

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 25, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (MOORE) *ATM DS*
DIVISION OF LEGAL SERVICES (PIERSON, DAVIS) *Rand*
DIVISION OF RESEARCH & REGULATORY REVIEW (HARLOW) *gsk/pd*

RE: DOCKET NO. 960515-OT - - Proposed Repeal of Rules 25-22.009, 25-22.010, 25-22.011, 25-22.040, 25-22.102, and 25-22.106, F.A.C.; and Amendment of Rules 25-22.005(2)(e), 25-22.0376(1), 25-22.042(2), and 25-22.060(3)(b), F.A.C., to delete unnecessary or obsolete provisions.

AGENDA: 5/7/96 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

RULE STATUS: PROPOSAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\960515-OT.RCM

CASE BACKGROUND

The Commission and other state agencies were asked by the President of the Florida Senate last year to identify rules that are unnecessary, redundant, overlapping, or obsolete. In its response to that request, the Commission identified the procedural rules in this docket and stated that it would proceed with repealing them.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission repeal Rules 25-22.009, 25-22.010, 25-22.011, 25-22.040, 25-22.102, and 25-22.106, F.A.C.; and amend Rules 25-22.005(2)(e), 25-22.0376(1), 25-22.042(2), and 25-22.060(3)(b), F.A.C.?

RECOMMENDATION: Yes.

DOCUMENT NUMBER-DATE

04740 APR 25 96

FPSC-RECORDS/REPORTING

DOCKET NO. 960515-OT
DATE April 25, 1996

STAFF ANALYSIS: Staff has identified the following rules as unnecessary, redundant, overlapping, or obsolete and recommends their repeal or revision:

25-22.005(2)(e), Noticing Address Files. This rule lists the different categories of industries to receive certain Commission notices and includes, in subsection (2)(e), "railroads." Because the Public Service Commission no longer regulates railroads, this rule is obsolete.

Rule 25-22.009 Size of Paper Filed With Commission. Rule 25-22.009(1) requires pleadings filed with the Commission to be on 8 1/2 by 11-inch paper beginning January 1, 1990. The rule was adopted to inform persons of the transition from the use of legal-size to letter-size paper. Since use of letter-size paper is now standard practice, the rule is unnecessary. Subsection (2) of the rule, providing that correspondence and documents filed with or issued by the Commission "should" be on letter-size paper, but permitting maps, spreadsheets and similar documents to be on larger paper, is also unnecessary.

25-22.010 Commencement of Rulemaking Proceedings. This rule is unnecessary because it merely states that rulemaking will be conducted pursuant to Chapter 120, Florida Statutes, and how rulemaking is commenced in general terms. Statutes and other rules, including Rule 25-22.012, entitled "Petitions to Initiate Rulemaking Proceedings," inform the public more specifically how rulemaking is commenced.

25-22.011 Notice of Rulemaking; Proceeding and the Proposed Rules. Rule 25-22.011 requires the Commission to give notice of its intent to adopt, amend, or repeal a rule as provided by statute. It is unnecessary for the Commission to require itself by rule to give a notice that is required by statute.

25-22.0376(1) Reconsideration of Prehearing Officer Orders. The second sentence of this rule provides that orders of a prehearing officer are not nonfinal orders that are subject to Rule 25-22.060(3)(b), which authorizes filing of a motion for reconsideration of a nonfinal order at any time. This rule is unnecessary if the Commission repeals Rule 25-22.060(3)(b) as recommended by Staff and discussed below.

25-22.040 Notice of Hearings. This rule requires 14 days notice of final hearings; requires the notice to contain the statements set out in section 120.57(1)(b)2, Florida Statutes; and requires at least seven days notice for all other hearings. The rule is unnecessary because it merely reiterates the provisions of sections 120.57(1)(b)2. and 120.53(1)(d), Florida Statutes, and addresses a subject that is covered in more detail in Rules 25-22.0405 through 25-22.0408.

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25-22.042(2) Recommended Order for Dismissal. Rule 25-22.042(2) provides the procedure for a hearing officer to enter a recommended order dismissing a party for failure to comply with a Commission order. This part of the rule is obsolete because the Commission no longer employs hearing officers and the procedure does not conform to current practice.

25-22.060(3)(b) Motion for Reconsideration of Nonfinal Order. This provision, which is in the rule on Motions for Reconsideration in the post-hearing part of Rule Chapter 25-22, describes the procedure for reconsideration of a nonfinal order prior to issuance of a final order. The rule is obsolete because there are no post-hearing nonfinal orders to which it applies. Reconsideration of pre-hearing nonfinal orders is covered under Rule 25-22.0376.

25-22.102 Public Inspection and Duplication. Rule 25-22.102, which requires the Commission to make its orders available for public inspection and copying, restates section 120.53(2)(a)2., Florida Statutes, and is unnecessary.

25-22.106 Maintenance of Records. This rule, which requires records to be maintained pursuant to a Department of State approved retention schedule, merely restates the requirements of section 120.532, Florida Statutes, and is unnecessary.

