

MEMORANDUM

June 21, 1996

ORIGINAL  
FILE COPY

TO : DIVISION OF RECORDS & REPORTING

FROM : CHRISTIANA T. MOORE, ASSOCIATE GENERAL COUNSEL *CTM*

RE : DOCKET NO. 960515-OT - PROPOSED REPEAL OF RULES 25-22.009, 25-22.010, 25-22.011, 25-22.040, 25-22.102, AND 25-22.106, F.A.C., AND AMENDMENT OF RULES 25-22.005(2)(e), 25-22.042(2), AND 25-22.060(3)(b), F.A.C., TO DELETE UNNECESSARY OR OBSOLETE PROVISIONS

Attached is an original and three copies of the certification of the proposed repeal of Rules 25-22.009, 25-22.010, 25-22.011, 25-22.040, 25-22.102, and 25-22.106, F.A.C., and amendment of Rules 25-22.005(2)(e), 25-22.042(2), and 25-22.060(3)(b), F.A.C. The Department of State must receive the original and two copies of the certification no later than 5:00 p.m., June 21, 1996. The Certification includes:

- (1) An original and two certified copies of Rules 25-22.009, 25-22.010, 25-22.011, 25-22.040, 25-22.102, 25-22.106, 25-22.005(2)(e), 25-22.042(2), and 25-22.060(3)(b), F.A.C.
- (2) A summary of the rules;
- (3) A summary of the hearing on the rules; and
- (4) A written statement of the facts and circumstances justifying the rules.

ACK            CRT2522.MRD  
Attachments

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FPSC-RECORDS/REPORTING

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TALLAHASSEE, FLORIDA

CERTIFICATION OF  
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES  
FILED WITH THE  
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

(a) And are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(e) Are filed within 21 days after the date the transcript was received by this agency.

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Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

| <u>Rule No.</u> | <u>Rulemaking Authority</u> | <u>Specific Law Being Implemented, Interpreted or Made Specific</u> |
|-----------------|-----------------------------|---|
| 25-22.005       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.009       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.010       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.011       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.0376      | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.040       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.042       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.060       | 120.53, F.S.                | 120.53, F.S.  |
| 25-22.102       | 120.533, F.S.               | 120.53(2)(a)(1)-(5),<br>350.06(7), F.S.                             |
| 25-22.106       | 120.53(2)(f), F.S.          | 119.041(2), F.S.  |

Under the provision of paragraph 120.54(13)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: \_\_\_\_\_  
 (month) (day) (year)

Blanca S. Bayó  
 BLANCA S. BAYÓ, Director  
 Division of Records & Reporting

\_\_\_\_\_  
 Number of Pages Certified

(S E A L)

1           25-22.005   Noticing Address Files.

2           The Division of Records and Reporting ("the Division") shall  
3 maintain a main noticing address file for purposes of distributing  
4 Commission agenda, notices of workshops and rulemaking and, where  
5 appropriate, other notices and orders. The Division shall also  
6 maintain an individual noticing address file for each docket for  
7 purposes of distributing Commission notices and orders issued in  
8 that docket.

9           (1) Main File. The main noticing address file shall contain  
10 a single name, address and telephone number for each utility  
11 subject to Commission jurisdiction, the Public Counsel, the Clerk  
12 of each Board of County Commissioners and the chief executive  
13 officer of each municipality. This file shall also contain a name,  
14 address and telephone number for each person requesting in writing  
15 to be included in the file on one or more of the following lists:

16           (a) Persons requesting the Commission agenda (subject to  
17 payment of subscription fee);

18           (b) Persons requesting the weekly report of new dockets  
19 (subject to payment of subscription fee);

20           (c) Persons requesting the weekly summary of Commission  
21 orders (subject to payment of subscription fee);

22           (d) Persons requesting notices of Commission workshops;

23           (e) Persons requesting notices of proposed rulemaking; and

24           (f) Persons requesting copies of Commission notices of  
25 hearings and orders initiating industry-wide nonrule proceedings.

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1 Any person seeking to be on this list shall state with specificity  
2 how his substantial interests may be affected by Commission action  
3 in the categories of his interest. (For instance, a customer's  
4 rates or service may be affected, or a regulated utility's rates or  
5 service may be affected). Absent such a showing, a person will not  
6 be included on this list.

7 (2) The three lists described in paragraphs (1)(d-f) are  
8 further subdivided into the following categories:

- 9 (a) Electric
- 10 (b) Gas
- 11 (c) Telecommunications
- 12 (d) Water and Wastewater
- 13 (e) Railroad
- 14 ~~(f)~~ Practice and Procedure

15 (3) Any person seeking to be included in the main noticing  
16 address file shall file a written request with the Division. The  
17 request shall state the name, address and telephone number the  
18 person seeks to have placed in the file, as well as the list(s) and  
19 category(ies) in which the person desires to be included. Persons  
20 entitled to practice before the Commission under Rule 25-22.008 may  
21 request inclusion in the file as representatives of their  
22 client(s). A request for inclusion in the rulemaking list does not  
23 constitute a request for a notice of change to a proposed rule  
24 under Section 120.54(11)(a).

