

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK
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TUDOR DEMELLO
CBA JDS

DATE: NOVEMBER 20, 2003
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK ADMINISTRATIVE SERVICES (BAYÓ)
FROM: OFFICE OF THE GENERAL COUNSEL (CIBULA, GERVAZI)
DIVISION OF CONSUMER AFFAIRS (TUDOR, DEMELLO)
DIVISION OF ECONOMIC REGULATION (HEWITT)
RE: DOCKET NO. 030575-PU - PROPOSED AMENDMENT TO RULE 25-22.032, F.A.C., CUSTOMER COMPLAINTS.
AGENDA: 12/02/03 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF
RULE STATUS: ADOPTION MAY BE DEFERRED
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\030575.RCM

CASE BACKGROUND

On August 19, 2003, the Commission voted to propose amendments to Rule 25-22.032, Florida Administrative Code. Rule 25-22.032 pertains to the Commission's customer complaint handling procedure. The purpose of the rule amendments is to streamline the customer complaint handling process to allow Commission staff to better assist consumers in a timely and efficient manner.

The Commission published its Notice of Proposed Rulemaking in the September 5, 2003, Florida Administrative Weekly. Although the Commission did not receive any requests for hearing on the proposed rule amendments, it did receive a letter (Attachment C) from the staff of the Joint Administrative Procedures Committee (JAPC) containing comments on the proposed rule amendments. This

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recommendation is to address whether the Commission should make changes to the proposed Rule 25-22.032 based on JAPC's comments.

Staff originally brought a recommendation to the Commission's November 3, 2003, agenda conference to address JAPC's comments. The Commission deferred vote on the recommendation, however, to allow staff to discuss with JAPC alternative language for subsection (6)(b) of the proposed rule amendment. On November 4, 2003, staff discussed this alternative language with JAPC's staff attorney. This revised recommendation includes the outcome of those discussions.

The Commission has rulemaking authority in this matter pursuant to sections 120.54, 350.127(2), 364.19, 364.0252, 366.05, and 367.121, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt changes to the proposed amendment of Rule 25-22.032, Florida Administrative Code, entitled Customer Complaints, to address JAPC's comments?

RECOMMENDATION: Yes. The Commission should adopt proposed Rule 25-22.032 with changes, as set forth in Attachment A. (CIBULA, GERVASI, TUDOR, DEMELLO, HEWITT)

STAFF ANALYSIS: As stated in the case background, the Commission voted to propose amendments to Rule 25-22.032 on August 19, 2003. On October 2, 2003, JAPC staff provided comments on the proposed rule amendment.

The first comment JAPC made in regard to the proposed rule amendment pertains to subsection (6)(b)(page 13). Specifically, JAPC refers to the phrase "Unless the Commission staff requests that the company not contact the customer directly," and states that the Commission should provide criteria pursuant to which Commission staff will request that a company not make direct contact with a customer. Staff notes that the phrase in subsection (6)(b) to which JAPC takes issue was included to take into account the rare times when customers have specifically stated that they want to deal only with the Commission, not the utility, in resolving complaints.

~~Upon further reflection, staff recommends that the beginning phrase be removed from the rule. Removal of the language will require that the utility company contact the customer in every instance to attempt to resolve the complaint. As the rule permits the company to contact the customer in writing, staff believes that such contact will not be overly intrusive. Staff notes that, however, in instances where the customer specifically requests the Commission's assistance in resolving the complaint, Commission staff would of course continue to work with the customer and company to arrive at a resolution. Staff believes that attempting to provide a list of criteria for when Commission staff will request that a company not make direct contact with the customer would unduly complicate the rule.~~

At the November 3, 2003, agenda conference, the Commission offered revised rule language to address JAPC's comments. The Commission instructed staff to consult with JAPC on the alternative

language. On November 4, 2003, staff counsel contacted JAPC staff counsel on the matter. After some discussion, JAPC counsel and staff counsel arrived at possible alternative language for this section that would address JAPC's and the Commission's concerns. Staff recommends that the Commission revise the first part of subsection (6)(b) to state: "If the customer specifically makes a request to the Commission that he or she not be contacted by the company, Commission staff will request that the company not contact the customer directly. Otherwise, the company shall make direct contact with the customer. . . ."

