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MEMORANDUM

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TO : BLANCHE W. SAO, PSC Records Reporting, DIVISION OF RECORDS AND REPORTING

FROM : MARY ANNE HELTON, ASSOCIATE GENERAL COUNSEL *nat*

RE : DOCKET NO. 950500-PU-

980500-PU

Attached is the Florida Public Service Commission's Petition for Exceptions to Uniform Rules that was filed with the Administration Commission on April 15, 1998. This petition should be included in the above-referenced docket file, which is the docket in which the PSC will be repealing and amending its rules based on the Administration Commission's disposition of the petition.

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APR 15 1998

U.S. DEPARTMENT OF JUSTICE

BEFORE THE ADMINISTRATION COMMISSION  
OF THE STATE OF FLORIDA

IN THE MATTER OF: THE FLORIDA )  
PUBLIC SERVICE COMMISSION'S )  
REQUEST FOR EXCEPTIONS TO )  
UNIFORM RULES OF PROCEDURE )  
\_\_\_\_\_ )

AC CASE# \_\_\_\_\_

FILED: April 15, 1998

FLORIDA PUBLIC SERVICE COMMISSION'S  
PETITION FOR EXCEPTIONS TO UNIFORM RULES OF PROCEDURE

Pursuant to section 120.54(5)(a), Florida Statutes, the Florida Public Service Commission (PSC) respectfully requests exceptions to the following provisions of the Uniform Rules of Procedure. Notice of this petition shall be published in the April 24, 1998, edition of the Florida Administrative Weekly, and a copy of the notice is attached as Attachment A.

I. Introduction.

The Legislature has charged the PSC with the economic and service regulation of telecommunications companies and electric, natural gas, water, and wastewater utilities. Chapters 350, 364, 366, 367, and 368, Florida Statutes. When carrying out its statutory responsibilities, the PSC must consider not only the interests of the regulated entity, but also those of the public. Most matters that come before the PSC have broad policy implications.

The agency head of the PSC is a five-member collegial body. The PSC refers few cases to the Division of Administrative Hearings

(DOAH) for resolution because most issues that come before the PSC are mixed questions of law and fact infused with policy considerations that involve the ongoing regulation of a discrete number of utilities over which it has general ratemaking authority. Instead, the PSC conducts most Chapter 120, Florida Statutes, hearings itself.

The PSC presides over a number of different types of proceedings. For instance, the PSC sets rates in file and suspend rate cases. These complex cases generally involve over 150 issues and a number of intervenors. Not all rates are set in rate cases, as the PSC has a number of different procedures in place to conduct cost recovery and pass-through proceedings on a periodic basis. These types of proceedings can also involve multiple issues and parties. There are also other types of rate proceedings such as staff assisted rate cases, earnings review, service availability, and limited scope proceedings.

In addition, the PSC considers certificate and territorial matters for the different industries that it regulates. The PSC also hears complaints, resolves disputes, and takes action to enforce its statutes, rules, and orders. All of these proceedings may also involve a number of issues and parties.

A case may be heard by a single commissioner, a panel of commissioners, or all five commissioners. When each proceeding is initiated, a commissioner is designated as the prehearing officer

to handle all prehearing matters. At the hearing, however, the prehearing officer is not necessarily the presiding officer. The presiding officer function for conducting the actual hearing is assigned to the chairman, or the most senior commissioner if the chairman is not on the panel.

The PSC conducts its routine decision making at regularly scheduled public internal affairs meetings and agenda conferences.

During the calendar year 1997, the PSC opened 1,679 dockets and closed 1,775, with an average of over 650 dockets in active status each month. The PSC has tailored its procedural rules to efficiently handle this large case load dealing with multiple complex issues and parties. The exceptions that the PSC seeks below are for agency procedures that have evolved over time for the most efficient PSC operations.

## **II. Exceptions to Procedures Covered by the Uniform Rules:**

The PSC seeks exceptions for the rules listed below for the most efficient operation of the agency.

**Uniform Rule:** 28-102.001, Notice of Public Meeting, Hearing, or Workshop.

**Agency Alternative:** 25-22.001(3) and (4), Notice of Meeting or Workshop.

**Reasons for Exception:** The PSC seeks an exception to keep the additional provisions on noticing found in subsections (3) and (4)

of PSC Rule 25-22.001 that define the terms "meeting" and "workshop."

The terms public meeting and workshop are not defined by either statute or case law. By keeping subsections (3) and (4) of the PSC Rule, there will be no doubt or controversy concerning what constitutes a meeting or workshop that must be noticed by publication in the Florida Administrative Weekly (F.A.W.).

This exception is necessary for the efficient operation of the agency.

**Uniform Rule:** 28-102.002(2), Agenda of Meetings, Hearings, and Workshops.

**Agency Alternative:** 25-22.002(3), Agenda of Meetings.

**Reasons for Exception:** The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.002(3) that "[a] majority vote of a quorum of the Commission is required to modify the presiding officer's decision" on specific changes in the agenda.

The Uniform Rule does not address the procedure collegial bodies must follow to change agendas if there is disagreement with the decision of the presiding officer. To avoid doubt or controversy, the commissioners, and those who appear before the PSC, must know what the procedure is for overriding the presiding officer's decision to change the agenda.

The PSC seeks an exception for this additional requirement for

the most efficient operation of the agency.

Uniform Rule: 28-105.003, Disposition.

Agency Alternative: 25-22.022(3), Disposition.

Reasons for Exception: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.022(3) that except for hearings held under Section 120.57, Florida Statutes, "oral argument or rebuttal to staff recommendation regarding the petition are inappropriate to the proceedings under this Part, and the Commission may deny request for same."

Most agencies can issue declaratory statements without any public deliberation. In contrast, the PSC must vote on the disposition of petitions for declaratory statements at its agenda conferences, at which the PSC normally allows interested persons to speak. However, the PSC's policy has been to not take public comment concerning petitions for declaratory statements. This is because such petitions must be answered based on the facts and circumstances alleged in the petition. Because Section 350.042(1) allows commissioners to hear ex parte communications in declaratory statement proceedings, anyone who wishes to be heard may contact a commissioner with his view prior to the petition being taken up at agenda.

This exception is necessary for the efficient operation of the agency.

Uniform Rule: 28-106.102, Presiding Officer.

Agency Alternative: 25-22.035(1), Miscellaneous Matters.

Reasons for Exception: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.035(1) that "[u]nless good cause is shown, all motions for disqualification of a presiding officer shall be made at least five days prior to the date scheduled for the final hearing."

If the PSC did not have this disqualification requirement, parties could delay PSC proceedings by moving to disqualify a commissioner the day a final hearing is scheduled to commence. Such delay could result in the PSC missing statutory deadlines for file and suspend rate cases, staff assisted rate cases, reuse proceedings, need determination proceedings, tariff proceedings, rule waivers, and arbitrations of interconnection and other disputes between telecommunications companies.

This exception is necessary for the efficient operation of the PSC.

Uniform Rule: 28-106.104, Filing.

Agency Alternative: 25-22.028(1), Filing, Service of Documents, and Computation of Time; 25-22.0375(3), Pleadings.

Reasons for Exception: The PSC seeks exceptions to keep the additional filing requirements contained in PSC Rules 25-22.028(1) and 25-22.0375(3). Specifically, the PSC seeks an exception for

the provisions in 25-22.028(1) that require the larger regulated entities and parties to provide computer diskette files for documents larger than five pages. The PSC also seeks an exception so that it can continue to require multiple copies of filings as set forth in PSC Rules 25-22.028(1) and 25-22.0375(3). Finally, the PSC seeks an exception so that it can continue to require the filing of notices of service of interrogatories or production of documents.