25 (4) Purge of Main File. During the first quarter of each

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1 | calendar year the Division shall transmit to all persons listed in  
2 | the main file under the lists described in (1)(a-f) a written  
3 | request to confirm the name, address and telephone number on file  
4 | and the types of notices to be received. Any person who fails to  
5 | confirm the foregoing in writing within 30 days after the date of  
6 | the Division's request shall be stricken from the main noticing  
7 | address file.

8 |       (5) Addresses of Regulated Companies. Each regulated  
9 | company, as defined in Section 350.113, F.S., shall, in writing and  
10 | within 30 days of the effective date of this rule, provide the  
11 | Division with a single official mailing address to be placed in the  
12 | main noticing address file. Except in a docket where a company  
13 | representative has previously provided an alternative address, the  
14 | Commission is obliged only to transmit its orders, notices and  
15 | other documents (such as regulatory assessment fee notices and  
16 | annual report forms) to the official address. The Commission may,  
17 | solely as a courtesy, transmit documents to additional addresses.  
18 | Initial pleadings served by parties shall be transmitted to the  
19 | official address on file. When a regulated company has filed a  
20 | document in a docket and such document shows the name and address  
21 | of counsel or other official representative and that name and  
22 | address is different from the official mailing address it shall be  
23 | recorded in the docket mailing address file in lieu of the official  
24 | address. All documents thereafter served on the regulated company  
25 | shall be transmitted to that address.

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1 (6) Docket File. Individual docket mailing address files  
2 shall be maintained as part of each docket file and contain the  
3 name, address and phone number of each party of record, or its  
4 representative, and each person requesting copies of notices and  
5 orders issued in that docket and qualifying under this subsection.

6 (a) Any person, other than a party of record, seeking to be  
7 on an individual docket noticing address file shall file a written  
8 request with the Division. Such request shall state the name,  
9 address and telephone number the person seeks to have placed in the  
10 file and, except for rulemaking dockets, shall state with  
11 specificity how his substantial interests may be affected by  
12 Commission action in that docket. (For instance, the docket may  
13 affect a customer's rates or service, or may have a potential  
14 impact on other utilities in similar circumstances). Absent such  
15 a showing, a person will not be included in the docket noticing  
16 address file. Persons entitled to practice before the Commission  
17 under Rule 25-22.008 may request inclusion in the file as  
18 representatives of their client(s).

19 (7) Change of Name, Address, Telephone. Each person included  
20 in the main noticing address file or in any docket noticing address  
21 file shall, in writing, notify the Division (and any parties of  
22 record in a docketed matter) of any change in name, address or  
23 telephone number. Any notice, order or other document served on  
24 the name and address on file prior to the date of receipt of such  
25 written notification shall be considered properly served.

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1 (8) The Division Director may grant requests to be placed in  
2 the main file under (1)(f) or requests to be placed in a docket  
3 noticing address file. The Chairman will rule on all such requests  
4 that the Division Director recommends be denied.

5 **Specific Authority:** 120.53, F.S.

6 **Law Implemented:** 120.53, F.S.

7 **History:** New 8/20/84, formerly 25-22.05, Amended 7/11/96.

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1 Rule 25-22.009 Size of Paper Filed With Commission.

2 Specific Authority: 120.53, F.S.

3 Law Implemented: 120.53, F.S.

4 History: New 2/12/90, Repealed 7/11/96.

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1           25-22.010 Commencement of Rulemaking Proceedings.

2 Specific Authority: 120.53, F.S.

3 Law Implemented: 120.53, F.S.

4 History: New 12/21/81, formerly 25-22.10, Repealed 7/11/96.

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1 25-22.011 Notice of Rulemaking; Proceeding and the Proposed  
2 Rules.

3 Specific Authority: 120.53, F.S.

4 Law Implemented: 120.53, F.S.

5 History: New 12/21/81, formerly 25-22.11, Repealed 7/11/96.

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1           25-22.0376   Reconsideration of Non-Final Prehearing Officer  
2 Orders.

3           (1) Any party who is adversely affected by an non-final order  
4 ~~of a prehearing officer~~ may seek reconsideration by the Commission  
5 panel assigned to the proceeding by filing a motion in support  
6 thereof within 10 days after issuance of the order. ~~For the~~  
7 ~~purposes of this rule, orders of the prehearing officer shall not~~  
8 ~~be considered non final orders subject to Rule 25-22.060(3)(b),~~  
9 ~~Florida Administrative Code.~~ The Commission shall not entertain a  
10 motion for reconsideration of an order disposing of a motion for  
11 reconsideration.

12           (2) A party may file a response to a motion for  
13 reconsideration within 7 days after service of the motion for  
14 reconsideration.

15           (3) Failure to timely file a motion for reconsideration or a  
16 response shall constitute a waiver of the right to do so.

17           (4) Any motion or response filed pursuant to this rule shall  
18 contain a concise statement of the grounds therefor and the  
19 signature of counsel or other person filing the motion.

20           (5) Oral argument on any motion filed pursuant to this rule  
21 may be granted at the discretion of the Commission. A party who  
22 fails to file a written response to a point on reconsideration  
23 shall be precluded from responding to that point during oral  
24 argument.

