

State of Florida

Commissioners:
J. TERRY DEASON, CHAIRMAN
THOMAS M. BEARD
SUSAN F. CLARK
LUIS J. LAUREDO
JULIA L. JOHNSON



DIVISION OF APPEALS
DAVID E. SMITH
DIRECTOR
(904) 488-7464

Public Service Commission

February 22, 1993

Mr. Carroll Webb
Joint Administrative Procedures
Committee
120 Holland Building
Tallahassee, Florida 32399

Re: DOCKET NO. ~~920840-OT~~ RULES 25-22.056, 25-22.057, 25-22.058, and 25-22.0021

Dear Mr. Webb:

Enclosed is a statement of changes for the proposed new rule, Rule 25-22.0021, and the amendment of existing rule, Rule 25-22.056. No changes were made to the proposed amendment of Rule 25-22.058 or to the repeal of 25-22.057. A copy of the rules is enclosed.

The rules will affect small businesses participating in Commission proceedings, however, they will not result in any substantial increase in costs or significant adverse effect to any party directly affected by the rules. In any event, the Small and Minority Business Advocate, the Division of Economic Development and the Minority Business Enterprise Assistance Office have not offered alternatives regarding the impact of the rule on small business.

- ADR _____
- APA _____
- APP _____
- CAP _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- ROH _____
- SEC _____
- WAS _____
- OTH _____

Sincerely,

Christiana T. Moore
Associate General Counsel

Enclosure

cc: Steve Tribble, Director,
Div. Records & Reporting

02000-1-233

STATEMENT OF CHANGES

Comments were filed by the Office of Public Counsel (OPC), Florida Power & Light Company (FPL), Florida Waterworks Association (FWWA), GTE Florida, Incorporated (GTE), Gulf Power Company (Gulf), Tampa Electric Company (TECO), United Telephone Company of Florida (United), the Legal Environmental Assistance Foundation (LEAF), and Mr. Ben Girtman. The following are the changes based on these comments that the Commission voted to make at its public agenda conference held on February 16, 1993.

Rule 25-22.056: FPL, GTE and TECO commented on the 50-word limit on position summary statements contained in subsection (3)(a), asserting that it is inadequate for many complex issues. The Commission added a provision to the rule authorizing the prehearing officer or hearing officer to modify the word limit if good cause is shown.

TECO also stated that the rule was unfair in that the word limit only applies when a party's position has changed from its prehearing position. To correct this disparity, and to clarify the confusion it has caused some parties, the Commission deleted that provision (lines 13-15, page 3), rearranged the other provisions of the subsection, and added a provision requiring a summary of the party's position whether or not it has changed from the prehearing statement.

In response to Mr. Girtman's question about subsection (1)(d)'s restriction on the size of the printing type used in documents, the Commission replaced "11-point type" with "type of no more than 10 characters per inch."

Rule 25-22.0021: The FWWA noted that, on occasion, new matters that have not been an issue in a proceeding arise and are subsequently considered by the Commission in the same docket, although parties have not had the opportunity to address those matters or offer any

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- ACK _____
- ZFA _____
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- CTR _____
- EAG _____
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- LIN _____
- OPC _____
- RCH _____
- SEC / _____
- WAS _____
- OTH _____

Enclosure

cc: Steve Tribble, Director,
Div. Records & Reporting

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Christiana T. Moore
Associate General Counsel

02000 12238

STATEMENT OF CHANGES

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evidence. The Commission changed the proposed rule to accommodate these occurrences by adding language to section (2) to allow participation by parties at an agenda conference when the Commission is considering new matters that are related to but were not addressed at the hearing.

Section (2) of the rule was changed based on comments by Mr. Girtman to state that "written presentations" as well as "oral presentations" are not permitted at agenda conferences where a hearing has been held. Mr. Girtman also questions the meaning of section (3), providing that the Commission is not precluded from "taking action" during the course of a hearing or other duly noticed proceeding. The purpose of including this section in the agenda participation rule is to give notice that not all decisions in a proceeding are made at agenda conference and that some are "bench decisions" made during a hearing. The Commission changed the wording of the rule in an attempt to clarify its meaning.

1 25-22.056 Post-Hearing Filings.

2 (1) General Provisions.

