

MEMORANDUM

MAY 5, 2010

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COMMISSION  
CLERK

TO: OFFICE OF COMMISSION CLERK

FROM: Kathryn G.W. Cowdery, Senior Attorney 

RE: DOCKET NO. 100062-OT, Initiation of rulemaking to amend Rule 25-22.061,  
F.A.C., Stay Pending Judicial Review.

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Please file the attached letter dated April 23, 2010, from Brian, T. Moore, Chief Attorney, Joint Administrative Procedures Committee, in the above-named docket.

KC

Attachment

DOCUMENT NUMBER-DATE

03782 MAY -6 09

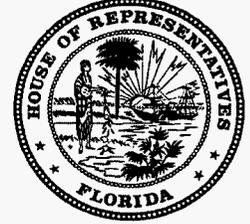
FPSC-COMMISSION CLERK

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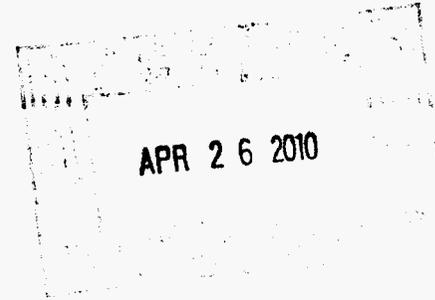


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THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

April 23, 2010

Ms. Kathryn G. W. Cowdery  
Senior Attorney  
Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850



**Re: Public Service Commission Proposed Rule Section 25-22.061**

Dear Ms. Cowdery:

After reviewing the proposed changes to Rule Section 25-22.061, F.A.C. (Docket No. 100062-OT), I offer the following comments and questions for your consideration and written response:

**Law Implemented** The rule cites only section 350.127(2), Florida Statutes, as rulemaking authority and section 120.68(3) as the law implemented. Section 350.127(2) authorizes the Public Service Commission (PSC) to adopt rules "to implement provisions of law conferring duties upon it." Section 120.68(3) provides that the filing of a petition for review of final agency action does not automatically stay the enforcement of the agency's decision, addresses specific procedures relating to stays pending review of the suspension or revocation of a license, and broadly authorizes all agencies the power to "grant a stay upon appropriate terms."

Are there any other provisions of law that the PSC is implementing? For example, section 366.06 confers rate-setting duties on the PSC, as well as requirements for establishing procedures to follow when fixing rates. See also sec. 350.01 (general PSC proceedings), sec. 367.081 (water rates), and sec. 368.05(2) (gas transmission). In other words, other than a broad grant of authority to all agencies to "grant a stay upon appropriate terms," has the Legislature conferred any duties on the PSC that would authorize a rule establishing the PSC's procedures for ruling on a request for a stay pending judicial review? If so, these should be cited as law implemented.

DOCUMENT NO. DATE

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**Uniform Rules**

The PSC has obtained several exceptions to the Uniform Rules from the Administration Commission pursuant to section 120.54(5)(a)2., Florida Statutes. However, this rule is not included among those listed in Rule Section 25-40.001. Several of the listed rule sections are exceptions to Rule Chapter 28-106, which addresses decisions determining substantial interests. For example, the PSC has its own rules for point-of-entry and motions for reconsideration. It does not appear that there is a uniform rule specifically addressing petitions for stay pending judicial review, but it still appears to be a decision determining substantial interests. Has the PSC requested and obtained an exception from the Administration Commission for this rule? If the PSC does not think that an exception is required, please explain why.

If you have any questions or need me to elaborate further on any of the above, please let me know. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "B. T. Moore", with a long horizontal line extending to the right.

Brian T. Moore  
Chief Attorney