The second comment JAPC provides pertains to the incorporation of Form PSC/CAF10 in subsection (8)(a) of the amended rule (page 18). Staff recommends that the Commission make this change so that the rule complies with section 120.55(1)(a)4, Florida Statutes.

JAPC also comments on the use of the word "may" in subsection (8)(c) of the amended rule (page 20) and on the very last line of Form PSC/CAF10 (page 29). JAPC staff indicated to staff counsel that the use of "may" in this regard gives the Commission too much discretion. JAPC staff indicated that subsection (8)(c) could be remedied by changing the beginning phrase in (8)(c) from "Staff handling the informal conference may permit any participant to file additional information, documentation, or arguments. . . ." to "Any participant may file additional information, documentation, or arguments. . . ." Staff recommends that the Commission make this change to the rule.

As for the Form PSC/CAF10 language stating that "Failure to provide this information may result in denial of the informal conference request," staff recommends that this language be deleted from the form. Staff believes that changing the language to require that the Commission will deny the informal conference request if the information is not provided could result in the Commission being required to dismiss a complaint even when the customer may have substantially complied with the requirement to fill out the form. Staff points out that an informal conference would not normally be denied on this basis and that staff currently works with customers and companies to ensure that all the information necessary for the informal conference is provided.

Staff further notes that removal of the language will not foreclose the Commission from dismissing a complaint if a customer fails to fill out the form as required. Staff believes that if

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there is an instance where this is problem, the matter can be handled on a case-by-case basis by the Commission, and if a major problem develops in this regard, the rule can be amended at a future date.

JAPC's final comment on Rule 25-22.032 pertains to subsection (11)(a) of the amended rule (page 26). Specifically, JAPC inquired as to the criteria the Commission will consider for a request for additional extension of time to file the Commission required forms and the criteria upon which the time of such extension will be set.

Staff recommends that this portion of subsection (11)(a) be deleted from the rule. As discussed above in regard to JAPC's comments to subsection (6)(b) of the proposed rule, staff believes listing criteria may unduly complicate the rule. Furthermore, staff notes that if companies are in need of an additional extension of time, they may still file motions for extension of time pursuant to Rule 28-106.204, Florida Administrative Code. The Commission can address any such motions on a case-by-case basis.

Based on the foregoing, staff recommends that the Commission adopt proposed Rule 25-22.032, Florida Administrative Code, with changes, as set forth in Attachment A.

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ISSUE 2: Should the rule be filed for adoption with the Secretary of State and the docket closed?

RECOMMENDATION: Yes. A Notice of Change should be published in the Florida Administrative Weekly. After the notice is published, the rule may be filed for adoption with the Secretary of State and the docket may then be closed. (CIBULA, GERVASI)

STAFF ANALYSIS: If the Commission approves the changes to Rule 25-22.032 as set forth in Issue 1, a Notice of Change must be published in the Florida Administrative Weekly. After the notice is published, the rule may be filed for adoption with the Secretary of State and the docket may then be closed.

Attachments:

Rule
Form PSC/CAF10
JAPC staff letter

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3 **Attachment A**

4 25-22.032 Customer Complaints.

5 (1)~~1.~~ Intent; Application and Scope.

6 It is the Commission's intent that disputes between regulated
7 companies and their customers be resolved as quickly, effectively,
8 and inexpensively as possible. This rule establishes informal
9 customer complaint procedures that are designed to address
10 disputes, subject to the Commission's jurisdiction, that occur
11 between regulated companies and individual customers ~~accomplish~~
12 ~~that intent. This rule applies to all companies regulated by the~~
13 ~~Commission.~~ It provides for expedited processes for customer
14 complaints that can be resolved quickly by the customer and the
15 company ~~without extensive Commission participation.~~ It also
16 provides a process for informal Commission staff resolution of
17 complaints that cannot be resolved by the company and the customer.

