

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

May 30, 1991

TO: DIRECTOR OF RECORDS AND REPORTING (TRIBBLE)
FROM: DIVISION OF APPEALS (MOORE) *CM DES*
DIVISION OF LEGAL SERVICES (DAVIS) *NSD by R*
DIVISION OF RESEARCH (HEWITT) *DMH*
RE: DOCKET NO.: 910588-PU - PROPOSED AMENDMENT OF RULE
25-22.026, F.A.C., PARTIES
AGENDA: 6/11/91 - CONTROVERSIAL - PARTIES MAY NOT PARTICIPATE
PANEL: FULL COMMISSION
RULE STATUS: PROPOSAL MAY BE DEFERRED

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose an amendment to Rule 25-22.026, Florida Administrative Code, to state that, in cases assigned to the Division of Administrative Hearings, the role of Commission staff is to ensure that a complete record is made, and not to advocate a position except in specified proceedings?

RECOMMENDATION: Yes. The Commission should amend Rule 25-22.026 to state that the Commission staff's role in cases conducted by the Division of Administrative Hearings is to ensure development of a complete record, except when the Commission is a respondent or is enforcing its rules or statutes.

STAFF ANALYSIS: The role of Commission staff in cases assigned to the Division of Administrative Hearings (DOAH) has been misunderstood by DOAH hearing officers where the Commission is not a respondent or is not enforcing Commission rules or statutes. In several proceedings, the hearing officer has insisted that staff declare a position either for or against a party, although staff has no position and has intervened in the proceeding between private litigants only to make sure that the record is fully developed.

DOCUMENT NUMBER-DATE

05427 MAY 30 1991

FPSC-RECORDS/REPORTING

DOCKET NO. 910588-PU
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The proposed addition to Rule 25-22.026 is an attempt to clarify the role of staff in those cases where they are not an adversary of any party. The Commission's interest in these cases is to ensure that a complete record is available for the Commission's final action on the hearing officer's recommended order. The rule states that in other cases, where staff is advocating a position, the staff may testify and offer exhibits and evidence and will be subject to cross-examination to the same extent as any other party. (Attachment 1)

The proposed amendment to this rule should not result in any additional cost to the Commission or affected parties.
(Attachment 2)

ISSUE 2: Should the Commission adopt Rule 25-22.026 as proposed if no comments are filed or requests for hearing are made?

RECOMMENDATION: Yes. The Commission should adopt the rule as proposed if no comments are filed and no requests for hearing are made.

CTM/
Attachments

1 25-22.026 Parties.

2 (1) Parties in any proceeding conducted in accordance with
3 §120.57, F.S., are complainants, applicants, petitioners,
4 protestants, respondents, or intervenors. Parties shall be
5 entitled to receive copies of all pleadings, motions, notices,
6 orders and other matters filed in a proceeding, and shall be
7 entitled to all rights afforded under Chapter 120, F.S. According
8 to the nature of the proceeding, the term "party" may include the
9 Commission.

10 (2) If it appears that the determination of the rights of
11 parties in a proceeding will necessarily involve a determination of
12 the substantial interests of persons who are not parties, the
13 presiding officer may, upon motion of a party, or upon his or her
14 own initiative enter an order requiring that the absent person be
15 notified of the proceeding and be given an opportunity to be joined
16 as a party of record.

17 (3) The Commission staff may participate as a party in any
18 proceeding. Their primary duty is to represent the public interest
19 and see that all relevant facts and issues are clearly brought
20 before the Commission for its consideration.

21 (4) In cases assigned to the Division of Administrative
22 Hearings, the Commission staff's role is to represent the public
23 interest and be neither in favor of nor against any particular
24 party, unless the Commission is enforcing rules or statutes through
25 a show cause or similar proceeding, or unless the Commission is a

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~~struck through~~ type are deletions from existing law.

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1 respondent at the Division of Administrative Hearings. Staff is
2 not a party in interest and has no substantial interests that may
3 be affected by the proceeding. Commission staff's role shall be to
4 assist in developing evidence to ensure a complete record so that
5 all relevant facts and issues are presented to the fact finder.
6 Any position that staff has prior to the hearing is preliminary;
7 final positions are based upon review of the complete record.

8 (b) When advocating a position, Commission staff may testify
9 and offer exhibits and such evidence shall be subject to cross-
10 examination to the same extent as evidence offered by any other
11 party.

12 Specific Authority: 120.53, F.S.

13 Law Implemented: 120.53, F.S.

14 History: New 12/21/81, formerly 25-22.26.

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M E M O R A N D U M

April 18, 1990

TO: DIVISION OF APPEALS (MOORE)
FROM: DIVISION OF RESEARCH (HEWITT) *CBH* *WAB*
SUBJECT: ECONOMIC IMPACT STATEMENT FOR PROPOSED CHANGES TO RULE 25-22.026,
FAC, PARTIES

SUMMARY OF THE RULE

Rule 25-22.026, FAC, Parties, concerns those persons who wish to participate in proceedings in accordance with Chapter 120.57, Florida Statutes, before the Florida Public Service Commission (Commission). Parties are complainants, applicants, petitioners, protestants, respondents, or intervenors. Parties are entitled to receive copies of all paperwork filed in a proceeding and are entitled all rights afforded under Chapter 120, F.S. The Commission may also be a "party" to a proceeding. The Commission staff may participate as a party in any proceeding.

The proposed addition to the rule addresses the Commission staff's role in those cases assigned to the Division of Administrative Hearings (DOAH). Staff would develop evidence to ensure a complete record so that all relevant facts and issues are presented to the fact finder. Commission staff could advocate a position, testify, and offer exhibits and other evidence subject to cross-examination like any other party. As in other proceedings, Commission staff's role would be to represent the public interest and be neither in favor of nor against any particular party, unless the Commission was enforcing rules or statutes, or was a respondent at the Division of Administrative Hearings.

DIRECT COSTS TO THE AGENCY

The proposed change to the Parties rule would benefit the Commission by clarifying the role of staff in DOAH proceedings and thus saving some staff time. There should be no increase in paperwork or workload since staff is currently involved in these types of proceedings.

COSTS AND BENEFITS TO THOSE PARTIES DIRECTLY AFFECTED BY THE RULE

The proposed change to Rule 25-22.026, Parties, should clarify the Commission's role in proceedings to the DOAH and parties involved in those proceedings. There should be no substantive costs involved because there should be no significant changes in proceedings involving the Commission. Some benefits may accrue to DOAH and its staff from clarifying the role of the Commission staff in proceedings before DOAH.

IMPACT ON SMALL BUSINESSES

There should be no impact on small businesses since the proposed rule change only addresses procedures in the administrative fact finding process and clarifies the existing roles that Commission staff may play in these proceedings.

IMPACT ON COMPETITION

There should be no change in the competitive environment from the proposed rule change.

IMPACT ON EMPLOYMENT

The proposed rule change will have no effect on employment.

METHODOLOGY

Discussions were held with Commission legal staff to obtain background information on the proposed rule change. Documents from DOAH were examined.

CBH:jn/e-partie