25 **Specific Authority: 120.53, F.S.**

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1 | Law Implemented: 120.53, F.S.

2 | History: New 9/3/95, Amended 7/11/95.

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1           25-22.040 Notice of Hearings.  
2 Specific Authority: 120.53, F.S.  
3 Law Implemented: 120.53, F.S.  
4 History: New 12/21/81, formerly 25-22.40, Repealed 7/11/96.  
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1        25-22.042 Dismissal.

2        ~~(1)~~ The failure or refusal of a party to comply with any  
3 lawful order may be cause for dismissing the party from the  
4 proceeding.

5        ~~(2) The presiding officer shall serve upon all parties~~  
6 ~~written notice of any recommended order entered pursuant to~~  
7 ~~Subsection (1). Not later than fourteen (14) days after service of~~  
8 ~~notice, the party against whom such an order is entered may file a~~  
9 ~~motion requesting that the recommendation for or dismissal be set~~  
10 ~~aside and stating the ground relied upon.~~ If a dismissal is  
11 entered against the party who has the burden of proof, the  
12 proceeding will be dismissed. If a dismissal is entered against a  
13 party who does not have the burden of proof, the party shall not be  
14 allowed to participate in the proceeding as a party.

15 **Specific Authority:** 120.53, F.S.

16 **Law Implemented:** 120.53, F.S.

17 **History:** New 12/21/81, formerly 25-22.42, Amended 7/11/96.

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1        25-22.060 Motion for Reconsideration

2        (1) Scope and general provisions.

3        (a) Any party to a proceeding who is adversely affected by an  
4 order of the Commission may file a motion for reconsideration of  
5 that order. The Commission will not entertain any motion for  
6 reconsideration of any order which disposes of a motion for  
7 reconsideration. The Commission will not entertain a motion for  
8 reconsideration of a Notice of Proposed Agency Action issued  
9 pursuant to Rule 25-22.029, regardless of the form of the Notice  
10 and regardless of whether or not the proposed action has become  
11 effective under Rule 25-22.029(6).

12        (b) A party may file a response to a motion for  
13 reconsideration and may file a cross motion for reconsideration.  
14 A party may file a response to a cross motion for reconsideration.

15        (c) A final order shall not be deemed rendered for the  
16 purpose of judicial review until the Commission disposes of any  
17 motion and cross motion for reconsideration of that order, but this  
18 provision does not serve automatically to stay the effectiveness of  
19 any such final order. The time period for filing a motion for  
20 reconsideration is not tolled by the filing of any other motion for  
21 reconsideration.

22        (d) Failure to file a timely motion for reconsideration,  
23 cross motion for reconsideration, or response, shall constitute  
24 waiver of the right to do so.

25        (e) A motion for reconsideration of an order adopting,

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1 | repealing or amending a rule shall be treated by the Commission as  
2 | a petition to adopt, repeal or amend a rule under §120.54(5), F.S.,  
3 | and Rule 25-22.012.

4 | (f) Oral argument on any pleading filed under this rule shall  
5 | be granted solely at the discretion of the Commission. A party who  
6 | fails to file a written response to a point on reconsideration is  
7 | precluded from responding to that point during the oral argument.

8 | (2) Contents. Any motion or response filed pursuant to this  
9 | rule shall contain a concise statement of the grounds for  
10 | reconsideration, and the signature of counsel, if any.

11 | (3) Time.

12 | ~~(a)~~ A motion for reconsideration of a final order shall be  
13 | filed within ~~fifteen~~ (15) days after issuance of the order.

14 | ~~(b) A motion for reconsideration of a nonfinal order may be~~  
15 | ~~filed at any time prior to the issuance of a final order. However,~~  
16 | ~~except for good cause shown, unless the motion is filed within~~  
17 | ~~fifteen (15) days after the issuance of the nonfinal order, the~~  
18 | ~~Commission may rule upon that motion in its final order.~~

19 | ~~(c)~~ A response to a motion for reconsideration or a cross  
20 | motion for reconsideration shall be served within ~~seven~~ (7) days of  
21 | service of the motion for reconsideration to which the response or  
22 | cross motion is directed. A response to a cross motion for  
23 | reconsideration shall be served within ~~seven~~ (7) days of service of  
24 | the cross motion.

25 | **Specific Authority: 120.53, F.S.**

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1 Law Implemented: 120.53, F.S.  
2 History: New 12/21/81, Amended 10/4/84, formerly 25-22.60, Amended  
3 7/11/96.  
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1 25-22.102 Public Inspection and Duplication

2 Specific Authority: 120.533, F.S.

3 Law Implemented: 120.53(2)(a)(1) - (5), 350.06(7), F.S.

4 History: New 9/24/92, Amended 12/27/94, Repealed 7/11/96.

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1           25-22.106 Maintenance of Records.