18 (2) Processing of Complaints

19 (a) Any customer of a Commission regulated company may file
20 a complaint with the Division of Consumer Affairs whenever the
21 customer has an unresolved dispute with the company regarding
22 electric, gas, telephone, water, or wastewater service that is
23 subject to the Commission's jurisdiction. The complaint may be
24 communicated orally or in writing. The complaint shall include the
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3 name of the company against which the complaint is made, the name
4 of the customer of record, and the customer's service address.
5 Upon receipt of a ~~the~~ complaint by telephone, Commission ~~a~~ staff
6 ~~member~~ will determine if the customer has contacted the company.
7 ~~and,~~

8 (b) In the case of complaints made by telephone, if the
9 customer agrees, Commission staff will put the customer in contact
10 with the company for resolution of the complaint using the
11 telephone transfer-connect system described in subsection (4)(3),
12 or by other appropriate means if the company does not subscribe to
13 the telephone transfer-connect system. If the customer does not
14 agree to be put in contact with the company, then, in the case of
15 ~~for those~~ companies subscribing to the telephone transfer-connect
16 system, ~~the staff member~~ will submit the complaint to the company
17 for resolution in accordance with the provisions three-day
18 ~~complaint resolution process~~ set forth in subsection (5)(4).

19 (c) For those companies not subscribing to the telephone
20 transfer-connect or to the E-mail transfer system described in
21 subsection (4), ~~the staff member~~ will submit the complaint to the
22 company for resolution in accordance with the provisions of
23 subsection (6)(5).

24 (3) Protection from Disconnection.
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3 During the complaint process described in sections (5) - (9),
4 a company shall not discontinue service to a customer because of
5 any unpaid disputed amount until the complaint is closed by
6 Commission staff. However, the company may require the customer to
7 pay that part of a bill which is not in dispute. If the company and
8 the customer cannot agree on the amount in dispute, Commission
9 staff will make a reasonable estimate to establish an interim
10 disputed amount until the complaint is closed by Commission staff.
11 If the customer fails to pay the undisputed portion of the bill,
12 the company may discontinue the customer's service pursuant to
13 Commission rules.

14 (4)(3) Telephone Transfer-connect and E-mail Transfer
15 systems.

16 (a) Each company subject to regulation by the Commission may
17 provide a telephone transfer-connect (~~warm transfer~~) telephone
18 number by which the Commission may directly transfer a customer to
19 that company's customer service personnel. When the telephone
20 transfer is complete, any further charges for the call shall be the
21 responsibility of the company and not the Commission or the
22 customer. Each company that subscribes to the telephone transfer-
23 connect system must provide customer service personnel to handle
24 transferred calls during the company's normal business hours and at
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3 a minimum from Monday through Friday, 9:00 A.M. to 4:00 P.M.,
4 Eastern time, excluding all holidays observed by the company.
5 Telephone transfer-connect calls shall not be initially answered by
6 a recorded voice but shall be answered by a person ready to receive
7 information about the complaint.

8 (b) A company may also provide to the Commission an E-mail
9 address by which the customer may directly E-mail a complaint to
10 the company's customer service personnel from the Commission's
11 Internet Web site. The company shall acknowledge the customer's E-
12 mail to the customer by no later than the working day after the
13 date of receipt.

14 ~~(5)(4)~~ Complaints resolved within three (3) days by
15 companies participating in the Telephone Transfer-Connect System or
16 the E-mail Transfer System.

17 Companies that subscribe to the telephone transfer-connect or
18 E-mail transfer system may resolve a customer complaints within
19 three days in the following manner:

20 (a) The Commission staff ~~member~~ handling the complaint will
21 forward a description of the complaint to the company for response
22 and resolution. The three day period will begin the working day
23 after at 5:00 p.m. on the day the information is sent to the
24 company and end at 5:00 p.m. Eastern time on the third working day,
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3 excluding weekends and company holidays. If the company
4 satisfactorily resolves the complaint, the company shall notify
5 Commission ~~the staff member~~ of the resolution in writing by no
6 later than 5:00 p.m. Eastern time on the third day.

7 (b) ~~The Commission will contact the customer to confirm that~~
8 ~~the complaint has been resolved.~~ If the customer does not object
9 to the company's resolution to the complaint ~~confirms that the~~
10 ~~complaint has been resolved,~~ the complaint will not be reported in
11 the total number of complaints shown for that company in the
12 Commission's Consumer Complaint Activity Report. However, the
13 Commission will retain the information for use in enforcement
14 proceedings, or for any other purpose necessary to perform its
15 regulatory obligations.

16 (c) If the customer informs ~~the~~ Commission staff ~~member~~ that
17 the complaint has not been resolved, the Commission staff will
18 notify the company and require a full report as prescribed in
19 subsection (6)(5).

