

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule 25-22.026,)
 F.A.C., Parties.)

DOCKET NO. 910588-PU
 ORDER NO. 24887
 ISSUED: 8/7/91

NOTICE OF ADOPTION OF RULE AMENDMENT

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has adopted the amendments to Rule 25-22.026, F.A.C., relating to parties, without change.

The rule amendment was filed with the Secretary of State on August 5, 1991 and will be effective on August 25, 1991. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By Direction of the Florida Public Service Commission, this
7th day of AUGUST, 1991.


 STEVE TRIBBLE, Director
 Division of Records & Reporting

(S E A L)

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

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 FALLAHOUSE

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.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the

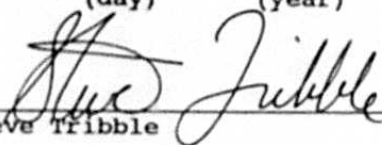
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undersigned agency by and upon their filing with the Department of State.

<u>Rule No.</u>	<u>Rulemaking Authority</u>	<u>Specific Law Being Implemented, Interpreted or Made Specific</u>
25-22.026	120.53	120.53

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)



Steve Tribble

Director, Division of Records & Reporting Title

Number of Pages Certified

(S E A L)

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1 25-22.026 Parties.

2 (1) Parties in any proceeding conducted in accordance with
3 §120.57, F.S., are complainants, applicants, petitioners,
4 protestants, respondents, or intervenors. Parties shall be
5 entitled to receive copies of all pleadings, motions, notices,
6 orders and other matters filed in a proceeding, and shall be
7 entitled to all rights afforded under Chapter 120, F.S. According
8 to the nature of the proceeding, the term "party" may include the
9 Commission.

10 (2) If it appears that the determination of the rights of
11 parties in a proceeding will necessarily involve a determination of
12 the substantial interests of persons who are not parties, the
13 presiding officer may, upon motion of a party, or upon his or her
14 own initiative enter an order requiring that the absent person be
15 notified of the proceeding and be given an opportunity to be joined
16 as a party of record.

17 (3) The Commission staff may participate as a party in any
18 proceeding. Their primary duty is to represent the public interest
19 and see that all relevant facts and issues are clearly brought
20 before the Commission for its consideration.

21 (4)(a) In cases assigned to the Division of Administrative
22 Hearings, the Commission staff's role is to represent the public
23 interest and be neither in favor of nor against any particular
24 party, unless the Commission is enforcing rules or statutes through
25 a show cause or similar proceeding, or unless the Commission is a

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

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1 respondent at the Division of Administrative Hearings. Staff is
2 not a party in interest and has no substantial interests that may
3 be affected by the proceeding. Commission staff's role shall be to
4 assist in developing evidence to ensure a complete record so that
5 all relevant facts and issues are presented to the fact finder.
6 Any position that staff has prior to the hearing is preliminary;
7 final positions are based upon review of the complete record.

8 (b) When advocating a position, Commission staff may testify
9 and offer exhibits and such evidence shall be subject to cross-
10 examination to the same extent as evidence offered by any other
11 party.

12 Specific Authority: 120.53, F.S.

13 Law Implemented: 120.53, F.S.

14 History: New 12/21/81, formerly 25-22.26.

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Rule 25-22.026
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SUMMARY OF RULE

The proposed amendment to Rule 25-22.026 provides that the Commission staff's role in cases assigned to the Division of Administrative Hearings is to ensure development of a complete record. Staff's role is not to advocate a position unless the Commission is a respondent or is enforcing rules or statutes.

SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The role of Commission staff in cases assigned to the Division of Administrative Hearings (DOAH) has been misunderstood by DOAH hearing officers where the Commission is not a respondent or is not enforcing Commission rules or statutes. In several proceedings, the hearing officer has insisted that staff declare a position either for or against a party, although staff has no position and has intervened in the proceeding between private litigants only to make sure that the record is fully developed.

The proposed addition to Rule 25-22.026 is an attempt to clarify the role of staff in those cases where they are not an adversary of any party. The Commission's interest in these cases is to ensure that a complete record is available for the Commission's final action on the hearing officer's recommended order. The rule states that in other cases, where staff is

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advocating a position, the staff may testify and offer exhibits and evidence and will be subject to cross-examination to the same extent as any other party.