The PSC's clerk-type functions are handled by its Division of Records and Reporting (the Division). This office handles a voluminous number of documents, orders, and notices. For example, in 1997, 13,380 documents were filed with the Division, and 1,687 orders and 141 notices were issued. The Division has a sophisticated records management system that enables it to efficiently process this large amount of paper.

A separate docket number is assigned to each proceeding at the PSC. Each document that is filed with the Division, and each order and notice that the Division issues, is assigned a sequential document number. Information describing the document, order, or notice is then logged into the PSC's computerized Case Management System. This system enables all PSC employees, internet users, and visitors using the PSC public computer terminals to have access to information concerning docket filings.

In addition, the PSC requires the larger regulated entities



and parties to provide diskette filings of certain documents filed with the PSC. These computer files are then made part of the computerized Case Management System. They can be retrieved by all PSC employees, as well as by visitors using the PSC public computer terminals. In 1997 alone, 1,237 on-line documents were accessed through the Case Management System. Having these files on computer reduces paper consumption and makes staff recommendations and orders easier to draft because of cut-and-paste word processing capabilities.

When documents are filed with the PSC, the Division forwards the original to the docket file, and copies to a back-up docket file, the commissioners and technical staff members assigned. If the PSC were not able to ask for the additional copies required by Rules 25-22.028(1) and 25-22.0375(3), extra staff would have to be employed to make the requisite numbers of copies needed for internal distribution and to meet the time constraints for production and distribution of those copies. Thus, the cost of agency operations would increase.

The PSC currently requires parties to file a notice of service for interrogatories and production of documents so that all parties and interested persons will be informed of discovery being conducted in a case.

These exceptions are necessary for the PSC to continue to operate efficiently.

Uniform Rule: 28-106.106, Who May Appear; Criteria for Qualified Representatives.

Agency Alternative: 25-22.008(1)-(3)(a)3.; (3)(a)5.-(4); and (6), Practitioners.

Reasons for Exception: The PSC seeks an exception so that it can continue to follow its Rule 25-22.008.

The PSC Rule is different from Uniform Rule 28-106.106 in a number of ways. First, the PSC Rule allows attorneys who are not admitted to the Florida Bar to practice before the PSC. Rule 25-22.008(1)(a) and (2)(b), F.A.C. Rule 25-22.008(2)(b) does require the attorney to have "practiced before utility regulatory bodies in other states or at the federal level." The practice of utility law is a very specialized field, and there are a limited number of such practitioners in Florida. In addition, the PSC regulates Florida operations of large corporations with headquarters and counsel out-of-state. This provision allows substantially affected persons to utilize or seek counsel outside of Florida.

Second, under the Uniform Rule, the client of the qualified representative must seek permission from the presiding officer for the qualified representative to represent the client in each proceeding. On the other hand, the PSC Rule allows a non-attorney to obtain a Class B certificate that is renewable every two years. This practice negates the need for non-attorneys to seek and obtain permission each time they are to represent a client before the PSC.

This streamlined procedure recognizes that the same non-attorney representatives often represent the same clients before the PSC.

Third, the PSC Rule has more stringent requirements for non-attorney representatives to practice before the PSC. For example, PSC Rule 25-22.008(3)(a)2., 3., and 5. requires Class B practitioners to detail their knowledge of the relief available from the PSC; their education and experience relative to Chapter 120, F.S., and Rules 9.020, 9.110, 9.310, and 9.800, Florida Rules of Appellate Procedure; and their educational background, training, and work experience relative to utility regulation.

Fourth, the PSC Rule authorizes the Office of General Counsel to grant Class B applications. Rule 25-22.008(3)(c), F.A.C. Recommendations for denial must be heard by the full Commission. This provision allows the PSC to process applications more expeditiously.

Finally, the PSC Rule allows practitioners to appear as witnesses in PSC proceedings in the limited circumstances spelled out in PSC Rule 25-22.008(6).

The above exceptions are necessary for the efficient operation of the PSC.

**Uniform Rule:** 28-106.109, Notice to Interested Parties.

**Agency Alternative:** 25-22.026(3) and (4), Parties.

**Reasons for Exception:** The PSC seeks an exception to keep the

additional provisions in subsections (3) and (4) of PSC Rule 25-22.026 that delineate the role of PSC staff in evidentiary proceedings.

In the past, parties and hearing officers at DOAH have questioned the role of staff in evidentiary proceedings. These provisions make staff's role clear and avoid any confusion and controversy.

These additional provisions are necessary for the efficient operation of the agency.

**Uniform Rule:** 28-106.111(2)-(4), Point of Entry into Proceedings and Mediation.

**Agency Alternative:** 25-22.029, Point of Entry Into Proposed Agency Action Proceedings.

**Reasons for Exception:** The PSC seeks an exception to subsections (2) through (4) of Uniform Rule 28-106.111 that require a hearing to be requested within 21 days of receipt of notice of the decision and that provide that a right to hearing will be waived if not requested within 21 days.

The Uniform Rule ties the time period within which a request for hearing can be made to receipt of the notice; whereas, PSC Rule 25-22.029 ties the time period to issuance of the notice. During 1997, the PSC issued 576 proposed agency action orders. Under the PSC procedure, the PSC and affected persons are able to track the

time certain when proposed agency action becomes final. Under the Uniform Rule, the only way the PSC could assign a time certain to the finality of proposed agency action would be by sending out notices via certified mail. This procedure would be much more costly, and additional staff would be needed to complete and track the sending and receipt of certified receipt cards.

Moreover, the Uniform Rule does not contemplate the fact that the PSC often issues proposed agency action orders that may affect a broad class of persons. For instance, some rate cases may be decided by proposed agency action. See Sections 366.06(4) and 367.081(8), Florida Statutes. In these types of rate cases, utilities must notify affected customers of the rate increase by distributing a notice no later than with the first bill containing the revised rates.

In addition, PSC Rule 25-22.029(2) provides that the PSC may shorten the time to request a hearing to 14 days from issuance of the order for good cause shown. This shortened time period is needed to meet certain statutory deadlines, such as those associated with issuing a price increase or decrease index pursuant to Section 367.081(4)(a), Florida Statutes, or a leverage formula pursuant to Section 367.081(4)(f), Florida Statutes. See In re: Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4)(a), F.S., 97 F.P.S.C.

2:162, 164 (1997) (Protest period shortened to 14 days because of limited time to resolve protests).

Finally, the PSC Rule ties the waiver of hearing rights to "the expiration of the time within which to request a hearing." Rule 25-22.029(6), F.A.C. This provision recognizes that there may be different time periods for requesting a hearing depending on the notice given. The Uniform Rule, on the other hand, states that waiver of hearing rights occurs if a hearing is not requested within 21 days of receipt of the notice.

An exception for the PSC Rule is necessary for the efficient operation of the agency.

**Uniform Rule:** 28-106.201, Initiation of Proceedings.

**Agency Alternative:** 25-22.036(1)-(7) and (9)-(10), Initiation of Formal Proceedings.

**Reasons for Exception:** The PSC seeks an exception from the Uniform Rule on the initiation of proceedings.

Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action.

The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The

rule recognizes there are other ways to seek the determination of substantial interests before the PSC besides filing a petition, and clearly lays out the avenues available to the public. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

This exception is necessary for the agency to operate efficiently.