2 Specific Authority: 120.53(2)(f) F.S.

3 Law Implemented: 119.041(2) F.S.

4 History: New 9/24/92, Amended 12/27/94, Repealed 7/11/96.

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Commission's Director of Records and Reporting for a Class B certification, completing the application, satisfying the Commission via the written application that he or she possesses legal skills and a knowledge of the law and utility regulatory matters which is greater than that possessed by the average person, and making an appearance before the Commission as a Class B practitioner.

Specifically, the applicant for a Class B certification must detail:

1. Name, mailing address and street address, business telephone number, employer, and occupation;

2. Knowledge of Commission jurisdiction and the relief obtainable from the Commission;

3. Education and experience relative to Chapter 120, F. S., Rules 9.020, 9.110, 9.310 and 9.800 of the Florida Rules of Appellate Procedure, the Florida Rules of Civil Procedure as they relate to discovery in administrative proceedings, rules of evidence including the concept of hearsay and its use in administrative proceedings, relevant chapters of Title 25 of the Florida Administrative Code, and relevant chapters of Florida Statutes governing the Commission;

4. Knowledge of the Standards of Conduct for Administrative Proceedings as contained in Rule 28-5.1056, Florida Administrative Code; and

5. Educational background, training and work experience relative to utility regulation.

(b) The applicant for a Class B certification may specify that he or she wishes to limit practice before the Commission. Under such a circumstance, the Commission will evaluate the applicant's qualifications with regard to the limitation on practice. Where the application is granted under this paragraph, the Commission will issue the Class B certification with appropriate notations as to the limitations imposed.

(c) The Office of the General Counsel will determine the qualifications of any applicant for a Class B certification and may grant the application. Where, however, the Office of General Counsel determines that the application should be denied, its recommendation shall come to the Commission's attention at agenda conference and the Commission shall dispose of the application.

(d) Each Class B practitioner who is not employed by either the Commission or the Office of the Public Counsel and who desires to participate in a proceeding shall, prior to participating on behalf of a client for the first time before the Commission, file a notice of representation with the Director of Records and Reporting.

1. The notice shall be accompanied by a signed, written statement of the person desiring non-attorney representation stating the person's acceptance and approval of representation by the Class B practitioner in Commission proceedings. The statement shall include a description of the nature and extent of the services the Class B practitioner can and will provide.

2. Class B practitioners must file an updated notice and statement with the Director of Records

and Reporting no later than June 30 of each even-numbered year.

(e) The Commission may revoke or suspend a Class B certification after hearing for good cause, which shall include, but not be limited to, a violation of the Standards of Conduct contained in Rule 28-5.1056, Florida Administrative Code.

(f) Each Class B practitioner shall promptly notify the Director of Records and Reporting of any changes to the practitioner's mailing address, street address or business telephone number.

(g) If a person holding Class B certification does not practice before the Commission or is not employed by the Commission or the Office of the Public Counsel for a period of two consecutive years, the certification shall terminate without further action of the Commission. Not later than June 30 of each even-numbered year, each Class B practitioner who wishes to continue his or her certification shall furnish the Director of Records and Reporting with information sufficient to establish that he or she has appeared before the Commission on behalf of a client during the previous two calendar years.

(4) Self representation, which includes individuals appearing on their own behalf and representation of a corporation or other entity within the meaning of "person" as defined in section 1.01, Florida Statutes, by an officer of the corporation or entity, is not precluded by this rule.

(5) Rule 28-5.1056, Florida Administrative Code, entitled "Standards of Conduct for Administrative Proceedings," is incorporated by reference into this rule and applies to practitioners in any Commission proceeding other than practitioners subject to the disciplinary procedures of The Florida Bar.

(6) A practitioner representing a party in an evidentiary proceeding shall not appear as a witness in any hearing in that proceeding except where the Commission determines:

(a) the testimony relates to an uncontested issue;

(b) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(c) the testimony relates to the nature and value of the practitioner's services rendered in the case; or

(d) disqualification of the practitioner would work substantial hardship on the person desiring non-attorney representation.

*Specific Authority 120.53 FS Law Implemented 120.53 FS. History—New 9-24-81. Formerly 25-22.08. Amended 3-21-94.*

**25-22.009 Size of Paper Filed with Commission.**  
(1) Beginning on January 1, 1990, all petitions, pleadings, and motions filed with the Commission and all orders, opinions, and other official documents issued by the Commission shall be on paper measuring 8 1/2 by 11 inches in size. However, the Commission shall use legal-size paper when necessary to comply with the filing

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requirements of any court or other administrative body.

(2) Correspondence and other documents filed with or issued by the Commission should also be on 8 1/2 by 11-inch paper where possible. Maps, data spreadsheets, and similar documents may be on larger paper.

*Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 2-11-90.*

## PART II RULEMAKING PROCEEDINGS

**25-22.010 Commencement of Rulemaking Proceedings.** Proceedings held for the adoption, amendment or repeal of a Commission rule shall be conducted according to the provisions of Chapter 120, F.S., and these rules. Rulemaking proceedings shall commence upon the Commission's own initiative, or on the petition of a person regulated by the Commission, or on the petition of a person having a substantial interest in a Commission rule. A proceeding shall be deemed to have been initiated upon publication of notice by the Commission in the Florida Administrative Weekly. *Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.10.*

**25-22.011 Notice of Rulemaking Proceeding and the Proposed Rules.** Except as provided in the Commission's rules on the adoption of emergency rules, notice of its intention to adopt, amend, or repeal a rule shall be given by the Commission as provided in Section 120.54(1), F.S. *Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.11.*

**25-22.012 Petitions to Initiate Rulemaking Proceedings.**

(1) All petitions for the initiation of rulemaking proceedings pursuant to Section 120.54(5), F.S., must contain the name and address of the petitioner, specific reasons for the proposed adoption, amendment or repeal, the specific action requested, the date submitted, and the proposed rule or amendment.