20 (d) For purposes of this subsection a complaint will be
21 considered "resolved" if the company report indicates that the
22 problem has been corrected or the company report indicates that the
23 company and the customer have agreed to a plan to correct the
24 problem. ~~and the customer indicate that the problem has been~~

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3 ~~corrected, or the company and the customer indicate that they have~~
4 ~~agreed to a plan to correct the problem.~~

5 ~~(6)(5)~~ General Commission Staff Complaint Investigation.
6 ~~Complaints not resolved within three days.~~

7 If the customer is not placed in direct contact with the
8 company by means of the telephone transfer connect or E-mail
9 transfer system for resolution of his complaint, does not agree to
10 ~~contact the company directly, if the customer is not satisfied with~~
11 ~~the company's proposed resolution of the complaint, or if the~~
12 ~~company does not subscribe to the transfer connect system, a~~
13 Commission staff ~~member~~ will investigate the complaint and attempt
14 to resolve the dispute in the following manner:

15 (a) Commission ~~The~~ staff ~~member~~ will acknowledge receipt of
16 the complaint to the customer, notify the company of the complaint
17 and request a written response from the company. Notification to
18 the company by Commission staff will be to the primary Commission
19 liaison for each certificate unless the company has provided to the
20 Director of the Division of Consumer Affairs a name, address,
21 telephone and facsimile numbers and E-mail address for a separate
22 point of contact for complaint handling for each certificate. It
23 is preferable for a company to have a single point of contact for
24 complaint handling but a company may identify up to a maximum of
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3 three points of contact for complaint handling per certificate.
4 However, if Commission staff directs a complaint to any one of the
5 identified multiple complaint handling contacts, the company shall
6 process the complaint and not return the complaint to Commission
7 staff for redirecting the complaint to other company points of
8 contact. The company shall provide its response to the complaint
9 within fifteen (15) working days.

10 (b) If the customer specifically makes a request to the
11 Commission that he or she not be contacted by the company,
12 Commission staff will request that the company not contact the
13 customer directly. Unless the Commission staff requests that the
14 company not contact the customer directly, otherwise, the company
15 shall make direct contact with the customer verbally or in writing
16 and provide to the customer its response to the complaint within 15
17 working days after the Commission staff sends the complaint to the
18 company. Responses sent by mail must be postmarked within the 15
19 working day time period. The company shall also provide to the
20 Commission staff, within 15 working days after the Commission staff
21 sends the complaint to the company, a written response to the
22 customer's complaint. However, in the case of those complaints
23 where the company has proposed, under the provisions of subsection
24 (5) of this rule (complaints resolved in 3 days), a resolution with
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3 which the customer is not satisfied, the company shall respond
4 within twelve (12) working days of the case being resent to the
5 company.

6 (c) The company's response to the Commission staff shall
7 explain the company's likely cause of the problem, all actions
8 taken by the company to resolve the customer's complaint, and the
9 company's resolution or proposed resolution of the complaint and
10 shall answer any specific questions raised by Commission staff.
11 The company response shall also include letters or E-mails sent to
12 the customer that contain the company's proposed resolution of the
13 complaint or statement of position in addressing or resolving the
14 complaint. Upon Commission staff request, other documentation
15 related to the complaint shall be provided to Commission staff.
16 ~~actions in the disputed matter and the extent to which those~~
17 ~~actions were consistent with applicable statutes and regulations.~~
18 ~~The response shall also describe all attempts to resolve the~~
19 ~~customer's complaint. If the company's proposed resolution has not~~
20 ~~yet been implemented at the time of the response to the Commission~~
21 ~~staff and customer, the company shall fully set forth in its~~
22 ~~response the steps that will be taken by the company to resolve the~~
23 ~~complaint and the dates by which each step will be taken by the~~
24 ~~company. The company shall promptly notify the customer if it is~~

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3 subsequently unable to take its proposed action as scheduled and
4 shall provide to the customer and, upon request, to Commission
5 staff, a new resolution schedule for the complaint.

6 (d) Commission staff will not normally further respond to the
7 customer. However, if a customer objects to the company response
8 to the complaint, the customer may request further review of the
9 complaint by Commission staff. Commission staff will then propose
10 a resolution of the complaint. The proposed resolution to the
11 customer may be either oral or written. Upon request of either the
12 customer or the company, Commission staff shall provide the
13 proposed resolution in writing.