Uniform Rule: 28-106.202, Amendment of Petitions.

Agency Alternative: 25-22.036(8), Initiation of Formal Proceedings.

Reasons for Exception: The PSC seeks an exception from the Uniform Rule concerning the amendment of petitions.

The Uniform Rule contemplates only petitions may be amended, whereas the PSC Rule contemplates petitions, applications, and complaints may be amended. The PSC amendment provision recognizes that proceedings determining substantial interests may also be initiated at the PSC by complaint and application.

This exception is necessary for the most efficient operation of the agency.

Uniform Rule: 28-106.203, Answer.

Agency Alternative: 25-22.037(1), Answers and Motions.

Reasons for Exception: The PSC seeks an exception from the Uniform

Rule concerning Answers.

The Uniform Rule does not state the time by which an answer must be filed as does the PSC Rule, which requires an answer to be served within 20 days of service of the petition. In addition, the PSC Rule clarifies that an answer to a PSC order or notice must be filed within 20 days unless a different time period is specified by the order or notice.

By specifying a time period, the PSC Rule avoids confusion and abuse. Without the PSC Rule, a respondent could claim the right to file an answer at virtually any time, and challenge the validity of any ruling made before the respondent opted to file a response. The PSC Rule promotes the orderly disposition of matters brought before the agency.

This exception is necessary for the efficient operation of the agency.

**Uniform Rule:** 28-106.204(1)-(2), Motions.

**Agency Alternative:** 25-22.037(2), Answers and Motions; 25-22.038(1), Prehearing Officer; Prehearing Statement; Prehearing Conference; and Prehearing Order.

**Reasons for Exception:** The PSC seeks an exception to subsections (1)-(2) of the Uniform Rule on motions.

PSC Rule 25-22.037(2)(a) requires motions to dismiss, motions to strike, and motions for a more definite statement to be filed



within the time for filing an answer, whereas Uniform Rule 28-106.204(2) requires only motions to dismiss to be filed no later than 20 days after service of the petition on the party. PSC Rule 25-22.037(2)(a) also has the additional provision that if any of these motions in opposition are denied, "an answer or other responsive pleading may be filed within 10-days [sic] after issuance of an order denying the motion." The PSC seeks to keep these additional provisions because they prevent delay and may reduce workload if it can be discerned early on that part of an initial pleading is inadequate.

In addition, PSC Rule 25-22.037(2)(b) requires motions not made during the course of a hearing to be filed with the Division of Records and Reporting (the Division). In contrast, Uniform Rule 28-106.204(1) requires motions to be filed with the presiding officer. As discussed above at pages 6-7, the Division has a complex computerized Case Management System that tracks and stores documents filed with the PSC. The Division's document management controls could be contravened if motions were required to be filed with the presiding officer. At best, this Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC.

In addition, Uniform Rule 28-106.204(1) authorizes the presiding officer to conduct proceedings and enter orders to dispose of motions. This requirement conflicts with current

Commission practice because PSC prehearing matters are handled by the prehearing officer. As discussed above in Part I, the prehearing officer may or may not be the presiding officer at the hearing.

These exceptions to the Uniform Rule on motions are necessary for the most efficient operation of the PSC.

**Uniform Rule:** 28-106.205, Intervention.

**Agency Alternative:** 25-22.039, Intervention.

**Reasons for Exception:** The PSC seeks an exception to the Uniform Rule on intervention.

PSC Rule 25-22.039 requires petitions for intervention to be filed at least five days before the commencement of a hearing, and Uniform Rule 28-106.205 requires such petitions to be filed at least 20 days prior to a final hearing.

Because Uniform Rules 28-106.208 and 28-106.302 require 14 days written notice for hearings determining substantial interests, it is possible that a potential intervenor would not learn of a hearing until the 20-day period to intervene had expired. Also, many customers that intervene in PSC proceedings do so at the end of the intervention period. The PSC is concerned that the 20-day rule could limit customer participation in hearings. Allowing the PSC to keep its five-day rule would probably reduce the number of instances where the PSC would have to determine whether good cause

System. If the Uniform Rule were to control, the PSC's streamlined procedure would become more cumbersome because additional divisions would have to be included in the process.

In addition, the Uniform Rule requirement may invite inquiries about hearing dates and times to the office of the commissioner who is the presiding officer. This could create opportunities for abuse of the strict ex parte prohibitions in Section 350.042, Florida Statutes.

As discussed above in Part I, PSC proceedings often impact broad interests. The PSC notice requirements in subsections (2) and (4) concerning local government notification and newspaper publication are designed to ensure that all persons potentially affected by PSC action will have notice of PSC proceedings.

These exceptions are needed for the efficient operation of the agency.

**Uniform Rule:** 28-106.209, Prehearing Conferences; and 28-106.211, Conduct of Proceedings.

**Agency Alternative:** 25-22.038, Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

**Reasons for Exception:** The PSC seeks an exception to Uniform Rules 28-106.109 and 28-106.211 so that the agency can continue to follow PSC Rule 25-22.038.

Under the Uniform Rules, the presiding officer is responsible

for prehearing matters. However, under PSC practice the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the hearing, as discussed above in Part I.

In addition, the PSC Rule explains in detail the prehearing procedures followed by the PSC. These procedures, which have evolved over the years, ensure that the same procedures are used in each hearing. The specifics set forth in PSC Rule 25-22.038 provide all hearing participants with knowledge of PSC prehearing procedures. This allows the PSC to conduct prehearing matters in a consistent, orderly, and efficient fashion.

The PSC seeks an exception to continue to follow PSC Rule 25-22.038 for the more efficient operation of the agency.

**Uniform Rule:** 28-106.212(1) and (3), Subpoenas.

**Agency Alternative:** 25-22.045(1), (2), (3), and (5), Subpoenas.

**Reasons for Exception:** The PSC seeks exceptions to subsections (1) and (3) of the Uniform Rule so that it can continue to follow subsections (1), (2), (3), and (5) of the PSC Rule.

Under the Uniform Rule, only the presiding officer can issue subpoenas. Under the PSC Rule, either the presiding officer or the Division of Records and Reporting (the Division) can issue subpoenas. In practice, however, the Division issues all subpoenas. Since subpoenas must be timely issued, this is the more

practical approach for the PSC since the travel and hearing schedules of presiding officers often prevent quick responses.

In addition, pursuant to the Uniform Rule, motions to quash are to be filed with the presiding officer. The PSC seeks an exception to this requirement so that motions to quash will continue to be filed with the Division. This Division has controls in place to ensure the motion will be disposed of by the appropriate prehearing officer, and that the motion will be logged into the Division's computerized Case Management System discussed above at pages 6-7.

The PSC Rule also provides that subpoenas may be issued for the inspection of documents without deposing anyone. This additional procedure effectuates discovery in PSC proceedings.

Finally, the PSC Rule allows subpoenas to be served by certified mail. This type of service cuts down on costs for hearing participants.

The PSC seeks exceptions for the subpoena provisions discussed above for the most efficient operation of the agency.

**Uniform Rule:** 28-106.213, Evidence.

**Agency Alternative:** 25-22.048(3) and (4), Evidence.

**Reasons for Exception:** The PSC seeks exceptions to keep the additional requirements in subsection (3) concerning the exclusion of irrelevant and repetitious evidence and subsection (4)

concerning prefiled testimony for its Rule 25-22.048.