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

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

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

18 (d) A party's proposed findings of fact, conclusions of law,
19 statement of issues and positions, and brief shall together total
20 no more than 60 pages and shall be filed at the same time. The
21 hearing officer or, if the hearing has been conducted by a panel or
22 the full Commission, the prehearing officer, may modify the page
23 limit for good cause shown. Lettering shall be distinct and
24 printed in type of no more than 10 characters per inch. The text
25 must be double spaced with 1-inch margins except for quoted

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1 material which may be indented and single spaced.

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

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

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

12 (b) Each proposed finding of fact shall be separately stated,
13 numbered consecutively, and shall be a succinct statement may not
14 to exceed 3 sentences in length. ~~be contained in extensive~~
15 ~~narrative form, or~~ Proposed findings of fact shall not contain
16 mixed questions of fact and law. Each proposed finding of fact
17 shall cite to the record, identifying the page and line of the
18 transcript or exhibit that supports the particular finding. All
19 proposed findings of fact which relate to a particular issue shall
20 be grouped together and shall identify the issue number to which
21 they relate. Any written statement that is not clearly designated
22 as a proposed finding of fact shall be considered to be legal
23 argument rather than proposed finding of fact.

24 (3) Statement of issues and positions. In any proceeding
25 where a prehearing order has been issued, and such prehearing order

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1 contains a statement of the issues as well as the positions of the
2 parties thereon, all post-hearing statements and other documents
3 filed pursuant to this rule memoranda shall conform to the form and
4 content of the statement of the issues and positions.

5 (a) Each party to a proceeding shall file a post-hearing
6 statement of issues and positions which shall include a summary of
7 each position of no more than 50 words, set off with asterisks. If
8 a party's position has not changed since the issuance of the
9 prehearing order, the party's post-hearing statement may simply
10 restate the prehearing position; however, if the prehearing
11 position is longer than 50 words it must be reduced to no more than
12 50 words. The 50-word limit may be modified for good cause shown.

13 In the event that a new issue is identified by a party in a
14 post-hearing statement, that new issue shall be clearly identified
15 as such, and a statement of position thereon shall be included.
16 Any issue or position not included in a post-hearing statement
17 shall be considered waived.

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

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1 proceeding.

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

9 (a) Recommended or Proposed Order. The hearing officer
10 shall, within 30 days after the hearing or receipt of the hearing
11 transcript, whichever is later, file a recommended or proposed
12 order which shall include a caption, time and place of hearing,
13 appearances entered at the hearing, statement of the issues,
14 findings of fact and conclusions of law separately stated, and
15 recommendation for final Commission action.

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

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

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

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

3

4 25-22.057 Recommended Order, Exceptions, Replies, Staff
5 Recommendations.

6 Specific Authority: 120.53, F.S.

7 Law Implemented: 120.53, F.S.

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

9

10 25-22.058 Oral Argument.

11 (1) The Commission may grant oral argument upon request of
12 any party to a section 120.57, F.S. formal hearing. A request for
13 oral argument shall be contained on a separate document and must
14 accompany the pleading upon which argument is requested. The
15 request shall state with particularity why oral argument would aid
16 the Commission in comprehending and evaluating the issues before it
17 ~~raised by exceptions or responses~~. Failure to file a timely
18 request for oral argument shall constitute waiver thereof.

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

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

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1 Specific Authority: 120.53, F.S.
2 Law Implemented: 120.53, 120.58(1)(e), F.S.
3 History: New 12/21/81, formerly 25-22.58, Amended _____.

4

5 25-22.0021 Agenda Conference Participation.

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

12 (2) When a recommendation is presented and considered in a
13 proceeding where a hearing has been held, no person other than
14 staff who did not testify at the hearing and the Commissioners may
15 participate at the agenda conference. Oral or written presentation
16 by any other person, whether by way of objection, comment, or
17 otherwise, is not permitted, unless the Commission is considering
18 new matters related to but not addressed at the hearing.

19 (3) Nothing in this rule shall preclude the Commission from
20 making decisions during the course of or at the conclusion of a
21 hearing.

22 Specific Authority: 120.53, F.S.

23 Law Implemented: 120.53, F.S.

24 History: New _____.

25

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