

State of Florida

Commissioners:
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JOHN T. HERNDON



Office of the General Counsel
SUSAN F. CLARK, GENERAL COUNSEL
(904) 488-7463

Public Service Commission

June 25, 1991

ORIGINAL
FILE COPY

Mr. Carroll Webb
Joint Administrative Procedures
Committee
120 Holland Building
Tallahassee, Florida 32399

Re: DOCKET NO. 910588, RULE 25-22.026, F.A.C.

Dear Mr. Webb:

Enclosed are the following materials concerning the above referenced proposed rule:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal comparison statement.
5. A statement of the impact of the rule on small business.
6. An economic impact statement.

If there are any questions with respect to this rule, please do not hesitate to call on me.

Sincerely,

Christiana T. Moore

CHRISTIANA T. MOORE
Associate General Counsel

ACK _____
 AFA _____
 APP _____
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 CMU _____
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CTM/cjp
 Enclosures
 cc: ✓ Steve Tribble, Director,
 Division of Records & Reporting
 amd22026.cjp

DOCUMENT NUMBER-DATE
 06373 JUN 25 1991
 PSC-RECORDS/REPORTING

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.

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.

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

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 910588-PU

RULE TITLE:

RULE NO.:

Parties

25-22.026

PURPOSE AND EFFECT: The proposed addition to Rule 25-22.026 is an attempt to clarify the role of staff in those cases assigned by the Commission to the Division of Administrative Hearings, where staff is 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 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.

SUMMARY: 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.

RULEMAKING AUTHORITY: 120.53, F.S.

LAW IMPLEMENTED: 120.53, F.S.

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THIS RULE: The proposed amendment to this rule addresses a procedural matter and will not result in any additional cost to the Commission or affected parties.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21

DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., September 11, 1991

PLACE: Room 122, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399

THE FULL TEXT OF THE RULE IS:

25-22.026 Parties.

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

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

(3) The Commission staff may participate as a party in any proceeding. Their primary duty is to represent the public interest

and see that all relevant facts and issues are clearly brought before the Commission for its consideration.

(4)(a) In cases assigned to the Division of Administrative Hearings, the Commission staff's role is to represent the public interest and be neither in favor of nor against any particular party, unless the Commission is enforcing rules or statutes through a show cause or similar proceeding, or unless the Commission is a respondent at the Division of Administrative Hearings. Staff is not a party in interest and has no substantial interests that may be affected by the proceeding. Commission staff's role shall be to assist in developing evidence to ensure a complete record so that all relevant facts and issues are presented to the fact finder. Any position that staff has prior to the hearing is preliminary; final positions are based upon review of the complete record.

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

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Robert Vandiver,
Director, Division of Legal Services

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission

DATE PROPOSED RULE APPROVED: June 11, 1991

If any person decides to appeal any decision of the Commission with

respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING 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 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.

STATEMENT ON FEDERAL STANDARDS

There are no federal standards on the subject of this rule.

STATEMENT OF IMPACT ON SMALL BUSINESS

This rule addresses procedure in administrative proceedings and will have no impact on small or minority businesses as defined in the Florida Small and Minority Business Assistance Act of 1985.

M E M O R A N D U M

April 18, 1990

TO: DIVISION OF APPEALS (MOORE)
FROM: DIVISION OF RESEARCH (HEWITT) *CBH* *WAB*
SUBJECT: ECONOMIC IMPACT STATEMENT FOR PROPOSED CHANGES TO RULE 25-22.026,
FAC, PARTIES

SUMMARY OF THE RULE

Rule 25-22.026, FAC, Parties, concerns those persons who wish to participate in proceedings in accordance with Chapter 120.57, Florida Statutes, before the Florida Public Service Commission (Commission). Parties are complainants, applicants, petitioners, protestants, respondents, or intervenors. Parties are entitled to receive copies of all paperwork filed in a proceeding and are entitled all rights afforded under Chapter 120, F.S. The Commission may also be a "party" to a proceeding. The Commission staff may participate as a party in any proceeding.

The proposed addition to the rule addresses the Commission staff's role in those cases assigned to the Division of Administrative Hearings (DOAH). Staff would develop evidence to ensure a complete record so that all relevant facts and issues are presented to the fact finder. Commission staff could advocate a position, testify, and offer exhibits and other evidence subject to cross-examination like any other party. As in other proceedings, Commission staff's role would be to represent the public interest and be neither in favor of nor against any particular party, unless the Commission was enforcing rules or statutes, or was a respondent at the Division of Administrative Hearings.

DIRECT COSTS TO THE AGENCY

The proposed change to the Parties rule would benefit the Commission by clarifying the role of staff in DOAH proceedings and thus saving some staff time. There should be no increase in paperwork or workload since staff is currently involved in these types of proceedings.

COSTS AND BENEFITS TO THOSE PARTIES DIRECTLY AFFECTED BY THE RULE

The proposed change to Rule 25-22.026, Parties, should clarify the Commission's role in proceedings to the DOAH and parties involved in those proceedings. There should be no substantive costs involved because there should be no significant changes in proceedings involving the Commission. Some benefits may accrue to DOAH and its staff from clarifying the role of the Commission staff in proceedings before DOAH.

IMPACT ON SMALL BUSINESSES

There should be no impact on small businesses since the proposed rule change only addresses procedures in the administrative fact finding process and clarifies the existing roles that Commission staff may play in these proceedings.

IMPACT ON COMPETITION

There should be no change in the competitive environment from the proposed rule change.

IMPACT ON EMPLOYMENT

The proposed rule change will have no effect on employment.

METHODOLOGY

Discussions were held with Commission legal staff to obtain background information on the proposed rule change. Documents from DOAH were examined.

CBH:jn/e-partie