

CERTIFICATION OF  
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES  
FILED WITH THE  
DEPARTMENT OF STATE

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

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

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

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

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

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

- ACK \_\_\_\_\_
- AF \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CT \_\_\_\_\_
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DOCUMENT NUMBER-DATE

02497 MAR-5

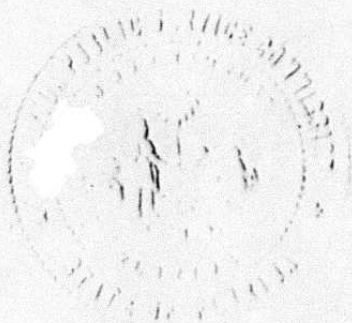
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<u>Rule No.</u>	<u>Rulemaking Authority</u>	<u>Specific Law Being Implemented, Interpreted or Made Specific</u>
25-22.033	120.53, F.S.	120.53, F.S.

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

\_\_\_\_\_  
 Number of Pages Certified

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(S E A L)

1 Rule 25-22.033 - Communications Between Commission Employees  
2 and Parties - The Commission recognizes that Commission employees  
3 must exchange information with parties who have an interest in  
4 Commission proceedings. However, the Commission also recognizes  
5 that all parties to adjudicatory proceedings need to be notified  
6 and given an opportunity to participate in certain communications.  
7 The intent of this rule is not to prevent or hinder in any way the  
8 exchange of information, but to provide all parties to adjudicatory  
9 proceedings notification of and the opportunity to participate in  
10 certain communications.

11 (1) This rule shall govern communications between Commission  
12 employees and parties to docketed proceedings before the  
13 Commission. This rule shall not apply in proceedings under  
14 sections 120.54, 120.565, 367.0814, Fla. Stat., proposed agency  
15 action proceedings before the Commission has voted to issue a  
16 proposed agency action order, non-rate case tariffs, workshops or  
17 internal affairs meetings. Also exempted are docketed and  
18 undocketed audits, telephone service evaluations, and electric and  
19 gas safety inspections. Nothing in this rule is intended to modify  
20 or supersede the procedural requirements for formal discovery under  
21 the Commission's rules and applicable provisions of the Florida  
22 Rules of Civil Procedure, or affect communications regarding  
23 discovery requests, procedure, or other matters not concerned with  
24 the merits of a case.

25 (2) Written Communications - Notice of any written

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1 | communication between Commission employees and parties shall be  
2 | transmitted to all other parties at the same time as the written  
3 | communication, whether by U. S. Mail or other means.

4 |       (3) Scheduled Meetings and Conference Calls - All parties to  
5 | the proceeding shall be given reasonable notice of the time and  
6 | place of any scheduled meeting or conference call between  
7 | Commission employees and parties. For purposes of this subsection,  
8 | a conference call is defined as a telephone call involving three or  
9 | more persons.

10 |       (4) Response to Communications - Any party to a proceeding  
11 | may prepare a written response to any communication between a  
12 | Commission employee and another party. Notice of any such response  
13 | shall be transmitted to all parties.

14 |       (5) Prohibited Communications - No Commission employee shall  
15 | directly or indirectly relay to a Commissioner any communication  
16 | from a party or an interested person which would otherwise be a  
17 | prohibited ex parte communication under section 350.042, Fla. Stat.  
18 | Nothing in this subsection shall preclude non-testifying advisory  
19 | staff members from discussing the merits of a pending case with a  
20 | Commissioner, provided the communication is not otherwise  
21 | prohibited by law. However, a staff member who testifies in a case  
22 | shall not discuss the merits of that case with any Commissioner  
23 | during the pendency of that case.

24 | Specific Authority: 120.53, F.S.

25 | Law Implemented: 120.53, F.S.

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SUMMARY OF RULE

This rule governs certain written and oral communications between employees of the Public Service Commission and parties to docketed proceedings. Excluded from application of the rule are communications between Commission employees and parties made in the course of audits; electric and gas safety inspections; telephone service evaluations; rulemaking; declaratory statements; staff assisted water and wastewater rate cases; non-rate case tariff proceedings; and proceedings involving proposed agency action at the stage before the Commission has voted to issue the proposed agency action. Commission workshops and internal affairs meetings are also exempted from the rule. The rule further does not apply to communications initiated in the context of formal discovery pursuant to Commission rules and the Florida Rules of Civil Procedure nor communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.