Economic Impact

Repeal or revision of these rules does not result in a "substantial increase in costs" or "significant adverse effects" to the parties directly affected; therefore, an Economic Impact Statement is not required and none was prepared. (Attachment 2)

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ISSUE 2: If no comments are filed, should the rules as proposed for repeal or revision be filed for adoption with the Secretary of State and the docket closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The Commission is not required to offer the opportunity for a hearing on rules that relate exclusively to its organization, procedure or practice. Section 120.54(3)(a), Florida Statutes. The Commission may act on the basis of comments alone, but if none are received, there is no need to return to agenda and the rule may be filed with the Secretary of State without further Commission action. The docket may then be closed.

CTM/

Attachments:
Recommended Rules
Economic Impact Memorandum

1 **25-22.005 Noticing Address Files.**

2 The Division of Records and Reporting ("the Division") shall
3 maintain a main noticing address file for purposes of distributing
4 Commission agenda, notices of workshops and rulemaking and, where
5 appropriate, other notices and orders. The Division shall also
6 maintain an individual noticing address file for each docket for
7 purposes of distributing Commission notices and orders issued in
8 that docket.

9 (1) Main File. **No change.**

10 (a) - (f) **No change.**

11 (2) The three lists described in paragraphs (1)(d-f) are
12 further subdivided into the following categories:

13 (a) Electric

14 (b) Gas

15 (c) Telecommunications

16 (d) Water and Wastewater

17 (e) **Railroad**

18 ~~(f)~~ Practice and Procedure

19 (3) - (8) **No change.**

20 Specific Authority: 120.53, F.S.

21 Law Implemented: 120.53, F.S.

22 History: New 8/20/84, formerly 25-22.05, Amended.

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

1 Rule 25-22.009 Size of Paper Filed With Commission.

2 ~~(1) Beginning on January 1, 1990, all petitions, pleadings,~~
3 ~~and motions filed with the Commission and all orders, opinions, and~~
4 ~~other official documents issued by the Commission shall be on paper~~
5 ~~measuring 8 1/2 by 11 inches in size. However, the Commission~~
6 ~~shall use legal size paper when necessary to comply with the filing~~
7 ~~requirements of any court or other administrative body.~~

8 ~~(2) Correspondence and other documents filed with or issued~~
9 ~~by the Commission should also be on 8 1/2 by 11 inch paper where~~
10 ~~possible. Maps, data spreadsheets, and similar documents may be on~~
11 ~~larger paper.~~

12 Specific Authority: 120.53, F.S.

13 Law Implemented: 120.53, F.S.

14 History: New 2/12/90, Repealed.

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1 **25-22.010 Commencement of Rulemaking Proceedings.**

2 ~~Proceedings held for the adoption, amendment or repeal of a~~
3 ~~Commission rule shall be conducted according to the provisions of~~
4 ~~Chapter 120, F.S., and these rules. Rulemaking proceedings shall~~
5 ~~commence upon the Commission's own initiative, or on the petition~~
6 ~~of a person regulated by the Commission, or on the petition of a~~
7 ~~person having a substantial interest in a Commission rule. A~~
8 ~~proceeding shall be deemed to have been initiated upon publication~~
9 ~~of notice by the Commission in the Florida Administrative Weekly.~~

10 Specific Authority: 120.53, F.S.

11 Law Implemented: 120.53, F.S.

12 History: New 12/21/81, formerly 25-22.10, Repealed.

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16 **25-22.011 Notice of Rulemaking; Proceeding and the Proposed**
17 **Rules.** ~~Except as provided in the Commission's rules on the~~
18 ~~adoption of emergency rules, notice of its intention to adopt,~~
19 ~~amend, or repeal a rule shall be given by the Commission as~~
20 ~~provided in Section 120.54(1), F.S.~~

21 Specific Authority: 120.53, F.S.

22 Law Implemented: 120.53, F.S.

23 History: New 12/21/81, formerly 25-22.11, Repealed.

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1 25-22.0376 Reconsideration of Prehearing Officer Orders.

2 (1) Any party who is adversely affected by an order of a
3 prehearing officer may seek reconsideration by the Commission panel
4 assigned to the proceeding by filing a motion in support thereof
5 within 10 days after issuance of the order. ~~For the purposes of~~
6 ~~this rule, orders of the prehearing officer shall not be considered~~
7 ~~non-final orders subject to Rule 25-22.060(3)(b), Florida~~
8 ~~Administrative Code.~~ The Commission shall not entertain a motion
9 for reconsideration of an order disposing of a motion for
10 reconsideration.

11 (2) - (5) **No change.**

12 Specific Authority: 120.53, F.S.

13 Law Implemented: 120.53, F.S.

14 History: New 9/3/95, Amended_____.

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1 25-22.040 Notice of Hearings. ~~The presiding officer shall~~
2 ~~set the time and place for all hearings and shall issue notice~~
3 ~~thereof on all parties of record. No less than fourteen (14) days~~
4 ~~notice shall be given for the final hearing on the merits of the~~
5 ~~petition complaint, application or other initial pleading unless~~
6 ~~otherwise agreed by the parties. The notice of hearing shall~~
7 ~~contain the statements set out in Section 120.57(1)(b)2, F.S. No~~
8 ~~less than seven (7) days notice shall be given for all other~~
9 ~~hearings.~~

10 Specific Authority: 120.53, F.S.

11 Law Implemented: 120.53, F.S.

12 History: New 12/21/81, formerly 25-22.40, Repealed _____.

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1 25-22.042 Dismissal.

