

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-10-0195-NOR-OT
ISSUED: March 30, 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. "STEVE" STEVENS III

NOTICE OF RULEMAKING

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-22.061, Florida Administrative Code, Stay Pending Judicial Review.

The attached Notice of Rulemaking will appear in the April 2, 2010, edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at a time and place to be announced in a future notice. Written requests for hearing and written comments or suggestions on the rule must be received by the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than April 23, 2010.

By ORDER of the Florida Public Service Commission this 30th day of March, 2010.



ANN COLE
Commission Clerk

(SEAL)

KC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO: RULE TITLE

25-22.061: Stay Pending Judicial Review

PURPOSE AND EFFECT: Rule 25-22.061, Stay Pending Judicial Review, is amended for consistency with Florida Rule Appellate Procedure 9.310 , and to clarify who shall hear motions for stay and what factors are considered by the Florida Public Service Commission in granting a stay and in setting an interest rate when a stay is conditioned upon the posting of a bond or corporate undertaking. Docket No. 100062-OT.

SUMMARY: Rule 25-22.061, Stay Pending Judicial Review, is amended to delete provisions concerning automatic stays pending judicial review granted to public entities filing a notice of appeal in administrative actions under Chapter 120, F.S. The amendments state the factors which the Commission may consider in determining whether to grant a stay and under what conditions the Commission may condition a stay, list the factors that the Commission may consider in setting an interest rate when granting a stay conditioned upon the posting of a bond or corporate undertaking, and clarify that motions for stay shall be heard by those Commissioners who were on the deciding panel for the order being appealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The rule amendments would benefit the Commission by updating, clarifying and streamlining rule language; utilities would benefit from the rule becoming more accurate and specific concerning the granting of stays of orders pending judicial review; the changes would not result in any transactional costs to utilities, customers, small businesses, the Commission, or local governments.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), FS

LAW IMPLEMENTED: 120.68(3), FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL (850) 413-6770. If you are hearing or speech impaired, please

contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216, kcowdery@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

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. Rulemaking Specific Authority 350.127(2) FS. Law Implemented 120.68(3) FS. History—New 2-1-82, Formerly 25-22.61.~~

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216, kcowdery@psc.state.fl.us

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 16, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 35, Number 42, October 23, 2009