**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building**

 **101 East Gaines Street**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **September 3, 1992**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM: DIVISION OF APPEALS (MOORE)**

 **DIVISION OF LEGAL SERVICES (DAVIS)**

**RE: DOCKET 920840-0T - PROPOSED REVISION OF RULES 25-22.056, F.A.C., POST-HEARING FILINGS; 25-22.058, F.A.C., ORAL ARGUMENT; and ADOPTION OF RULE 25-22.0021, F.A.C., AGENDA CONFERENCE PARTICIPATION; TRANSFER OF PARTS OF RULE 25-22.057, F.A.C., RECOMMENDED ORDER, EXCEPTIONS, REPLIES, STAFF RECOMMENDATIONS, TO RULE 25-22.056, F.A.C; AND REPEAL OF RULE 25-22.057**

**AGENDA:09/15/92 - CONTROVERSIAL - PARTIES MAY PARTICIPATE**

**RULE STATUS: PROPOSAL MAY BE DEFERRED**

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**ISSUE 1**: Should the Commission combine and revise Rules 25-22.056 and 25-22.057, relating to post-hearing procedures, and consolidate the oral argument and agenda conference provisions in separate rules on those subjects?

**RECOMMENDATION**: Yes. The Commission should revise its rules to improve and simplify post-hearing procedures.

**STAFF ANALYSIS**: Rule 25-22.057 prescribes post-hearing procedures when hearings are conducted by one Commissioner or Division of Administrative Hearings (DOAH) Hearing Officer. The procedures are cumbersome and, if the Commission follows them in staff-assisted rate cases, it is unable to meet the statutory time limits set forth in section 367.0814, Florida Statutes. In the past, and in lieu of the Rule 25-22.057 provisions, Commissioners have issued orders establishing post-hearing procedures modelled on the Division of Administrative Hearings (DOAH) rule (Rule 22I-6.031) and the Model Rules of Procedure (Rules 28-5.401 through 28-5.404, F.A.C.). See, Order No. 24856, Docket No. 900505-WS, In re: Application for a Staff-Assisted Rate Case in Bay County by Sandy Creek Utilities, Inc.

 Post-hearing procedures are also prescribed by Rule 25-22.056, leading to some confusion and duplication. The attached proposal addresses these problems. All post-hearing procedures for filing documents are combined into a single rule and Rule 25-22.057 is repealed. Certain sections apply to all hearings, and when a hearing is conducted by one Commissioner or a DOAH hearing officer, the sections addressing recommended orders and exceptions apply. Replies to exceptions are not authorized.

 Restrictions on the format and length of post-hearing pleadings are also imposed. These include a maximum length of 50 pages total for proposed findings of fact, conclusions of law, statement of issues and positions, and briefs; and margin and spacing requirements. Proposed findings of fact must cite to the record and, along with arguments, must be grouped by the issue to which they relate. In the past, post-hearing documents have not tracked the organization of the issues in the prehearing order, making it difficult to tie positions, arguments and proposed findings of fact to issues.

 The oral argument provisions of Rule 25-22.057 are repealed and a new section is added to the existing rule entitled "Oral Argument", Rule 25-22.058. The new section implements section 120.58(1)(e), and provides that the Commission shall grant requests for oral argument on recommended orders and exceptions where the majority of Commissioners have not heard the case or read the record.

 The substance of the agenda conference participation provisions of Rule 25-22.057(5) is transferred to a new rule, Rule 25-22.0021, entitled "Agenda Conference Participation". The rule also authorizes participation of affected persons on items for which a hearing has not been held, except actions on interim rates in file and suspend rate cases or declaratory statements.

 An Economic Impact Statement (EIS) has not been prepared. Effective July 1, 1992, an EIS is not required if the rule will result in no substantial increases in costs or significant adverse effects to parties directly affected.

**ISSUE 2**: Should the rules be filed for adoption with the Secretary of State if no comments are filed?

**RECOMMENDATION**: Yes. If no comments are filed, the rule may be filed for adoption. The docket may then be closed.

**STAFF ANALYSIS**: The Commission is not required to offer the opportunity for a hearing on rules that relate exclusively to organization, procedure or practice. Section 120.54(3)(a), Florida Statutes. The Commission may act on the basis of comments alone, but if none are received, there is no need to return to agenda and the rule will be filed for adoption without change.

CTM/

Attachments