(2) Any interested person may file a statement in support of or in opposition to any petition for the initiation of rulemaking proceedings. The interested person shall furnish the petitioner with a copy upon filing of the statement.

(3) Any interested person may submit a reply to the statement in subsection (2) prior to the Commission action. The interested person shall furnish the petitioner and the person(s) filing under subsection (2) with a copy upon filing of the reply. *Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.12.*

**25-22.013 Commission Action on Petitions to Initiate Rulemaking Proceedings.**

(1) Upon receipt of any petition for the initiation of rulemaking pursuant to Section 120.54(5), F.S., the Division of Records and Reporting shall assign the petition an identification number. The Division of Records and Reporting shall publish notice of receipt of the petition in the next available issue of the Florida Administrative

Weekly, and shall send a copy of the petition to the Administrative Procedures Committee.

(2)a. If the Commission determines that the petitioner is not regulated by the Commission, does not have a substantial interest in the Commission rule, or does not have the interest as stated in the petition, the Commission may forthwith dismiss the petition, and shall notify the petitioner in writing, stating with particularity, the reasons for the dismissal.

b. If the Commission determines that rulemaking should not be initiated, it shall deny the petition and issue to the petitioner a written statement setting forth, with particularity, the reasons for such denial.

c. If the Commission determines that the petition should be granted, it shall initiate rulemaking in accordance with Chapter 120, F.S.

(3) Notice of the Commission's disposition of the petition shall be published in the next available issue of the Florida Administrative Weekly. *Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.13.*

**25-22.014 Rulemaking Materials.**

(1) After the publication of notice initiating rulemaking, the Commission shall make available for public inspection and shall provide upon request, copies of the following materials:

(a) The text of the proposed rule, or any amendment, or repeal of any existing rule;

(b) A detailed written statement justifying the proposed rule;

(c) A copy of the economic impact statement required by § 120.54, F.S.;

(d) A statement comparing the proposed rule with any applicable federal rules, regulations or standards, or a statement that no comparable federal standards exists;

(e) The published notice.

(2) Thereafter, the Commission shall make available for public inspection all written material submitted into the rulemaking record.

*Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.14.*

**25-22.015 Rulemaking Proceeding — No Hearing.** When no hearing is requested in writing, and when the Commission chooses not to initiate a hearing on its own, the Commission may direct that the proposed rule be filed with the Department of State no less than twenty-one (21) days following notice.

*Specific Authority: 120.53 FS, Law Implemented 120.53 FS, History—New 12-21-81, Formerly 25-22.15.*

**25-22.016 Rulemaking Proceeding — Hearing.**

(1) If the proposed rule does not relate exclusively to organization, practice, or procedure, the Commission shall provide, upon written request, a public hearing for presentation of evidence, argument, and oral statements, within reasonable conditions and limitations imposed by the Commission to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceeding. Written statements may be submitted to the Commission, if it conducts the public

include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

*Specific Authority* 120.53 FS. Law Implemented 120.53 FS. History—Formerly 25-2.34. Amended 12-21-81. Formerly 25-22.39.

#### ANNOTATIONS

##### Intervenor

*Application for certificate initiates proceedings such that third party may petition to intervene in action. Intervenor need not request specific relief in petition, but must make allegations sufficient to show that petitioner has a substantial interest in outcome of proceedings. Condominium Association passed substantial interest test in petition for centralized sewer certificate, where Association was under consent order from DER to hook up to any central sewage treatment plant constructed on island. In re: Application of South Hutchinson Service Company, 87 FPSC 10,298 (1987).*

##### Substantial interest

*Potential adverse legal precedent does not constitute "substantial interest" needed for intervention. Furthermore, economic damage alone does not constitute "substantial interest." In re: Monsanto Company, 86 FPSC 9,211 (1986).*

**25-22.040** Notice of Hearing. The presiding officer shall set the time and place for all hearings and shall issue notice thereof on all parties of record. No less than fourteen (14) days' notice shall be given for the final hearing on the merits of the petition complaint, application or other initial pleading unless otherwise agreed by the parties. The notice of hearing shall contain the statements set out in Section 120.57(1)(b)2., F. S. No less than seven days' notice shall be given for all other hearings.

*Specific Authority* 120.53 FS. Law Implemented 120.53 FS. History—New 12-21-81. Formerly 25-22.40.

##### 25-22.0405 Notices of Public Hearings.

(1) The provisions of this rule shall apply to all public hearings conducted by the Commission, except rulemaking hearings held pursuant to Rules 25-22.010 through 25-22.018, F. A. C.