The last sentence in subsection (3) of the PSC Rule concerning the exclusion of irrelevant and repetitious evidence helps keep hearings manageable and may shorten the time spent in hearing.

In addition, PSC practice is to require prefiled direct testimony, and rebuttal testimony if any, in all proceedings. Often, as in rate cases, prefiled testimony is filed along with the petition. Cross-examination upon the prefiled testimony is conducted live at the hearing. This process acknowledges the technical subject matter of most issues, and expedites the hearing process. Moreover, the prefiled testimony format requirements ensure that the PSC can comply with the transcript requirements in Rules 9.190 and 9.200, Florida Rules of Appellate Procedure, if an order is appealed.

These exceptions are needed for the efficient operation of the agency.

Uniform Rule: 28-106.215, Post-Hearing Submittals.

Agency Alternative: 25-22.056(1)-(3), Post-hearing Filings.

Reasons for Exception: The PSC seeks an exception to keep its Rule 25-22.056(1)-(3) that sets forth the requirements for post-hearing filings.

The PSC Rule is tailored to the post-hearing procedure followed by the PSC. Because either a single commissioner or a

panel may hear a case, subsection (1) specifies the types of post-hearing filings available to parties in either circumstance. In particular, if a panel hears a case, proposed orders like those authorized under the Uniform Rule are not an option. Instead, a party may file a brief and statement of issues and positions.

PSC Rule 25-22.056(1)(d) also limits proposed findings of fact, conclusions of law, statements of issues and positions, and briefs to no more than 60 pages total. In addition, this rule sets out page formatting requirements. Past PSC experience has shown that more than 40 pages is consistently needed because of the number and complexity of issues in many PSC proceedings.

The rule also addresses the procedure to follow when requesting oral argument after a hearing. Rule 25-22.056(1)(e), F.A.C. This provision makes the rights of parties clear.

Subsection (2) of the PSC Rule sets out requirements on proposed findings of fact. The PSC adopted these requirements after the agency had experienced situations in which parties filed inappropriate findings of fact that diverted the PSC's "time and attention away from a careful analysis of the substance of the case." In re: Application of East Central Florida Services, Inc. for an original certificate in Brevard, Orange and Osceola Counties, 92 F.P.S.C. 3:374, 386 (1992) (One party filed 531 proposed findings of fact of which less than one-third were accepted).

Finally, subsection (3) of the PSC Rule sets out the requirements for the statement of issues and positions. Specific requirements concerning this post-hearing filing are necessary because this information is incorporated into the staff recommendation upon which the PSC votes to dispose of a case. The rule is clear that "[a]ny issue or position not included in a post-hearing statement shall be considered waived." Rule 25-22.056(3)(a), F.A.C.

These exceptions to the Uniform Rule are necessary for the efficient operation of the agency.

Uniform Rule: 28-106.216(1), Entry of Recommended Order.

Agency Alternative: 25-22.056(4)(a), Post-hearing Filings.

Reasons for Exception: The PSC seeks an exception for PSC Rule 25-22.056(4)(a) concerning recommended or proposed orders when a hearing is conducted by a single PSC commissioner.

The Uniform Rule is tailored to proceedings referred to DOAH, after which an Administrative Law Judge (ALJ) submits a recommended order to an agency head. The Uniform Rule does not address proceedings where a single commissioner acts as the hearing officer, and then submits his recommended order to the full commission to decide final agency action, which may be the case at the PSC and is contemplated under the PSC rule.

This exception is needed for the efficient operation of the



agency. In addition, Section 350.01(7), Florida Statutes, authorizes the PSC to adopt rules concerning a single commissioner conducting a hearing under Sections 120.569 and 120.57(1).

**Uniform Rule:** 28-106.217(1) and (2), Exceptions and Responses.

**Agency Alternative:** 25-22.056(4)(b), Post-hearing Filings.

**Reasons for Exception:** The PSC seeks an exception to the requirements of subsections (1) and (2) of Uniform Rule 28-106.217 so that the agency can continue to apply the requirements of PSC Rule 25-22.056(4)(b).

Pursuant to Section 120.569(2)(j)1., Florida Statutes, orders must be rendered within 90 days "[a]fter the hearing is concluded, if conducted by the agency." The PSC Rule requires exceptions to be filed within 14 days of service of the order, and not 15 days, as allowed by the Uniform Rule. In addition, the PSC Rule does not allow responses to exceptions. The PSC would not be able to meet the 90-day statutory deadline for rendering orders if the agency followed the Uniform Rule because it holds public meetings to do so only twice every month and recommended orders must be voted on by the full Commission.

This exception is necessary for the efficient operation of the agency. In addition, Section 350.01(7), Florida Statutes, authorizes the PSC to adopt rules concerning a single commissioner conducting a hearing under Sections 120.569 and 120.57(1).

**Uniform Rule:** 28-106.301, Initiation of Proceedings.

**Agency Alternative:** 25-22.036(1)-(7) and (9)-(10). Initiation of Formal Proceedings.

**Reasons for Exception:** The PSC seeks an exception from the Uniform Rule on the initiation of proceedings not involving disputed issues of material fact.

Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action.

The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The rule recognizes there are other ways to seek the determination of substantial interests before the PSC besides filing a petition, and clearly lays out the avenues available to the public. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

This exception is necessary for the agency to operate efficiently.

**Uniform Rule:** 28-106.302(1), Notice of Proceeding.

**Agency Alternative:** 25-22.038, Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

**Reasons for Exception:** The PSC seeks an exception to Uniform Rule 28-106.302(1) which provides that the agency serves written notice on all parties regarding the evidence or memoranda of law to be submitted by the parties. Under PSC practice, the governance of such matters is handled by the prehearing officer assigned to the case. The prehearing officer issues a procedural order which contains the specific details of what should be filed and on what date, and identifies the issues in dispute. This procedure provides all participants in the informal hearing with notice.

The PSC seeks an exception to the Uniform Rule for the more efficient operation of the agency.

**Uniform Rule:** 28-106.303(1), Motions.

**Agency Alternative:** 25-22.037(2)(b), Answers and Motions; 25-22.038(1), Prehearing Officer; Prehearing Statement; Prehearing Conference; and Prehearing Order.

**Reasons for Exception:** The PSC seeks an exception to the requirements in Uniform Rule 28-106.303(1) concerning the presiding officer's responsibilities over motions filed in informal proceedings.

PSC Rule 25-22.037(2)(b) requires motions not made during the course of a hearing to be filed with the Division of Records and Reporting. In contrast, Uniform Rule 28-106.303(1) requires motions to be filed with the presiding officer. As discussed above

at pages 6-7, the PSC's Division of Records and Reporting (the Division) has a complex computerized case management system to track and store documents filed with the PSC. The Division's document management controls may be contravened if motions were required to be filed with the presiding officer. At best, this Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC.

In addition, Uniform Rule 28-106.303 provides the presiding officer shall take action to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer. As discussed above in Part I, the prehearing officer may or may not be the presiding officer at the hearing.

This exception to the Uniform Rule on motions filed in proceedings not involving disputed issues of material fact is necessary for the most efficient operation of the PSC.

**Uniform Rule:** 28-106.305(1), Conduct of Proceedings.

**Agency Alternative:** 25-22.038(1), Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

**Reasons for Exception:** The PSC seeks an exception to Uniform Rule 28-106.305(1) so that the agency can continue to follow PSC Rule 25-22.038(1).

