

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of rulemaking to amend Rule 25-22.061, F.A.C., Stay Pending Judicial Review.

DOCKET NO. 100062-OT
ORDER NO. PSC-10-0371-FOF-OT
ISSUED: June 8, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. STEVENS, III

NOTICE OF ADOPTION OF RULE

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has adopted without changes the amendments to Rule 25-22.061, Florida Administrative Code, Stay Pending Judicial Review.

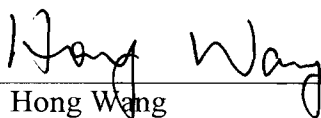
The rules were filed with the Department of State on June 7, 2010 and will be effective on June 27, 2010. A copy of the rule as filed with the Department is attached to this Notice.

This docket is closed upon issuance of this notice.

By ORDER of the Florida Public Service Commission this 8th day of June, 2010.

ANN COLE
Commission Clerk

By:



Hong Wang
Management Review Specialist

(SEAL)

KC

FILE NUMBER-DATE
14745 JUN-8 2010
FPSC-COMMISSION CLERK

25-22.061 Stay Pending Judicial Review.

(1) When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, ~~or~~ the posting of a corporate undertaking, or and such other conditions as the Commission finds appropriate to secure the revenues collected by the utility subject to refund.

~~(b) In determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as:~~

- ~~1. Terms that will discourage appeals when there is little possibility of success; and~~
- ~~2. A rate of interest that takes into consideration:~~
 - ~~a. The use of the money that the stay permits;~~
 - ~~b. The prime and other prevailing rates of interest at commercial banks and other potential sources of capital in the amount involved in the appeal.~~

(2) Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review ~~may~~shall file a motion with the Commission, which ~~has shall have~~ authority to grant, modify, or deny such relief. A stay pending review granted pursuant to this subsection may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions relevant to the order being stayed, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

(a) Whether the petitioner has demonstrated a likelihood of success on the merits is likely to prevail on appeal;

(b) Whether the petitioner has demonstrated a likelihood of sustaining that he is likely to suffer irreparable harm if the stay is not granted; and

(c) Whether the delay in implementing the order will likely cause substantial harm or be contrary to the public interest if the stay is granted.

~~(3)(a) When a public body or public official appeals an order involving an increase in a utility's or company's rates, which appeal operates as an automatic stay, the Commission shall vacate the stay upon motion by the utility or company and the posting of good and sufficient bond or corporate undertaking. When determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as those set forth in subparagraph (1)(b)2.~~

~~(b) When a public body or public official appeals an order that does not involve an increase in rates, the Commission may vacate the stay or impose any lawful conditions.~~

~~(34) When a stay or vacation of a stay is conditioned upon the posting of a bond, or corporate undertaking, or other appropriate form of surety, the Commission shall may at the time it grants the stay or vacation of the stay, set the rate of interest to be paid by the utility or company pursuant to Rule 25-4.114(4), F.A.C., for telecommunication companies, Rule 25-6.109(4), F.A.C., for electric public utilities, Rule 25-7.091(4), F.A.C., for gas public utilities, and Rule 25-30.360(4), F.A.C., for water and wastewater utilities in the event that the Court's decision requires a refund to customers.~~

~~(45) Motions filed pursuant to subsections (1) or (2) of this rule shall be heard by those Commissioners who were on the deciding panel for participated in the proceeding which resulted in the order being appealed. However, motions filed under subsection (3) of this rule may be ruled upon by the Chairman or the Commissioner assigned as the prehearing officer in the case.~~

ORDER NO. PSC-10-0371-FOF-OT
DOCKET NO. 100062-OT
PAGE 4

Rulemaking Specific Authority 350.127(2), 350.01(5), 364.01(4), 366.04(1), 366.05(1), 366.06(1), 367.011(2), 367.081(2), 367.0814, 367.121(1)(g), 368.05(2), FS. Law Implemented 120.68(3) FS. History–New 2-1-82, Formerly 25-22.61, Amended 6-27-10.