(2) Notice of such public hearings shall be given by the Commission to the clerk of the board of county commissioners of each county affected, the chief executive officer of each municipality to the area affected, all parties of record and all persons who have requested notice of such proceedings.

(3) A summary of the subject matter and notice of hearing shall be published by the Commission in the Florida Administrative Weekly. The summary shall be drawn and notice given as required by the provisions of the statute under which relief is sought, if applicable, but shall not be published less than 14 days prior to the hearing.

(4) The Commission may require any public utility in such proceedings to publish additional notices in newspapers of general circulation in the area affected and to give notice to its customers by

mail, as may be deemed reasonably necessary by the Commission to afford adequate notice to the customers of the utility.

(5) When the Commission determines that the health, safety, or welfare of the public requires an emergency hearing, notice may be accomplished by giving notice to those parties listed in subsection (2) not less than 48 hours prior to the time scheduled for the hearing.

*Specific Authority* 350.127(2), 366.03, 367.1211(f) FS. Law Implemented 364.03, 364.035(1), 364.07, 364.14, 364.15, 364.16, 364.27, 366.04, 366.05, 367.081, 367.111 FS. History—New 1-27-72. Formerly 25-2.981. Amended 12-21-81, 9-27-83. Formerly 25-22.405.

##### 25-22.0406 Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.

(1) The provisions of this rule shall be applicable to all requests for general rate increases by electric, gas and telephone companies subject to the Commission's jurisdiction.

(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service area affected.

(3)(a) Within 15 days after it has been notified by the Commission that the Minimum Filing Requirements (MFRs) have been met, the utility shall place a copy of the MFRs at its official headquarters and at its business office in each municipality in which service hearings were held in the last general rate case of the utility. Within 15 days after the time schedule has been mailed to the utility, copies of the MFRs shall be placed in the utility business office in each additional city in which service hearings are to be held. Upon customer request a copy of the MFRs shall be placed in a utility business office not located in a city where a service hearing is to be held. The copies of the MFRs shall be available for public inspection during the utility's regular business hours.

(b) In addition to the locations listed above, the Commission may require that copies of the MFRs be placed at other specified locations.

(4)(a) Within 15 days after the time schedule for the case has been mailed to the utility, the utility shall prepare and distribute a synopsis of the rate request. The synopsis shall be approved by the Commission or its staff prior to distribution and shall include:

1. A summary of the section of the MFRs showing a comparison of the present and proposed rates for major services;

2. A statement of the anticipated major issues involved in the rate case;

3. A copy of the executive summary filed with the MFRs;

4. A description of the ratemaking process and the time schedule established for the rate case; and

5. The locations at which complete MFRs are available.

(b) Copies of the synopsis shall be distributed to the same locations as required for the MFRs, to the

county in which a finalist has proposed to build an electrical power plant. The notice shall include the name and address of each finalist, the name and address of the utility, and a general description of each proposed power plant, including its location, size, fuel type, and associated facilities.

(7) Each electric utility shall file a copy of its RFP with the Commission.

(8) The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.

(9) The Commission may waive this rule or any part thereof upon a showing that the waiver would likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

*Specific Authority 120.53(1)(c), 350.127(2), 366.05(1), 366.051 FS. Law Implemented 401.519, 366.051 FS. History—New 1-10-94.*

#### PART VI INDEXING OF FINAL ORDERS

**25-22.100 Authority.** These rules regarding the indexing, management, and availability of Commission orders are issued pursuant to Section 120.533, Florida Statutes, and Chapter 1S-6, Florida Administrative Code, and have been approved by the Department of State pursuant to Section 120.53(2)(c), Florida Statutes.

*Specific Authority 120.533 FS. Law Implemented 120.53(2) — (4) FS. History—New 9-24-92, Amended 12-27-94.*

**25-22.101 Purpose.** The purpose of this part is to provide public access to and availability of all Commission orders.

*Specific Authority 120.533 FS. Law Implemented 120.53(2) — (4) FS. History—New 9-24-92, Amended 12-27-94.*

**25-22.102 Public Inspection and Duplication.** Commission orders shall be made available from the agency for public inspection and copying.

*Specific Authority 120.533 FS. Law Implemented 120.53(2)(a)3., 350.06(7) FS. History—New 9-24-92, Amended 12-27-94.*

**25-22.103 Orders Indexed.** All Commission orders shall be indexed.

*Specific Authority 120.533 FS. Law Implemented 120.53(2)(a)3., 12(d) FS. History—New 9-24-92, Amended 12-27-94.*

**25-22.1035 Designation of Official Reporter.** The official reporter of the Florida Public Service Commission shall be the Florida Public Service Commission Reporter (FPSCR), published by FALR, Inc. The official reporter shall index orders of the Commission as required by Rule 25-22.103, Florida Administrative Code, and shall publish the index and all orders. The Florida Public Service Commission Reporter is found at some county law libraries and is available by subscription at the offices of FALR, Inc., P.O. Box 385, Gainesville, FL 32602. A copy of the Florida Public Service Commission Reporter is also available for public

inspection at the Division of Records and Reporting.