2 ~~(1)~~ The failure or refusal of a party to comply with any
3 lawful order may be cause for dismissing the party from the
4 proceeding.

5 ~~(2) The presiding officer shall serve upon all parties~~
6 ~~written notice of any recommended order entered pursuant to~~
7 ~~Subsection (1). Not later than fourteen (14) days after service of~~
8 ~~notice, the party against whom such an order is entered may file a~~
9 ~~motion requesting that the recommendation for or dismissal be set~~
10 ~~aside and stating the ground relied upon.~~ If a dismissal is
11 entered against the party who has the burden of proof, the
12 proceeding will be dismissed. If a dismissal is entered against a
13 party who does not have the burden of proof, the party shall not be
14 allowed to participate in the proceeding as a party.

15 Specific Authority: 120.53, F.S.

16 Law Implemented: 120.53, F.S.

17 History: New 12/21/81, formerly 25-22.42, Amended.

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1 25-22.060 Motion for Reconsideration

2 (1) Scope and general provisions.

3 (a) - (f) No change.

4 (2) Contents. No change.

5 (3) Time.

6 (a) A motion for reconsideration of a final order shall be
7 filed within fifteen (15) days after issuance of the order.

8 ~~(b) A motion for reconsideration of a nonfinal order may be~~
9 ~~filed at any time prior to the issuance of a final order. However,~~
10 ~~except for good cause shown, unless the motion is filed within~~
11 ~~fifteen (15) days after the issuance of the nonfinal order, the~~
12 ~~Commission may rule upon that motion in its final order.~~

13 ~~(e)~~ A response to a motion for reconsideration or a cross
14 motion for reconsideration shall be served within seven (7) days of
15 service of the motion for reconsideration to which the response or
16 cross motion is directed. A response to a cross motion for
17 reconsideration shall be served within seven (7) days of service of
18 the cross motion.

19 Specific Authority: 120.53, F.S.

20 Law Implemented: 120.53, F.S.

21 History: New 12/21/81, Amended 10/4/84, formerly 25-22.60, Amended

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1 25-22.102 Public Inspection and Duplication. Commission
2 ~~orders shall be made available from the agency for public~~
3 ~~inspection and copying.~~

4 Specific Authority: 120.533, F.S.

5 Law Implemented: 120.53(2)(a)(1) - (5), 350.06(7), F.S.

6 History: New 9/24/92, Amended 12/27/94, _____.

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14 25-22.106 Maintenance of Records. ~~Orders shall be maintained~~
15 ~~by the Commission pursuant to the retention schedule approved by~~
16 ~~the Department of State, Division of Library and Information~~
17 ~~Services.~~

18 Specific Authority: 120.53(2)(f) F.S.

19 Law Implemented: 119.041(2) F.S.

20 History: New 9/24/92, Amended 12/27/94, _____.

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MEMORANDUM

February 29, 1996

TO: DIVISION OF APPEALS (Moore)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (Harlow) *gsh* *AD* *gmd*

SUBJECT: ECONOMIC IMPACT STATEMENT FOR PROPOSED REVISION OF 25-22.037(2)(a), FAC, ANSWERS AND MOTIONS; AND 25-0376(1), FAC, RECONSIDERATION OF PREHEARING OFFICER ORDERS; AND REPEAL OF RULES 25-22.005(2)(e), FAC, NOTICING ADDRESS FILES; 25-22.009, FAC, SIZE OF PAPER FILED WITH COMMISSION; 25-22.010, FAC, COMMENCEMENT OF RULEMAKING PROCEEDINGS; 25-22.011, FAC, NOTICE OF RULEMAKING; 25-22.040, FAC, NOTICE OF HEARINGS; 25-22.042(2), FAC, DISMISSAL; 25-22.060(3)(b), FAC, MOTION FOR RECONSIDERATION; 25-22.102, FAC, PUBLIC INSPECTION AND DUPLICATION; 25-22.106, FAC, MAINTENANCE OF RECORDS; AND 25-22.107, FAC, PLAN FOR MAKING ORDERS AND INDEX AVAILABLE TO THE PUBLIC

The practice and procedural rules referenced above have been recommended for revision or repeal in an effort to streamline Commission rules. The rules either do not conform to current Commission policy, are redundant with other Commission rules, or duplicate Florida Statutes. Therefore, the rules can be repealed with no effect on utilities, customers, or staff, beyond the costs associated with the repeal itself.

The statutes require an agency to prepare an economic impact statement if a rule revision results in any "substantial increase in costs" or "significant adverse effects" to the parties directly affected, including state and local governmental entities. Since the revisions would decrease Commission staff paperwork and no additional costs or adverse impacts have been identified, there is no need for preparation of an EIS for the proposed rule changes.

Please keep my name on the CASR.

JGH:tf/e-memo96

cc: Mary Andrews Bane
Hurd Reeves