

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed Adoption of)
Rule 25-22.033 Communications)
Between Commission Employees)
and Interested Persons)

DOCKET NO. 920617-OT
ORDER NO. PSC-93-0175-NOR-OT
ISSUED: 2/4/93

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to adopt Rule 25-22.033, F.A.C., relating to Communications between Commission employees and interested persons.

The attached Notice of Rulemaking will appear in the January 29, 1993 edition of the Florida Administrative Weekly. The Commission has scheduled a hearing which will be held at the following time and place:

9:30 a.m., Monday, February 22, 1993
Room 106, Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399

Written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399, no later than February 18, 1993.

By Direction of the Florida Public Service Commission, this 4th day of February, 1993.

STEVE TRIBBLE, Director
Division of Records & Reporting

by: Kay Helton
Chief, Bureau of Records

(S E A L)

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FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 920617-OT

RULE TITLE:

RULE NO.:

Communications Between Commission Employees and
Interested Persons

25-22.033

PURPOSE AND EFFECT: The Commission currently has no procedural rules dealing with informal interaction between Commission employees and regulated utilities, intervenors and other persons having an interest in Commission proceedings. Chapter 25-22, F.A.C., makes the Florida Rules of Civil Procedure applicable where formal discovery is conducted, but there are no similar provisions for notice and opportunity to participate where information is gathered through informal contacts. The rule clearly defines notice requirements and opportunities to participate when contacts are initiated outside the formal discovery process. The rule also prohibits staff from acting as a conduit for prohibited ex parte communications.

SUMMARY: 25-22.033 - Scope of the Rule - The rule applies to all Commission employees, excluding Commissioners, and governs written and oral communications between employees and "interested persons", i.e., those persons who will or may be affected by Commission action. The term interested person encompasses more than just the actual parties, but does not include individual residential ratepayers acting in their own behalf. Rulemaking, declaratory

statements, staff assisted water and wastewater rate cases, workshops and internal affairs are exempted from the rule.

The rule does not apply to communications initiated in the context of formal discovery pursuant to Commission rules and the Florida Rules of Civil Procedure.

(1) - **Docketed matters** - The notice requirements of this subsection apply in docketed matters.

(1)(a) - **Written communications** - Commission employees will send a copy of written communications with interested persons to all parties when the written communication is transmitted. All communications, including responses, will be put in the docket file.

(1)(b) - **Scheduled meetings and conference calls** - When a Commission employee schedules a meeting or conference call with interested persons, all parties will be given two working days' written notice. "Conference call" is defined as a call between 3 or more persons.

(1)(c) - **Follow-up communications** - No notice is required if there is a brief follow-up to the scheduled meeting or conference call or an emergency situation necessitates communication between Commission employees and interested persons. However, all parties will be sent a summary of the Communication within five working days.

(1)(d) - **Response to Communications** - Any party to the proceeding

may file a response to any communication between Commission employees and interested persons. The response must be filed with the Director of Records and Reporting within ten working days of the communication triggering the response.

(2) - **Communications in undocketed matters** - The rule does not apply to communications concerning undocketed matters unless the Commission employee knows that a docket directly relating to the matter will be opened within 90 days. Then, a copy of the correspondence or summary of the conversation or meeting will be filed with the Director of Records and Reporting.

(3) - **Audits** - No notice of communications made in the course of an audit will be given. However, if a written report is developed and the report is to be used in a docketed matter, notice will be given when the final audit report is published.

(4) - **Telephone service evaluations and electric and gas safety inspections** - The notice provision does not apply to communications in the course of these activities except where written reports are generated and will be used in a docketed matter. Then, notice will be given upon publication of the final report.

(5) - **Other communications** - This subsection deals with communications relating to surveys, questionnaires or information gathering activities of persons or organizations such as NARUC. No notice of such communications between Commission employees and interested persons would be required in these situations.

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(6) - **Prohibited communications** - This subsection prohibits Commission employees from being conduits for prohibited ex parte communications under section 350.042, F.S. It does not apply to communications between Commissioners and staff in staff's advisory role.

