

State of Florida

Commissioners:
KATIE NICHOLS, CHAIRMAN
THOMAS M. BEARD
GERALD L. (JERRY) GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON



Division of Appeals
David E. Smith, Director
(904) 488-7464

Public Service Commission

July 25, 1991

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

ORIGINAL
FILE COPY

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

Dear Mr. Webb:

The Commission has approved the amendment of Rule 25-22.026, F.A.C., without changes.

The rule does not have an impact on small business.

Sincerely,

CHRISTIANA T. MOORE
Associate General Counsel

CTM/cjp

Enclosure

ACK _____
AFA _____ cc: Steve Tribble, Director,
APP _____ Div. Records & Reporting
CAF _____

CMU _____ adp22026.cjp

CTR _____

EAG _____

LEG _____

LIN _____

OPC _____

RCH _____

SEC 1 _____

WAS _____

OTH _____

FLETCHER BUILDING • 101 EAST GAINES STREET • TALLAHASSEE, FL 32399-0861

An Affirmative Action/Equal Opportunity Employer

DOCUMENT NUMBER-DATE
07528 JUL 25 1991
FSC-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.

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910578-P4

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES

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TALLAHASSEE, FLORIDA

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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

ACK (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

APP (c) Are filed within 21 days after the adjournment of CAF the final public hearing on the rule; or

CMU (d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

LEG (e) Are filed within 21 days after the date the transcript was received by this agency.

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

SEC
WAS
OTH

DOCUMENT NUMBER-DATE

07921 AUG -6 1991

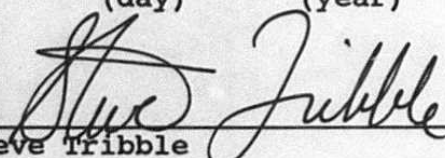
PSC-RECORDS/REPORTING

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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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.