

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed revisions to rules in Chapter  
25-22 and 25-40, F.A.C.

DOCKET NO. 050108-OT  
ORDER NO. PSC-06-1030-FOF-OT  
ISSUED: December 14, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF ADOPTION OF RULES

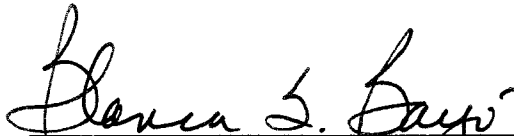
BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has adopted the amendments of Rules 25-22.0021, 25-22.029, 25-22.0376, and 25-22.060; adopt Rule 25-22.0022 and repeal Rule 25-22.058, Florida Administrative Code, relating to participation at agenda conference and filing of cross-petitions on proposed agency action without changes.

The rules were filed with the Department of State on December 12, 2006, and will be effective on January 1, 2007. A copy of the rules 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 14th day of December, 2006.



BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

(SEAL)

LDH

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FPSC-COMMISSION CLERK

25-22.0021 Agenda Conference Participation.

(1) Participation at agenda conferences may be informal or by oral argument. The Commission determines when and whether participation is allowed in accordance with this rule. The notice for each agenda conference contains a list of items to be discussed, and identifies the type of participation allowed. The notice is available in hard copy or on the Commission's internet site, [www.psc.state.fl.us/agendas](http://www.psc.state.fl.us/agendas), at least seven days before the agenda conference.

(2) Any person who may be affected by an item set for agenda conference will be allowed to address the Commission informally concerning that item when it is taken up for discussion, except as provided in subsections (3) – (8), below. To participate informally, affected persons need only appear at the agenda conference and request the opportunity to address the Commission on an item listed on the agenda.

(3) Informal participation is not permitted on dispositive motions and motions for reconsideration. Participation on such items is governed by Rule 25-22.022, F.A.C.

(4) Informal participation is not permitted when a recommended order is taken up by the Commission. For purposes of this rule and Rule 25-22.022, F.A.C., a recommended order is one prepared by an administrative law judge at the Division of Administrative Hearings, or by a Commissioner appointed by the Chair to conduct a hearing pursuant to Section 350.01(7), Florida Statutes. Participation on such items is governed by Rule 25-22.022, F.A.C.

(5) Informal participation is not permitted in a rulemaking proceeding after the record has been closed.

(6) Informal participation, except by non-testifying staff, is not permitted when the Commission considers a post-hearing recommendation on the merits of a case after the close of the record.

(7) In certain types of cases in which the Commission issues an order based on a given set of facts without hearing, such as declaratory statements and interim rate orders, the Commission allows informal participation at its discretion.

(8) The Commission reserves the discretion to limit or restrict informal participation as needed to ensure the orderly disposition of matters before it. In limiting or restricting informal participation the Commission will consider such things as the number of persons who wish to address the Commission on an item, the number of items to be taken up at the agenda conference, the procedural status of the docket to which the item pertains, and the complexity of the issues addressed in an item.

(9) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.

~~(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.~~

~~(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.~~

~~(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.~~

Specific Authority 350.01(7), 350.127(2) FS.

Law Implemented 120.569(1), 120.57(1), 120.57(2)(a), FS.

History–New 3-23-93, Amended \_\_\_\_\_.

25-22.0022 Oral Argument Rule

(1) Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than 10 days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

(2) The Commission may request oral argument on matters over which it presides. The Prehearing Officer may request oral argument on matters over which he or she presides. The parties will be notified directly when oral argument is scheduled.

(3) Granting or denying a request for oral argument is within the sole discretion of the Commission or the Prehearing Officer whichever presides over the matter to be argued.

(4) The staff attorney assigned to the docket may participate in any oral argument on that docket.

(5) Oral argument will not be entertained on a post-hearing recommendation on the merits of the case. However, when the Commission votes on a recommended order requests for oral argument will be entertained.

(6) Oral argument will not be entertained on a request for oral argument.

(7) Oral argument at an agenda conference.

(a) Oral argument at agenda conference will only be entertained for recommended orders and dispositive motions, such as motions to dismiss, motions for summary final order, and motions for reconsideration of non-final or final orders. Only parties to the docket and the staff attorney may participate in the oral argument.

(b) The Commission can request oral argument on any issue to be decided by a dispositive motion or recommended order. The listing of the dispositive motion or recommended order on the notice of the agenda conference shall serve as notice to the parties to be prepared for oral argument on all issues associated with the dispositive motion or recommended order on the agenda, even if a request for oral argument has not been made by a party, or if a request made by a party pertains to a limited number of issues. Notice of the agenda conference can be found at [www.psc.state.fl.us/agendas](http://www.psc.state.fl.us/agendas), as explained in Rule 25-22.0021(1), F.A.C.