14 (e)(b) Commission ~~The staff member investigating the~~
15 ~~complaint~~ may request copies of bills, billing statements, field
16 reports, written documents, or other information in the
17 participants' possession that may be necessary to resolve the
18 dispute. The company shall respond in 7 working days to each
19 subsequent request by staff after the initial company response. If
20 a complete response cannot be provided in the 7 working days, the
21 company shall provide an update regarding the response every 15
22 working days until the response is completed. Such update shall
23 identify all actions taken since the last report, an explanation of
24 why a complete response cannot be provided, and a time schedule for
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3 providing a complete response. Commission ~~The~~ staff member may
4 perform, or request the company to perform, any tests, on-site
5 inspections, and reviews of company records necessary to aid in the
6 resolution of the dispute.

7 ~~(6) During the complaint process, a company shall not~~
8 ~~discontinue service to a customer because of any unpaid disputed~~
9 ~~bill. However, the company may require the customer to pay that~~
10 ~~part of a bill which is not in dispute. If the company and the~~
11 ~~customer cannot agree on the amount in dispute, the staff member~~
12 ~~will make a reasonable estimate to establish an interim disputed~~
13 ~~amount until the complaint is resolved. If the customer fails to~~
14 ~~pay the undisputed portion of the bill the company may discontinue~~
15 ~~the customer's service pursuant to Commission rules.~~

16 (7) Process Review Team.

17 (a) If the customer or the company is not in agreement with
18 Commission staff's proposed resolution, the Division of Consumer
19 Affairs will refer the complaint to a Process Review Team
20 consisting of staff from the Office of the General Counsel, the
21 Division of Consumer Affairs, and the appropriate technical
22 division. This Process Review Team will review the complaint file
23 to determine further handling of the complaint.

24 (b) If the Process Review Team finds that the subject matter
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3 of the complaint may be within the Commission's jurisdiction, that
4 the relief sought can possibly be granted by the Commission, that
5 the basis of the complaint is not an objection to current statutes,
6 rules, company tariffs, or orders of the Commission, and that a
7 violation of an applicable statute, rule, company tariff or order
8 of the Commission may have occurred, the Division of Consumer
9 Affairs shall schedule an informal conference. The fact that an
10 informal conference is scheduled shall not preclude any participant
11 or Commission staff from later taking a position that the complaint
12 does not fall into one or more of the above categories.

13 (c) The Process Review Team will recommend that the Office of
14 the General Counsel send a closure letter to the participants if
15 the team finds that:

16 1. The case involves issues or concerns that fall outside
17 the jurisdiction of the Commission,

18 2. The relief sought cannot be provided by the Commission,

19 3. The basis of the complaint is an objection to current
20 statutes, rules, company tariffs, or orders of the Commission, or

21 4. It does not appear that a violation of applicable
22 statutes, rules, company tariffs, or orders of the Commission
23 occurred.

24 (d) Once the closure letter has been sent, the case will be
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3 ~~closed. The staff member will propose a resolution of the complaint~~
4 ~~based on the information provided by all participants to the~~
5 ~~complaint and applicable statutes and regulations. The proposed~~
6 ~~resolution may be either oral or written. Upon request, either~~
7 ~~participant shall be entitled to a written copy of the proposed~~
8 ~~resolution.~~

9 (8) Informal Conference.

10 (a) If the Process Review Team identifies a complaint for an
11 informal conference, Division of Consumer Affairs staff will notify
12 the company and provide to the customer a Dispute Resolution Form
13 PSC/CAF10 (XX/OX), incorporated herein by reference, via certified
14 mail. The customer shall return the completed Dispute Resolution
15 Form PSC/CAF10 to the Division of Consumer Affairs postmarked
16 within 15 working days after the date of its being sent to the
17 customer. If the completed Dispute Resolution Form PSC/CAF10 is
18 not received from the customer with a postmark within the required
19 15 working days, the customer's complaint will be closed at that
20 point. If the Dispute Resolution Form is completed and returned by
21 the customer, Commission staff will provide a copy to the company.

22 (b) A customer's completed Dispute Resolution Form PSC/CAF10
23 shall consist of:

24 1. A statement describing the facts that give rise to the
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3 complaint and, to the extent known, an explanation of why the basis
4 of the complaint may be a violation of the applicable statutes,
5 rules, company tariffs, or orders of the Commission. The
6 statements filed by the customer should not raise any new issues
7 not addressed in the initial complaint.

