearing or other duly noticed proceeding.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New _____.

NAME OF PERSON ORIGINATING PROPOSED RULES: Noreen Davis

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULES:

Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: October 6, 1992