(c) If a request for oral argument filed by a party is scheduled to be taken up at an agenda conference, and the request is granted at that time, the oral argument will occur at that agenda conference. At the agenda conference where the request is taken up, parties should be prepared to proceed with oral argument on all issues pertaining to the dispositive motion or recommended order, whether raised in the request for oral argument or not. Notice that such a request will be taken up is provided at [www.psc.state.fl.us/agendas](http://www.psc.state.fl.us/agendas), as explained in Rule 25-22.0021(1), F.A.C.

(d) This rule does not restrict the scheduling of oral arguments to agenda conferences. Oral arguments can be scheduled at any time, in which case the parties will be directly notified of the time and place.

Specific Authority 350.01(7), 350.127(2) FS

Law Implemented 120.569(1), 120.57(1), 120.57(2)(a), FS

History – New \_\_\_\_\_.

25-22.029 Point of Entry Into Proposed Agency Action Proceedings.

(1) After agenda conference, the Division of the Commission Clerk and Administrative Services shall issue written notice of the proposed agency action (PAA), advising all parties of record that, except for PAA orders establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, they have 21 days after issuance of the notice in which to file a request for a Section 120.569 or 120.57, Florida Statutes, hearing. For PAA orders establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, ~~t~~The time for requesting a Section 120.569 or 120.57, Florida Statutes, hearing shall be 14 days from issuance of the notice, ~~for PAA orders establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes.~~ The Commission will require a utility to serve written notice of the PAA on its customers if the Commission finds that it is necessary in order to afford adequate notice.

(2) The Commission will require a utility to publish notice of the decision in newspapers of general circulation in its service area if the Commission finds that it is necessary in order to afford adequate notice. ~~Any such publication may be used in establishing the date of receiving notice.~~

(3) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a Section 120.569 or 120.57, Florida Statutes, hearing, in the form provided by Rule 28-106.201, F.A.C. Any such petition shall be filed within the time stated in the notice issued pursuant to subsection (1) of this rule, and shall identify the particular issues in the proposed action that are in dispute. Within 10 days of service of the initial petition, any other person substantially affected by the proposed agency action or Commission staff may

file a cross-petition identifying additional particular issues on which a hearing is requested.  
Issues in the proposed action that are not identified in the petition or a cross-petition shall be  
deemed stipulated.

(4) The Commission will not entertain a motion for reconsideration of a notice of  
proposed agency action.

Specific Authority 350.01(7), 350.127(2) FS.

Law Implemented 120.569, 120.57, 364.05, 366.06, 367.081, 367.0817(4)(a), 367.0817,  
120.80(13)(b) FS.

History—New 12-21-81, Formerly 25-22.29, Amended 7-8-92, 5-3-99, \_\_\_\_\_.  
25-22.0376 Reconsideration of Non-Final Orders.

(1) Any party who is adversely affected by a non-final order may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order. The Commission shall not entertain a motion for reconsideration of an order disposing of a motion for reconsideration.

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

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

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

(5) The Commission will not entertain a motion for reconsideration of a notice of  
proposed agency action.

~~(5) Oral argument on any motion filed pursuant to this rule may be granted at the~~

~~discretion of the Commission. A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument.~~

Specific Authority 350.01(7), 350.127(2) FS.

Law Implemented 120.569, 120.57 FS.

History—New 9-3-95, Amended 7-11-96,\_\_\_\_\_.

25-22.058 Oral Argument.

~~(1) The Commission may grant oral argument upon request of any party to a Section 120.57, Florida Statutes, formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.~~

~~(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.~~

~~(3) Requests for oral argument on recommended or proposed orders and exceptions pursuant to Section 120.58(1)(e), Florida Statutes, must be filed no later than 10 days after exceptions are filed.~~

Specific Authority 350.01(7), 350.127(2) FS.

Law Implemented 120.569, 120.57 FS.

History—New 12-21-81, Formerly 25-22.58, Amended 3-23-93, Repealed\_\_\_\_\_.

25-22.060 Motion for Reconsideration of Final Orders.

(1) Scope and General Provisions.



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

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

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

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

(e) A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under Section 120.54(75), Florida Statutes and Rule ~~28-103.00625-22.012~~, F.A.C.

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

(2) Contents. Any motion or response filed pursuant to this rule shall contain a

concise statement of the grounds for reconsideration, and the signature of counsel, if any.

(3) Time. A motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. A response to a motion for reconsideration or a cross motion for reconsideration shall be served within 7 days of service of the motion for reconsideration to which the response or cross motion is directed. A response to a cross motion for reconsideration shall be served within 7 days of service of the cross motion.

Specific Authority 350.01(7), 350.127(2) FS.

Law Implemented 120.569, 120.57 FS.

History--New 12-21-81, Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96,\_\_\_\_\_.