*Specific Authority 120.533 FS. Law Implemented 120.53(2)(a)3., 120.53(2)(d), 120.53(4)(a) FS. History—New 12-27-94.*

#### 25-22.104 Numbering of Orders.

(1) All orders shall be sequentially numbered as rendered using a two-part number separated by a dash with the first part before the dash indicating the year and the second part indicating the numerical sequence of the order issued for that year beginning with the number 0001 each new calendar year. Amendatory orders will be assigned the same order number as the order being amended, with the addition of the letter "A" immediately following the order number. The assigned agency prefix which is "PSC" shall precede the two-part number.

(2) The applicable order category shall be added as a suffix succeeding the agency designation prefix and the two-part number. The order category suffix for proposed agency action orders will be either "FOF" or "FOI", depending on the type of proceeding in which the order was issued. The order categories are as follows:

DS — Declaratory Statement  
FOI — Final Order Informal Proceedings  
FOF — Final Order Formal Proceedings  
S — Stipulation  
AS — Agreed Settlement  
CO — Consent Order  
PCO — Procedural Order  
PHO — Prehearing Order  
CFO — Confidentiality Order  
NOR — Notice of Rulemaking

(3) After the order category, the applicable industry designation shall be inserted. The industry designations are as follows:

EI — Electric Utility — Investor Owned  
EM — Electric Utility — Municipality  
EC — Electric Utility — Rural Electric Cooperative  
EU — Electric Utility — All  
EG — Energy Conservation  
EQ — Qualifying Cogeneration Facility  
GU — Gas Industry  
GP — Gas Pipeline  
TA — Telephone Utility — Alternate Access Vendor  
TC — Telephone Utility — Coin (Pay) Telephone Company  
TI — Telephone Utility — Interexchange Company  
TL — Telephone Utility — Local Exchange Company  
TS — Telephone Utility — Shared Tenant Company  
TP — Telephone (Communications) Industry Generally  
WU — Water Utility  
SU — Wastewater (Sewer) Utility  
WS — Water and Wastewater Utility  
PU — Public Utilities Generally — Applies to matters which pertain to two or more industries.



OT — Other Matters — Administrative Matters not related to a particular industry.

*Specific Authority 120.533(1)(f) FS. Law Implemented 120.53(2) — (4) FS. History—New 9-24-92. Amended 12-27-94.*

**25-22.105 System for Indexing Orders.**

(1) The index shall be alphabetically arranged by main subject headings representing major categories of the Commission's regulatory jurisdiction and taken from the Florida Statutes index, when applicable. The applicable titles of citations of the Florida Statutes construed within the final order may determine the main subject headings and subheadings in the index. The index shall show the main subject headings in all capital letters, flush left on the page, followed by relevant subheadings which shall be initial cap. and lower case letters indented. Subheadings and sub-subheadings shall reflect increasingly specific areas or subjects addressed in Commission orders and may be taken from the text of the Florida Statutes construed. Subheadings and sub-subheadings at equal indentations shall also be alphabetized. The FPSCR citation to orders shall be listed sequentially in an indentation immediately below the applicable sub or sub-subheading. Cross references shall be used to direct the user to subject headings which contain the relevant information. Related key words (specific words, terms, and phrases) and common and colloquial words shall be

listed and cross-referenced to the appropriate main subject headings. New subject headings will be added when necessary.

(2) The index shall be cumulative for at least one calendar year and shall be updated and made available to the public at least quarterly.

*Specific Authority 120.533(1)(f) FS. Law Implemented 120.53(2) — (4) FS. History—New 9-24-92. Amended 12-27-94.*

**25-22.106 Maintenance of Records.** Orders shall be maintained by the Commission pursuant to the retention schedule approved by the Department of State, Division of Library and Information Services.

*Specific Authority 120.53(2)(f) FS. Law Implemented 119.041(2) FS. History—New 9-24-92. Amended 12-27-94.*

**25-22.107 Plan for Making Orders and Index Available to the Public.**

(1) The Commission shall make orders accessible and available to the public by sequentially numbering and maintaining all orders.

(2) The Division of Records and Reporting shall assist the public in obtaining information pertaining to Commission orders.

(3) Copies of orders, in numerical order, and a copy of the Commission's official reporter shall be maintained in the offices of the Division of Records and Reporting.

*Specific Authority 120.53(2), (3) FS. Law Implemented 120.53(2) FS. History—New 9-24-92. Amended 12-27-94.*

Rules 25-22.009, 25-22.010,  
25-22.011, 25-22.040, 25-  
22.102, 25-22.106, 25-  
22.005(2)(e), 25-22.042(2),  
and 25-22.060(3)(b)  
Docket No. 960515-OT

#### SUMMARY OF RULE

Rule provisions that are obsolete, or that are unnecessary because they reiterate statutes, are being repealed or amended. In addition, Rule 25-22.0376 is amended to apply to reconsideration of all non-final orders.

#### SUMMARY OF HEARINGS ON THE RULE

No hearing was required because these rules relate solely to the Commission's practice and procedure.

#### FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Commission and other state agencies were asked by the President of the Florida Senate last year to identify rules that are unnecessary, redundant, overlapping, or obsolete. In its response to that request, the Commission identified the procedural rules in this docket and stated that it would proceed with repealing them.

**25-22.005(2)(e), Noticing Address Files.** This rule lists the different categories of industries to receive certain Commission notices and includes, in subsection (2)(e), "railroads." Because the Public Service Commission no longer regulates railroads, this rule is obsolete.

**Rule 25-22.009 Size of Paper Filed With Commission.** Rule 25-22.009(1) requires pleadings filed with the Commission to be on 8 1/2 by 11-inch paper beginning January 1, 1990. The rule was adopted to inform persons of the transition from the use of legal-

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size to letter-size paper. Since use of letter-size paper is now standard practice, the rule is unnecessary. Subsection (2) of the rule is also unnecessary.

**25-22.010 Commencement of Rulemaking Proceedings.** This rule is unnecessary because it merely states that rulemaking will be conducted pursuant to Chapter 120, Florida Statutes, and how rulemaking is commenced in general terms. Statutes and other rules, including Rule 25-22.012, entitled "Petitions to Initiate Rulemaking Proceedings " inform the public more specifically how rulemaking is commenced.

**25-22.011 Notice of Rulemaking; Proceeding and the Proposed Rules.** Rule 25-22.011 requires the Commission to give notice of its intent to adopt, amend, or repeal a rule as provided by statute. It is unnecessary for the Commission to require itself by rule to give a notice that is required by statute.

**25-22.0376(1) Reconsideration of Prehearing Officer Orders.** The second sentence of this rule provides that orders of a prehearing officer are not nonfinal orders that are subject to Rule 25-22.060(3)(b), which authorizes filing of a motion for reconsideration of a nonfinal order at any time. This rule is unnecessary because the Commission is repealing Rule 25-22.060(3)(b). The rule is amended to apply to reconsideration of any nonfinal order, and not just those issued by a prehearing officer, because there are some prehearing orders issued by the Commission or a Commission panel.

**25-22.040 Notice of Hearings.** This rule requires 14 days notice of final hearings; requires the notice to contain the

statements set out in section 120.57(1)(b)2, Florida Statutes; and requires at least seven days notice for all other hearings. The rule is unnecessary because it merely reiterates the provisions of sections 120.57(1)(b)2. and 120.53(1)(d), Florida Statutes, and addresses a subject that is covered in more detail in Rules 25-22.0405 through 25-22.0408.

**25-22.042(2) Recommended Order for Dismissal.** Rule 25-22.042(2) provides the procedure for a hearing officer to enter a recommended order dismissing a party for failure to comply with a Commission order. This part of the rule is obsolete because the Commission no longer employs hearing officers and the procedure does not conform to current practice.

**25-22.060(3)(b) Motion for Reconsideration of Nonfinal Order.** This provision, which is in the rule on Motions for Reconsideration in the post-hearing part of Rule Chapter 25-22, describes the procedure for reconsideration of a nonfinal order prior to issuance of a final order. The rule is obsolete because there are no post-hearing nonfinal orders to which it applies. Reconsideration of pre-hearing nonfinal orders is covered under Rule 25-22.0376.

**25-22.102 Public Inspection and Duplication.** Rule 25-22.102, which requires the Commission to make its orders available for public inspection and copying, restates section 120.53(2)(a)2., Florida Statutes, and is unnecessary.

**25-22.106 Maintenance of Records.** This rule, which requires records to be maintained pursuant to a Department of State approved retention schedule, merely restates the requirements of section 120.532, Florida Statutes, and is unnecessary.

MEMORANDUM

June 24, 1996

RECEIVED  
JUN 24 1996

3:05  
FPSC-RECORDS/REPORTING

TO : DIVISION OF RECORDS & REPORTING

FROM : CHRISTIANA T. MOORE, ASSOCIATE GENERAL COUNSEL *CTM*

RE : DOCKET NO. 960515-OT - PROPOSED REPEAL OF RULES 25-22.009, 25-22.010, 25-22.011, 25-22.040, 25-22.102, AND 25-22.106, F.A.C., AND AMENDMENT OF RULES 25-22.005(2)(e), 25-22.042(2), AND 25-22.060(3)(b), F.A.C., TO DELETE UNNECESSARY OR OBSOLETE PROVISIONS

*PSC-96-0820-FOF-OT*

Attached please find a Notice of Adoption for distribution by your office.

Industry distribution is:

- Electric (EI)
- Electric (EM)
- Electric (EC)
- Gas (GU)
- Gas (GS)
- Gas Pipeline (GP)
- Telephone (TL)
- Telephone (TI)
- Telephone (TC)
- Telephone (TS)
- Telephone (TX)
- Telephone Alternate Access Vendors (TA)
- Water and Wastewater (WAW)
- All Rulemaking List & All Industries

This document has the following priority:

- Must be issued today.
- Must be issued within 48 hours.
- Must be issued within 5 working days.

*23 2 mailed*

This docket will be closed upon issuance of the Notice.

ADPT2522.MRD  
Attachment

cc: File  
Sandy Simmons (w/o attach.)  
W. Terrell