Under the Uniform Rules, the presiding officer issues orders

necessary to effect discovery and addresses other procedural matters in the case. Under PSC practice, the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the informal hearing. The prehearing officer issues a procedural order which provides the specific details of what should be filed, sets critical dates, and identifies the issues in dispute. This procedure provides all participants in the informal hearing with knowledge of the conduct of the informal hearing.

The PSC seeks an exception for the more efficient operation of the agency.

### **III. Exceptions for Procedures in Addition to the Uniform Rules Authority:**

The PSC acknowledges that the Administration Commission published a notice of rule development on March 13, 1998, to amend Uniform Rule 28-108.001 to require exceptions to the Uniform Rules only when an agency's procedural rules fall within the subject matter or scope of the Uniform Rules in Chapters 28-101 through 28-110, F.A.C. The PSC also acknowledges that recent Final Orders entered by the Administration Commission further clarify the types of agency procedural rules that require exceptions. See In re: Petition for Exceptions from the Uniform Rules of Procedure, State of Florida Department of Environmental Protection, AC Case No. APA-

98-003, Final Order No. AC-98-003, dated March 25, 1998 (Exceptions are necessary for procedural rules within the scope or subject matter of the Uniform Rules; exceptions are not necessary for appeals procedures extending beyond the scope of Chapter 28-106, F.A.C.); In re: Petition for Exceptions from the Uniform Rules of Procedure, South Florida Water Management District, AC Case No. APA-98-002, Final Order No. AC-98-005, dated March 25, 1998. Based on these recent directives, the PSC believes that exceptions are necessary for the procedural rules listed below. The PSC, however, reserves the right to seek exceptions for other procedural rules if it determines such exceptions may be necessary based on further directives from the Administration Commission.

**Agency Procedure:** 25-21.004, Disqualification.

**Reason for Procedure:** This rule clearly announces the reasons why a commissioner may be disqualified from hearing a case, states the procedure to follow when filing a petition for disqualification, and states how a petition will be disposed of by the PSC. The rule removes doubt or controversy concerning the procedures on disqualification. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(2), F.S.

**Agency Procedure:** 25-22.0021, Agenda Conference Participation.

**Reason for Procedure:** The PSC votes on agency action at public meetings called agenda conferences. The purpose of PSC Rule 25-22.0021 is to clearly set forth the PSC's policy on accepting public comments during the course of these meetings. It gives notice to all regulated entities, parties, and interested persons concerning their right to participate in the agenda conference. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(2), F.S.

**Agency Procedure:** 25-22.006, Confidential Information.

**Reason for Procedure:** PSC Rule 25-22.006 sets out the procedures to follow when requesting that certain information filed with the PSC be considered confidential and exempt from Section 119.07(1), Florida Statutes. For example, the rule prescribes the confidentiality procedures that must be followed when conducting discovery and using confidential information in hearings. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.121, 364.183, 366.093, and 367.156, F.S.

**Agency Procedure:** 25-22.017(1) and (2), Rulemaking Proceeding -- Adoption.

**Reason for Procedure:** Subsections (1) and (2) of PSC Rule 25-

22.017 prescribe the procedures the PSC will follow when voting to adopt changes to a proposed rule at an agenda conference. This rule puts the public on notice as to the procedure used by the PSC, and avoids doubt or controversy. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(2), F.S.

**Agency Procedure:** 25-22.035(3), Miscellaneous Matters.

**Reason for Procedure:** Subsection (3) of PSC Rule 25-22.035 provides the Florida Rules of Civil Procedure will govern formal proceedings except where they are superseded by or in conflict with a PSC Rule. If a procedural matter is not governed by a Uniform Rule or a PSC Rule, it will often be addressed in the Florida Rules of Civil Procedure. For instance, neither the Uniform nor PSC Rules address voluntary dismissal of actions. When the issue has arisen at the PSC in the past, the PSC has relied on and followed Rule 1.420, Florida Rules of Civil Procedure. See In re: Petition for approval of contract for the purchase of firm capacity and energy between General Peat Resources, L.P. and Florida Power and Light Company, 94 F.P.S.C. 3:507, 508 (1994) (Florida Rule of Civil Procedure 1.420 was found to be applicable to the petitioner's notice of dismissal pursuant to PSC Rule 25-22.035). This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(2), F.S.



Agency Procedure: 25-22.0355, Assignment of Formal Proceedings.

Reason for Procedure: PSC Rule 25-22.0355 puts all affected persons on notice as to the procedure that will be followed when assigning a commissioner or DOAH ALJ to formal proceedings. The rule also prescribes the procedure to follow when requesting to have a case assigned to the full Commission. The rule avoids doubt or controversy concerning the assignment of proceedings. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 120.57(1)(a), 350.01, 350.125, and 350.127(2), F.S.

Agency Procedure: 25-22.037(3) and (4), Answers and Motions.

Reason for Procedure: Subsections (3) and (4) of PSC Rule 25-22.037 prescribes the PSC's policy on default and waiver. The rule puts all interested persons on notice as to when waiver or default is considered to have occurred, and thus avoids any doubt or controversy concerning such issues. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.0376, Reconsideration of Non-Final Orders.

Reason for Procedure: PSC Rule 25-22.0376 provides a means for adversely affected parties to seek reconsideration of a non-final order issued by a single commissioner, usually acting as a

prehearing officer. The rule provides the procedure the party must follow to seek reconsideration by the panel assigned to hear the case. The rule avoids doubt or controversy concerning reconsideration of non-final orders. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(2), F.S.

**Agency Procedure:** 25-22.0406, Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.

**Reason for Procedure:** PSC Rule 25-22.0406 prescribes the procedure for noticing customers of electric and gas utilities and telecommunications companies that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of service hearings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 364.035(1), 364.19, 366.05(1), 366.06, F.S.

**Agency Procedure:** 25-22.0407, Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

**Reason for Procedure:** PSC Rule 25-22.0407 prescribes the procedure for noticing customers of water and wastewater utilities that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of customer meetings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 367.081, 367.0814(1), 367.0817(1)(h), 367.091, 367.121(1)(f), F.S.

**Agency Procedure:** 25-22.042, Dismissal.

**Reason for Procedure:** PSC Rule 25-24.042 puts all parties on notice that failure or refusal to comply with a PSC order subjects the party to dismissal from the action, and if the offending party carries the burden of proof, the proceeding itself may be dismissed. The rule enables the PSC to take affirmative action when a party demonstrates a "persistent inability to comply with Commission orders and rules." In re: Application for certificate to provide interexchange telecommunications service by Health Liability Management Corporation, 97 F.P.S.C. 11:451, 454 (1997). This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(2), F.S.

Agency Procedure: 25-22.046, Witnesses and Witness Fees.

Reason for Procedure: PSC Rule 25-22.046 sets out the requirements for witness fees, and states that members of the general public may appear as witnesses in PSC proceedings without being a party. The rule avoids doubt or controversy concerning witness fees, and the ability of the general public to participate in proceedings. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.058, Oral Argument.

Reason for Procedure: PSC Rule 25-22.058 puts all parties to a formal proceeding on notice as to when the PSC may grant requests for oral argument. The Florida Supreme Court has recognized that this rule may aid the PSC in determining what agency action to take. U.S. Sprint Communications Co. v. Nichols, 534 So. 2d 698, 700 (Fla. 1988). This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.060, Motion for Reconsideration.