Paragraph (2) of the rule requires that notice of written communications between parties and Commission employees be transmitted to all other parties at the same time the written communication is transmitted.

Paragraph (3) requires that parties be given reasonable notice of the time and place of scheduled meetings and conference calls involving parties and Commission employees. A conference call is defined as a telephone call involving three or more persons.

Paragraph (4) of the rule allows a party to respond to any communication between a Commission employee and another party and requires that notice of the response be given to other parties.

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Paragraph (5) of the rule prohibits Commission employees from relaying to a Commissioner any communication which would otherwise be a prohibited ex parte communication under section 350.042, Fla. Stat. The prohibition is not meant to preclude non-testifying staff members from discussing the merits of a case with a Commissioner in their role as advisors, but staff members who testify in a case are precluded from having such discussions.

#### SUMMARY OF HEARINGS ON THE RULE

A hearing on proposed Rule 25-22.033 was held before the full Commission on February 22, 1993, in Tallahassee. Parties who participated in the hearing included Florida Waterworks Association; GTE Florida, Inc.; Southern Bell Telephone and Telegraph Company; Florida Power and Light Company; Florida Power Corporation; Gulf Power Company; Tampa Electric Company; Joe Cresse; Office of Public Counsel; and Florida Consumer Action Network.

At the beginning of the hearing, staff introduced a draft of the rule prepared by the Prehearing Officer in the docket, Commissioner Susan Clark. Staff explained the differences between the new draft and the rule as proposed, primarily its limitation to communications involving "parties" and staff, as opposed to "interested persons"; simplification of the rule's structure; deletion of unnecessary provisions; and inclusion of additional proceedings where the rule would not apply.

Virtually all parties expressed the view that the Prehearing Officer's draft was an improvement over the more cumbersome rule as proposed. Each party then proceeded to offer suggestions for further refinement. Much of the discussion centered around very narrow provisions of the rule but there was general concern with

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the administrative burden which might be imposed with the rule as originally proposed and the restriction of routine contacts not involving the merits of docketed matters. It was suggested that filing and providing copies of voluminous documents sent to Commission employees outside of formal discovery could involve massive copying of documents which might additionally be of little interest to other parties. The requirement that the Commission's Director of Records and Reporting maintain these documents as part of the official record of the proceedings was also criticized as unnecessary and burdensome. As to the matter of routine contacts not involving the merits of a case, it was suggested that there should be a broader exemption than that provided in the Prehearing Officer's draft for attorneys communicating about procedural and other non-substantive matters. Proponents wanted to be able to contact any Commission employee about such matters, not just attorneys.

The general orientation toward the rule expressed by utility representatives was that it addressed problems more perceived than real but they were willing to follow the Commission's guidelines in contacts with Commission employees. Public Counsel expressed the view that the rule did not address all problems involving communications between the regulated and regulators, but that the rule was an acceptable effort to provide necessary restrictions. Florida Consumer Action Network was generally critical of the rule as inadequate.

After hearing the comments of all parties, the Commission recessed for lunch during which time the Prehearing Officer prepared a revised draft of the rule incorporating agreed on changes and adding a preamble. When the hearing reconvened this



draft was distributed and further comment entertained from participants and Commissioners. Having heard further suggestions on the content of the rule, the Commissioners prepared to take a final vote on adoption of a revised rule. After some discussion of their general views on the rule and its purpose, a final version of the rule was adopted unanimously.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Commission has been criticized by a report of the Tenth Statewide Grand Jury and by members of the Florida Legislature of not having rules governing informal contacts between regulatory staff and persons having an interest in the outcome of Commission proceedings. Public Counsel and others have likewise often expressed concerns that regulated utilities had too liberal access to Commission staff and that often other parties to proceedings were not provided access to information received by staff in informal communications. The rule being adopted addresses that perception by providing for notice of communications and an opportunity to participate in informal contacts. The Commission likewise does not currently have a rule which forbids staff from acting as a conduit to the Commissioners for prohibited ex parte communications under section 350.042, Florida Statutes. In theory at least, a person interested in a Commission proceeding would have been able to avoid a prohibited ex parte contact simply by directing the communication to a third person who would convey it to the Commissioner. The rule explicitly prohibits such contacts.

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