8 2. A statement of the issues to be resolved.

9 3. Any dollar amount in dispute.

10 4. A statement of the relief requested.

11 ~~If a participant objects to the proposed resolution, the~~
12 ~~participant may request an informal conference on the complaint.~~

13 ~~(a) The request for an informal conference shall be in~~
14 ~~writing and filed with the Division of Consumer Affairs within 30~~
15 ~~days after the proposed resolution is sent to the participants.~~

16 ~~(b) When the request for an informal conference is received,~~
17 ~~the Director of the Division of Consumer Affairs will assign a~~
18 ~~Commission staff member to process the request for an informal~~
19 ~~conference. The staff member will advise the participants to~~
20 ~~complete Form X (PSC/CAF Form X), incorporated by reference herein,~~
21 ~~and return the form to the Commission within fifteen (15) days. A~~
22 ~~copy of Form X may be obtained from the Division of Consumer~~
23 ~~Affairs. At a minimum, the participants shall provide the following~~
24 ~~information on the form:~~

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3 ~~1. A statement describing the facts that give rise to the~~
4 ~~complaint;~~

5 ~~2. A statement of the issues to be resolved; and~~

6 ~~3. A statement of the relief requested.~~

7 ~~The informal conference shall be limited to the complaint and the~~
8 ~~statement of facts and issues identified by the participants in the~~
9 ~~form. The Commission staff will notify the requesting participant~~
10 ~~that the request for an informal conference will be denied if the~~
11 ~~requesting participant's form is not received within the 15 days.~~

12 (c) Staff handling the informal conference may permit a Any
13 participant may to file additional information, documentation, or
14 arguments; however, such additional information, documentation or
15 arguments shall be limited to the issues from the customer's
16 original complaint which are identified in the customer's Dispute
17 Resolution request Form PSC/CAF10.

18 ~~(c) The Director of the Division will review the statements~~
19 ~~and either appoint a staff member to conduct the informal~~
20 ~~conference, or make a recommendation to the Commission for~~
21 ~~dismissal based on a finding that the complaint states no basis~~
22 ~~upon which relief may be granted.~~

23 (d) When an informal If a conference is scheduled granted,
24 the presiding staff member appointed to conduct the conference

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3 shall not have participated in the ~~investigation or~~ proposed
4 resolution of the complaint. The appointed staff shall be
5 comprised of a representative of the Division of Consumer Affairs
6 staff, an attorney from the Office of the General Counsel, and a
7 staff member from appropriate technical staff. The representative
8 from the Division of Consumer Affairs will preside at the informal
9 conference.

10 (e) ~~After consulting with the participants, the~~ After
11 receiving the Dispute Resolution Form from the customer, Commission
12 ~~staff member~~ will send a written notice to the participants setting
13 forth the unresolved issues, the procedures to be followed at the
14 informal conference, and the dates by which written materials are
15 to be filed ~~and the time and place for the conference.~~ A company
16 may at this time respond to information contained on the customer's
17 Dispute Resolution Form. Each participant may be represented at
18 the informal conference by an attorney or other representative or
19 may represent himself. Each participant shall be responsible for
20 his own expenses in the handling of the complaint. The conference
21 may be held no sooner than ten days following a notice, unless all
22 participants agree to an earlier date. ~~The conference may be held~~
23 ~~by telephone conference, video teleconference, or in person, no~~
24 ~~sooner than ten days following the notice.~~

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3 (f) At the conference, the participants shall have the
4 opportunity to present information, orally or in writing, in
5 support of their positions. During the conference, ~~the~~ staff
6 ~~member~~ may encourage the parties to resolve the dispute. The
7 Commission staff will be responsible for tape-recording, but not
8 transcribing, the informal conference. A participant may arrange
9 for transcription at his own expense.

10 ~~(g) The staff member may permit any participant to file~~
11 ~~additional information, documentation, or arguments. The opposing~~
12 ~~participant shall have an opportunity to respond.~~

13 (gh) If a settlement is not reached within 20 working days
14 following the informal conference and if the complaint is not
15 withdrawn, or the last post-conference filing, whichever is later,
16 ~~the~~ staff ~~member~~ shall submit a recommendation to the Commission
17 for consideration at the next available Commission Agenda
18 Conference. Copies of the recommendation shall be sent to the
19 participants by the Office of the General Counsel.