Reason for Procedure: PSC Rule 25-22.060 provides a means for adversely affected parties to seek reconsideration of final orders issued by the PSC. The rule provides the procedure the party must follow to seek reconsideration. As recognized by the Florida

Supreme Court,

A petition for reconsideration is used to bring to an agency's attention specific matters which do not appear to be reflected in its reasoning and decision. By this means the need for judicial review can be obviated, and the expertise of the agency can be expressed within the framework of goals established by the Legislature.

Sentinel Star Express Company v. Florida Public Service Commission, 322 So. 2d 503, 505 (Fla. 1975). This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 350.127(2), F.S.

Agency Procedure: 25-22.075, Transmission Line Permitting Proceedings.

Reason for Procedure: PSC Rule 25-22.075 sets out the procedure to initiate a transmission line permitting proceeding, including special noticing requirements. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.537, F.S. This rule is needed for the most efficient operation of the agency.

Authority for Procedure: 403.537, F.S.

Agency Procedure: 25-22.080, Electrical Power Plant Permitting Proceedings.

Reason for Procedure: PSC Rule 25-22.080 sets out the procedure to

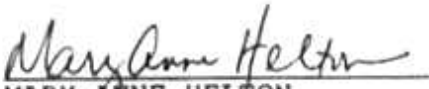
initiate an electrical power plant permitting proceeding, including special noticing requirements and decisional time lines. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.519, F.S. This rule is needed for the most efficient operation of the agency.

**Authority for Procedure:** 350.127(1) and 403.519, F.S.

WHEREFORE, the Florida Public Service Commission respectfully requests this Commission for an order granting the exceptions requested above.

Respectfully submitted,

ROBERT D. VANDIVER  
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MARY ANNE HELTON  
Associate General Counsel  
Florida Bar No. 894095

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0862  
850-413-6245

Dated: April 15, 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by U.S. Mail or hand-delivered this 15th day of April, 1998.

Honorable Lawton Chiles  
Governor  
The Capitol  
Tallahassee, FL 32399

Honorable Sandra B. Mortham  
Secretary of State  
The Capitol  
Tallahassee, FL 32399

Honorable Robert Milligan  
Comptroller  
The Capitol  
Tallahassee, FL 32399

Honorable Bill Nelson  
Insurance Commissioner  
The Capitol  
Tallahassee, FL 32399

Honorable Bob Butterworth  
Attorney General  
The Capitol  
Tallahassee, FL 32399

Honorable Frank Brogan  
Commissioner of Education  
The Capitol  
Tallahassee, FL 32399

Honorable Bob Crawford  
Commissioner of Agriculture  
The Capitol  
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David Schwartz, Esquire  
Governor's Legal Office  
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\_\_\_\_\_  
MARY ANNE HELTON

PET2.MAH

ATTACHMENT A

FLORIDA PUBLIC SERVICE COMMISSION

The PSC seeks exceptions to the following Uniform Rules of Procedure for the most efficient operation of the agency.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-102.001, Notice of Public Meeting, Hearing, or Workshop.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional provisions on noticing found in subsections (3) and (4) of PSC Rule 25-22.001 that define the terms "meeting" and "workshop" to avoid doubt or controversy concerning what constitutes a meeting or workshop that must be noticed by publication in the Florida Administrative Weekly.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-102.002(2), Agenda of Meetings, Hearings, and Workshops.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.002(3) that "[a] majority vote of a quorum of the Commission is required to modify the presiding officer's decision" on specific changes in the agenda. This provision avoids doubt or controversy concerning the procedure for overriding the presiding officer's decision to change the agenda.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-105.003, Disposition.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception



to keep the additional requirement in PSC Rule 25-22.022(3) that discourages oral argument on declaratory statements at its public agenda conferences. Petitions for declaratory statements must be answered based on the facts and circumstances alleged in the petition. Anyone who wishes to address the merits may contact commissioners prior to agenda conferences pursuant to Section 350.042(1), Florida Statutes.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.102,  
Presiding Officer.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.035(1) that "[u]nless good cause is shown, all motions for disqualification of a presiding officer shall be made at least five days prior to the date scheduled for the final hearing." This exception will prevent parties from delaying proceedings by moving to disqualify a commissioner the day a final hearing is scheduled to commence.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.104, Filing.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to keep the additional filing requirements contained in PSC Rules 25-22.028(1) and 25-22.0375(3). Specifically, the PSC seeks an exception for the provisions in 25-22.028(1) that require the larger regulated entities and parties to provide computer diskette files for documents larger than five pages. The PSC also seeks an exception so that it can continue to require

multiple copies of filings as set forth in PSC Rules 25-22.028(1) and 25-22.0375(3). Finally, the PSC seeks an exception so that it can continue to require the filing of notices of service of interrogatories or production of documents. These additional requirements enable the PSC to maintain its computerized Case Management System in which information concerning document filings and some on-line documents are stored for easy public access. This system also reduces paper consumption. The additional copies enable the PSC to distribute copies of filings to all PSC employees involved in the case without PSC staff having to make the copies. The filing of discovery notices enables all parties and interested persons to be informed of discovery being conducted in a case.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.106, Who May Appear; Criteria for Qualified Representatives.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception so that it can continue to follow its Rule 25-22.008. The PSC Rule allows attorneys who are not admitted to the Florida Bar to practice before the PSC and thus recognizes that the practice of utility law is a very specialized field, that there are a limited number of such practitioners in Florida, and that the PSC regulates Florida operations of large corporations with headquarters and counsel out-of-state. Under the Uniform Rule, the client of the qualified representative must seek permission

from the presiding officer for the qualified representative to represent the client in each proceeding. On the other hand, the PSC Rule allows a non-attorney to obtain a Class B certificate that is renewable every two years. This practice negates the need for non-attorneys to seek and obtain permission each time they are to represent a client before the PSC. The PSC Rule has more stringent requirements for non-attorney representatives to practice before the PSC. The PSC Rule authorizes the Office of General Counsel to grant Class B applications so that applications can be processed expeditiously; recommendations for denial must be heard by the full Commission. Finally, the PSC Rule allows practitioners to appear as witnesses in PSC proceedings in the limited circumstances spelled out in subsection (6).

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.109, Notice to Interested Parties.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional provisions in subsections (3) and (4) of PSC Rule 25-22.026 that delineate the role of PSC staff in evidentiary proceedings. These provisions make staff's role clear and avoid any confusion and controversy concerning staff's participation in proceedings.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.111(2)-(4), Point of Entry into Proceedings and Mediation.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to subsections (2) through (4) of Uniform Rule 28-106.111 that require a hearing to be requested within 21 days of receipt of notice of the decision and that provide that a right to hearing will be waived if not requested within 21 days. The Uniform Rule ties the time period within which a request for hearing can be made to receipt of the notice; whereas, PSC Rule 25-22.029 ties the time period to issuance of the notice. Under the PSC procedure, the PSC and affected persons are able to track the time certain when proposed agency action becomes final. In addition, PSC Rule 25-22.029(2) provides that the PSC may shorten the time to request a hearing to 14 days from issuance of the order for good cause shown. This shortened time period is needed to meet certain statutory deadlines. Finally, the PSC Rule ties the waiver of hearing rights to "the expiration of the time within which to request a hearing." This provision recognizes that there may be different time periods for requesting a hearing depending on the notice given.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.201,  
Initiation of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings so that it can continue to follow PSC Rule 25-22.036(1)-(7) and (9)-(10). Under the Uniform Rule, only petitions can initiate an agency

proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action. The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.202, Amendment of Petitions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule concerning the amendment of petitions so that it can continue to follow PSC Rule 25-22.036(8). The Uniform Rule contemplates only petitions may be amended, whereas the PSC Rule contemplates petitions, applications, and complaints may be amended. The PSC amendment provision recognizes that proceedings determining substantial interests may also be initiated at the PSC by complaint and application.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.203, Answer.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule concerning Answers so that it can continue to follow PSC Rule 25-22.037(1). The Uniform Rule does not state the time by which an answer must be filed as does the PSC Rule, which requires an answer to be served within 20 days of service

of the petition. In addition, the PSC Rule clarifies that an answer to a PSC order or notice must be filed within 20 days unless a different time period is specified by the order or notice. By specifying a time period, the PSC Rule avoids confusion and abuse. The PSC Rule promotes the orderly disposition of matters brought before the agency.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.204(1)-(2),  
Motions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to subsections (1)-(2) of the Uniform Rule on motions so that it can continue to follow PSC Rules 25-22.037(2) and 25-22.038(1). PSC Rule 25-22.037(2)(a) requires motions to dismiss, motions to strike, and motions for a more definite statement to be filed within the time for filing an answer, whereas Uniform Rule 28-106.204(2) requires only motions to dismiss to be filed no later than 20 days after service of the petition on the party. PSC Rule 25-22.037(2)(a) also has the additional provision that if any of these motions in opposition are denied, "an answer or other responsive pleading may be filed within 10-days [sic] after issuance of an order denying the motion." The PSC seeks to keep these additional provisions because they prevent delay and may reduce workload if it can be discerned early on that part of an initial pleading is inadequate. In addition, PSC Rule 25-22.037(2)(b) requires motions not made during the course of a

hearing to be filed with the Division of Records and Reporting (the Division) instead of the presiding officer as required by the Uniform Rule. The Division has a complex computerized Case Management System that tracks and stores documents filed with the PSC that could be contravened if motions were required to be filed with the presiding officer. The Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC. Finally, Uniform Rule 28-106.204(1) authorizes the presiding officer to conduct proceedings and enter orders to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.205, Intervention.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the Uniform Rule on intervention so that it can continue to follow PSC Rule 25-22.039. Under the PSC rule, petitions to intervene can be filed five days before the commencement of a hearing. The PSC is concerned that the 20-day period in the Uniform Rule could limit customer participation in hearings. Allowing the PSC to keep its five-day rule would probably reduce the number of instances where the PSC would have to determine whether good cause was shown to intervene after the expiration of the intervention period in the Uniform Rule. Also, the PSC Rule

makes it clear that "[i]ntervenors take the case as they find it," and, thus eliminates confusion over the impact an intervenor can have on an ongoing proceeding.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.208, Notice of Hearing.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the requirement in the Uniform Rule that the presiding officer is responsible for serving written notice on all parties, and also seeks an exception to keep subsections (2) and (4) of PSC Rule 25-22.0405 that provide the PSC will give notice to local government representatives and may require utilities to publish notice in local newspapers. At the PSC, the ministerial function of serving written notice on parties is already efficiently performed by the Division of Records and Reporting (the Division). If the Uniform Rule were to control, the PSC's streamlined procedure would become more cumbersome because additional divisions would have to be included in the process. The PSC notice requirements in subsections (2) and (4) concerning local government notification and newspaper publication are designed to ensure that all persons potentially affected by PSC action will have notice of PSC proceedings.

UNIFORM RULES FROM WHICH EXCEPTION IS SOUGHT: 28-106.209, Prehearing Conferences; and 28-106.211, Conduct of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception



to Uniform Rules 28-106.109 and 28-106.211 so that the agency can continue to follow PSC Rule 25-22.038. Under the Uniform Rules, the presiding officer is responsible for prehearing matters. However, under PSC practice, the governance of prehearing matters is handled by the prehearing officer. In addition, the PSC Rule explains in detail the prehearing procedures followed by the PSC. The specifics set forth in PSC Rule 25-22.038 provide all hearing participants with knowledge of PSC prehearing procedures and allow the PSC to conduct prehearing matters in a consistent, orderly, and efficient fashion.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.212(1) and (3), Subpoenas.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to subsections (1) and (3) of the Uniform Rule so that it can continue to follow subsections (1), (2), (4), and (5) of PSC Rule 25-22.045. Under the Uniform Rule, only the presiding officer can issue subpoenas. Under the PSC Rule, either the presiding officer or the Division of Records and Reporting (the Division) can issue subpoenas. Since subpoenas must be timely issued, this is the more practical approach for the PSC since the travel and hearing schedules of presiding officers often prevent quick responses. In addition, pursuant to the Uniform Rule, motions to quash are to be filed with the presiding officer. The PSC seeks an exception to this requirement so that motions to quash will

continue to be filed with the Division. This will ensure that the motion is tracked and logged in the Division's computerized Case Management System. The PSC Rule also provides that subpoenas may be issued for the inspection of documents without deposing anyone. This additional procedure effectuates discovery in PSC proceedings. Finally, the PSC Rule allows subpoenas to be served by certified mail. This type of service cuts down on costs for hearing participants.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.213,  
Evidence.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to keep the additional requirements in subsection (3) concerning the exclusion of irrelevant and repetitious evidence and subsection (4) concerning prefiled testimony for its Rule 25-22.048. The exclusion of irrelevant and repetitious evidence helps keep hearings manageable and may shorten the time spent in hearing. The requirement for prefiled direct testimony, and rebuttal testimony if any, acknowledges the technical subject matter of most issues, and expedites the hearing process. Moreover, the formatting requirements for prefiled testimony ensure that the PSC can comply with the transcript requirements in Rules 9.190 and 9.200, Florida Rules of Appellate Procedure, if an order is appealed.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.215,

Post-Hearing Submittals.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep its Rule 25-22.056(1)-(3) that sets forth the requirements for post-hearing filings that are tailored to the post-hearing procedure followed by the PSC. Because either a single commissioner or a panel may hear a case, subsection (1) specifies the types of post-hearing filings available to parties in either circumstance. PSC Rule 25-22.056(1)(d) also limits proposed findings of fact, conclusions of law, statements of issues and positions, and briefs to no more than 60 pages total. Past PSC experience has shown that more than 40 pages is consistently needed because of the number and complexity of issues in many PSC proceedings. Subsection (2) of the PSC Rule sets out requirements for proposed findings of fact to curb the filing of inappropriate proposed findings of fact. Finally, subsection (3) of the PSC Rule sets out the requirements for the statement of issues and positions. The rule is clear that "[a]ny issue or position not included in a post-hearing statement shall be considered waived."

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.216(1),  
Entry of Recommended Order.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception for PSC Rule 25-22.056(4)(a) concerning recommended or proposed orders when a hearing is conducted by a single PSC commissioner.