RULEMAKING AUTHORITY: 120.53, F.S.

LAW IMPLEMENTED: 120.53, F. S.

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.

A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., February 22, 1993

PLACE: Room 106, 101 East Gaines Street, Tallahassee, Florida.

THE PERSONS 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:

Rule 25-22.033 - Communications Between Commission Employees and Interested Persons - These rules shall govern communications between Commission employees and persons whose interests will or may be affected as a result of proceedings before the commission, including representatives of regulated companies and their affiliates, Public Counsel, intervenors, business competitors, and

other persons seeking to influence the outcome of Commission action, except individual residential ratepayers acting in their own behalf. These rules shall not apply in proceedings under sections 120.54, 120.565, 367.0814, Fla. Stat., workshops or internal affairs meetings.

Nothing in these rules is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable provisions of the Florida Rules of Civil Procedure.

(1) Communications in Docketed Matters - In any matter which has been formally docketed by the Commission, the following shall apply:

(a) Written Communications - Copies of any written communication between Commission employees and interested persons shall be provided to all parties to the proceeding at the same time as the written communication is transmitted, whether by U.S. Mail or other means. Copies of all written communications between staff and interested persons shall be filed in the official docket file maintained by the Commission's Director of Records and Reporting.

(b) Scheduled Meetings and Conference Calls - All parties to the proceeding shall be given two working days advance notice in writing of the time and place of any scheduled meeting or conference call between Commission

employees and interested persons. For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.

(c) Follow-up Communications - In the event of a documented emergency, or a brief unscheduled follow-up to a previously scheduled meeting or conference call, no advance notice shall be required, provided, however, that all parties shall be sent a written summary of the substance of the communication by U.S. mail or other means within five working days of its occurrence.

For purposes of this subsection, a documented emergency is an unforeseen or unpredictable event which necessitates the communication to Commission employees of some information essential to the performance of regulatory duties.

(d) Response to Communications - Any party to a proceeding may prepare a response to any communication between a Commission employee and an interested person. Any such response shall be filed with the Commission's Director of Records and Reporting within ten working days of the meeting or conference call or receipt of the written communication or summary.

(2) Communications in Undocketed Matters - The above provisions shall not apply to communications between Commission employees and interested persons where the subject of the

communication is not a matter under consideration in a pending docket. However, if the Commission employee knows that a docket directly relating to the matter will be initiated within ninety days, a copy of the written communication or written summary of the conference call or meeting shall be filed with the Commission's Director of Records and Reporting.

(3) Audits - No notice of any communication between Commission employees and a regulated company arising in the course of an audit of the regulated company shall be required, provided that, if the audit is to be documented in workpapers and developed as a written report to be used in a docketed matter, notice of the audit shall be given upon publication of the final audit report.

(4) Telephone Service Evaluations; Electric and Gas Safety Inspections - No notice shall be provided of communications between Commission employees and a regulated company arising in the course of telephone service evaluations or electric and gas safety inspections, provided, that, if a written report is prepared to be used in a docketed matter, notice will be provided upon publication of the final report.

(5) Other communications - No notice shall be required related to communications between Commission employees and interested persons where the subject of the communication relates to undocketed research projects of the Commission, responses to surveys, questionnaires or other information gathering activities

conducted by persons or organizations, such as the National Association of Regulatory Utility Commissioners, which are not intended for use in Commission proceedings.

(6) Prohibited Communications - No Commission employee shall directly or indirectly relay to a Commissioner any communication from an interested person which would otherwise be a prohibited ex parte communication under section 350.042, Fla. Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law.

Specific Authority: 120.53, F. S.

Law Implemented: 120.53, F. S.

NAME OF PERSON ORIGINATING PROPOSED RULE: David E. Smith

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

DATE PROPOSED RULE APPROVED: January 19, 1993

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. Any person requiring some accommodation at this hearing because of a physical