20 ~~(i) If the Director denies the request for an informal~~
21 ~~conference, the participants shall be notified in writing. Within~~
22 ~~20 days of giving notice, the staff shall submit a recommendation~~
23 ~~for consideration at the next available Agenda Conference. Copies~~
24 ~~of the recommendation shall be sent to the participants.~~

25
CODING: Words underlined are additions; words in ~~struck~~
~~through~~ type are deletions from existing law.

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3 (hj) The Commission will address the matter by issuing a
4 notice of proposed agency action or by setting the matter for
5 hearing pursuant to section 120.57, Florida Statutes.

6 ~~(9) At any point during the complaint proceedings, a~~
7 ~~participant has the right to be represented by an attorney or other~~
8 ~~representative. For purposes of this rule a representative may be~~
9 ~~any person the party chooses, unless the Commission sets the matter~~
10 ~~for hearing. If the Commission sets the matter for hearing, the~~
11 ~~participants may be represented by an attorney or a qualified~~
12 ~~representative as prescribed in Rule 28-106.106, Florida~~
13 ~~Administrative Code, or may represent themselves. Each participant~~
14 ~~shall be responsible for his own expenses in the handling of the~~
15 ~~complaint.~~

16 ~~(9)(10)~~ Settlement.

17 At any time the participants may agree to settle their
18 dispute. If a settlement is reached, the participants or their
19 representatives shall file with the Division of Consumer Affairs a
20 written statement to that effect. The statement shall indicate
21 that the settlement is binding on all ~~both~~ participants, and that
22 the participants waive any right to further review or action by the
23 Commission. If the complaint has been docketed, the Division of
24 Consumer Affairs shall submit the settlement to the Commission for
25

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3 approval. If the complaint has not been docketed, the Division of
4 Consumer Affairs will acknowledge the statement of settlement by
5 letter to the participants.

6 ~~(10)(11)~~ Record Retention, Reports, and Auditing.

7 (a) All companies shall retain ~~notes or~~ documentation
8 relating to each Commission complaint for two years after the date
9 ~~beginning when~~ the complaint was closed by the Commission first
10 ~~received.~~

11 (b) All companies that participate in the telephone-transfer
12 connect, E-mail transfer or three day complaint resolution options
13 shall file with the Commission's Division of Consumer Affairs, by
14 the fifth working day of each month beginning 60 days after the
15 ~~effective date of this rule and monthly thereafter,~~ a report in
16 tabular form that summarizes the following information for the
17 preceding calendar month:

18 1. The ~~total~~ number of calls handled via telephone transfer-
19 connect, including the date received, customer's name, a brief
20 description of the complaint, and whether or not the complaint was
21 addressed;

22 2. The number of complaints handled via E-mail transfer,
23 including the date received, the customer's name, the Commission
24 assigned tracking number, a brief description of the complaint, and
25

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3 whether the complaint was addressed.

4 32. The number of complaints handled under the three day
5 complaint resolution procedure, including the date received, the
6 customer's name, the Commission assigned filing number, a brief
7 description of the complaint, and whether the complaint was
8 resolved.

9 (c) Companies shall provide access to the Commission to all
10 such records for audit purposes. ~~The Commission shall have access~~
11 ~~to all such records for audit purposes.~~

12 (11) Extensions of Time.

13 (a) In the event of a storm named by the National Hurricane
14 Center, a tornado recorded by the National Weather Service, a
15 flood, a telephone cable cut, a severe gas or water main break, a
16 major electrical outage, an extreme weather disturbance or fire
17 causing activation of the county emergency operation center, acts
18 of terrorism, or work stoppage, any of which substantially affects
19 its operations and resources, a company may file a notice which
20 will automatically extend by three working days the time for filing
21 responses, forms, reports and other submissions required by this
22 rule. Such notice shall be submitted in writing to the Director of
23 the Division of Consumer Affairs and shall state a reason for the
24 three day extension. The utility will send one written request
25

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3 that will apply to all complaints or reports pending or received
4 during the extension period. When the company does provide
5 complaint responses or reports containing information on complaints
6 affected by an extension of time, the extension must be noted on
7 the complaint or report. For complaints, the three day extension
8 shall apply to any complaints pending at the time such notification
9 is given and to new complaints received during the extension
10 period. A company may also seek an additional extension of time
11 upon application to the Director of the Division of Consumer
12 Affairs. The request for additional extension of time must be
13 accompanied by a statement of good cause and shall specify the date
14 by which the information will be filed. "Good cause" means a
15 demonstration that the company has worked diligently to prepare the
16 information and that the additional time period requested to
17 complete and submit the information is both reasonable and
18 necessary given the company's particular circumstances.

19 (b) If the company participates in the transfer connect
20 system described in subsection (4), and the circumstances described
21 in paragraph (11)(a) affect the operation of the transfer connect
22 system, the company may establish an alternative, temporary means
23 of transmitting customer concerns from the Commission to the
24 company for handling within the transfer connect program.

25
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1 Specific Authority 350.127(2), 364.19, 364.0252, 366.05, 367.121,
2 FS.
3 Law Implemented 364.01, 364.0252, 364.03(1), 364.183, 364.185,
4 364.15, 364.19, 364.337(5), 366.03, 366.04, 366.05, 367.011,
5 367.111, 367.121, 120.54, 120.569, 120.57, 120.573, FS.
6 History--New 01-03-89, Amended 10-28-93, 06-22-00, XX-XX-XX.

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FLORIDA PUBLIC SERVICE COMMISSION DISPUTE RESOLUTION FORM

FPSC Complaint Number: _____

Utility: _____

Consumer to provide the following information:

Consumer's Name: _____

Address/Apartment: _____

City/State/Zip: _____

Daytime Telephone Number: _____ Home: _____

FAX: _____

E-mail address: _____ Authorized

Representative (if applicable): _____

Utility to provide the following information:

Account Holder: _____

Utility Contact Person: _____

Telephone Number: _____ FAX: _____ E-mail

address: _____

Please address the following statements using additional pages if necessary.

Describe the facts that gave rise to the complaint and the reason why it appears to be a violation of applicable statutes, rules, company tariffs, and/or orders of the Commission. **Statements should not raise any new issues not addressed in the initial complaint. Any new issues will be considered as a separate complaint.**

Identify the issue(s) to be resolved.

Identify any specific dollar amount in dispute, if applicable.

Provide a suggested resolution or the relief sought.

NOTICE: This form must be postmarked by _____. Failure to provide this information may result in denial of the informal conference request.

Form PSC/CAF10 (XX/0X) [G:\PSC Forms\redo form.PSCCAF10 pr wpd]

JAMES E. "JIM" KING, JR.
President

JOHNNIE BYRD
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

Senator Michael S. "Mike" Bennett, Chair
Representative Juan-Carlos "J.C." Planas, Vice-Chair
Senator Nancy Argenziano
Senator Gwen Margolis
Representative Bill Galvano
Representative Yolly Roberson

F. SCOTT BOYD
ACTING EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (904) 488-9110

October 2, 2003

RECEIVED
OCT - 3 PM 3:33
PUBLIC SERVICE COM.
OFFICE OF THE
GENERAL COUNSEL

Ms. Samantha Cibula
Public Service Commission
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule 25-22.032

Dear Ms. Cibula:

I have completed a review of rule 25-22.032 and prepared the following comments for your consideration and response.

25-22.032

(6)(b): What are the criteria pursuant to which the Commission staff will request that a company not make direct contact with a customer?

(8)(a): In order to comply with section 120.55(1)(a)4., F.S., the rule should state that the form is incorporated by reference and include an effective date.

(8)(c): The rule provides that staff "may" permit a participant to submit additional items; however, no standards or criteria are disclosed to apprise the reader of whether or not permission will be granted under any circumstances. This renders the rule objectionable pursuant to section 120.52(8)(d), F.S. The rule should be amended accordingly.

(11)(a): What are the criteria pursuant to which a request for additional time will be granted? Likewise, what are the criteria pursuant to which the time of such extension will be set?

DOCUMENT NUMBER-DATE

09668 OCT-6 8

FPSC-COMMISSION CLERK

Ms. Samantha Cibula
October 2, 2003
Page 2

Form PSC/CAFIO

The form provides that failure to provide the information "may" result in denial of the request for a conference. The use of the term "may" in this manner renders the form objectionable for the reasons described above.

I am available at your convenience to discuss the foregoing comments.

Sincerely,



John Rosner
Chief Attorney