The Uniform Rule is tailored to proceedings referred to the (Division of Administrative Hearings) DOAH, after which an Administrative Law Judge (ALJ) submits a recommended order to an agency head. The Uniform Rule does not address proceedings where a single commissioner acts as the hearing officer, and then submits his recommended order to the full commission to decide final agency action, which may be the case at the PSC and is contemplated under the PSC rule.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.217(1) and (2), Exceptions and Responses.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the requirements of subsections (1) and (2) of Uniform Rule 28-106.217 so that the agency can continue to apply the requirements of PSC Rule 25-22.056(4)(b). The PSC would not be able to meet the 90-day statutory deadline for rendering orders in Section 120.569(2)(j)1., Florida Statutes, if the agency followed the Uniform Rule because it holds public meetings to do so only twice every month and recommended orders must be voted on by the full Commission.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.301, Initiation of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings not involving disputed issues of material fact so that it can

continue to follow PSC Rule 25-22.036(1)-(7) and (9)-(10). Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.302(1),  
Notice of Proceeding.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rule 28-106.302(1) so that it can continue to follow PSC Rule 25-22.038. Under PSC practice, the governance of such prehearing matters is handled by the prehearing officer assigned to the case. The prehearing officer issues a procedural order which contains the specific details of what should be filed and on what date, and identifies the issues in dispute.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.303(1),  
Motions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the requirements in Uniform Rule 28-106.303(1) concerning the presiding officer's responsibilities over motions filed in informal proceedings so that it can continue to follow PSC Rules 25-22.037(2)(b) and 25-22.038(1). The PSC rules require motions to be filed with the Division of Records and Reporting (the Division) instead of with the presiding officer. The Division's

document management controls may be contravened if motions were required to be filed with the presiding officer, and would add additional layers of bureaucracy to the internal document controls followed by the PSC. In addition, Uniform Rule 28-106.303 provides the presiding officer shall take action to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.305(1),  
Conduct of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rule 28-106.305(1) so that the agency can continue to follow PSC Rule 25-22.038(1). Under the Uniform Rules, the presiding officer issues orders necessary to effect discovery and addresses other procedural matters in the case. Under PSC practice, the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the informal hearing.

The PSC seeks to keep the following procedural rules that would be in addition to the Uniform Rules of Procedure for the most efficient operation of the agency.

AGENCY PROCEDURE: 25-21.004, Disqualification.

REASON FOR PROCEDURE: This rule clearly announces the reasons why a commissioner may be disqualified from hearing a case,

states the procedure to follow when filing a petition for disqualification, and states how a petition will be disposed of by the PSC. The rule removes doubt or controversy concerning the procedures on disqualification.

AGENCY PROCEDURE: 25-22.0021, Agenda Conference Participation.

REASON FOR PROCEDURE: The PSC votes on agency action at public meetings called agenda conferences. The purpose of PSC Rule 25-22.0021 is to clearly set forth the PSC's policy on accepting public comments during the course of these meetings. It gives notice to all regulated entities, parties, and interested persons concerning their right to participate in the agenda conference.

AGENCY PROCEDURE: 25-22.006, Confidential Information.

REASON FOR PROCEDURE: PSC Rule 25-22.006 sets out the procedures to follow when requesting that certain information filed with the PSC be considered confidential and exempt from Section 119.07(1), Florida Statutes.

AGENCY PROCEDURE: 25-22.017(1) and (2), Rulemaking Proceeding -- Adoption.

REASON FOR PROCEDURE: Subsections (1) and (2) of PSC Rule 25-22.017 prescribe the procedures the PSC will follow when voting to adopt changes to a proposed rule at an agenda conference. This rule puts the public on notice as to the procedure used by the PSC, and avoids doubt or controversy.

AGENCY PROCEDURE: 25-22.035(3), Miscellaneous Matters.

REASON FOR PROCEDURE: Subsection (3) of PSC Rule 25-22.035 provides that the Florida Rules of Civil Procedure will govern formal proceedings except where they are superseded by or in conflict with a PSC Rule. If a procedural matter is not governed by a Uniform Rule or a PSC Rule, it will often be addressed in the Florida Rules of Civil Procedure.

AGENCY PROCEDURE: 25-22.0355, Assignment of Formal Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.0355 puts all affected persons on notice as to the procedure that will be followed when assigning a commissioner or DOAH ALJ to formal proceedings. The rule also prescribes the procedure to follow when requesting to have a case assigned to the full Commission. The rule avoids doubt or controversy concerning the assignment of proceedings.

AGENCY PROCEDURE: 25-22.037(3) and (4), Answers and Motions.

REASON FOR PROCEDURE: Subsections (3) and (4) of PSC Rule 25-22.037 prescribes the PSC's policy on default and waiver. The rule puts all interested persons on notice as to when waiver or default is considered to have occurred, and thus avoids any doubt or controversy concerning such issues.

AGENCY PROCEDURE: 25-22.0376, Reconsideration of Non-Final Orders.

REASON FOR PROCEDURE: PSC Rule 25-22.0376 provides a means for adversely affected parties to seek reconsideration of a non-final order issued by a single commissioner, usually acting as a



prehearing officer. The rule provides the procedure the party must follow to seek reconsideration by the panel assigned to hear the case. The rule avoids doubt or controversy concerning reconsideration of non-final orders.

AGENCY PROCEDURE: 25-22.0406, Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.

REASON FOR PROCEDURE: PSC Rule 25-22.0406 prescribes the procedure for noticing customers of electric and gas utilities and telecommunications companies that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of service hearings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing.

AGENCY PROCEDURE: 25-22.0407, Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

REASON FOR PROCEDURE: PSC Rule 25-22.0407 prescribes the procedure for noticing customers of water and wastewater utilities that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of customer meetings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to

detailed information concerning the rate filing.

AGENCY PROCEDURE: 25-22.042, Dismissal.

REASON FOR PROCEDURE: PSC Rule 25-24.042 puts all parties on notice that failure or refusal to comply with a PSC order subjects the party to dismissal from the action, and if the offending party carries the burden of proof, the proceeding itself may be dismissed. The rule enables the PSC to take affirmative action when a party demonstrates a "persistent inability to comply with Commission orders and rules." In re: Application for certificate to provide interexchange telecommunications service by Health Liability Management Corporation, 97 F.P.S.C. 11:451, 454 (1997).

AGENCY PROCEDURE: 25-22.046, Witnesses and Witness Fees.

REASON FOR PROCEDURE: PSC Rule 25-22.046 sets out the requirements for witness fees, and states that members of the general public may appear as witnesses in PSC proceedings without being a party. The rule avoids doubt or controversy concerning witness fees, and the ability of the general public to participate in proceedings.

AGENCY PROCEDURE: 25-22.058, Oral Argument.

REASON FOR PROCEDURE: PSC Rule 25-22.058 puts all parties to a formal proceeding on notice as to when the PSC may grant requests for oral argument. The Florida Supreme Court has recognized that this rule may aid the PSC in determining what agency action to

take. U.S. Sprint Communications Co. v. Nichols, 534 So. 2d 698, 700 (Fla. 1988).

AGENCY PROCEDURE: 25-22.060, Motion for Reconsideration.

REASON FOR PROCEDURE: PSC Rule 25-22.060 provides a means for adversely affected parties to seek reconsideration of final orders issued by the PSC. The rule provides the procedure the party must follow to seek reconsideration. The Florida Supreme Court has recognized the value of this rule. See Sentinel Star Express Company v. Florida Public Service Commission, 322 So. 2d 503, 505 (Fla. 1975).

AGENCY PROCEDURE: 25-22.075, Transmission Line Permitting Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.075 sets out the procedure to initiate a transmission line permitting proceeding, including special noticing requirements. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.537, F.S.

AGENCY PROCEDURE: 25-22.080, Electrical Power Plant Permitting Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.080 sets out the procedure to initiate an electrical power plant permitting proceeding, including special noticing requirements and decisional time lines. In addition, the rule specifies that a motion for

reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.519, F.S.

THE ADMINISTRATION COMMISSION IS EXPECTED TO HEAR THE PSC'S PETITION FOR EXCEPTIONS AT THE MAY 12, 1998, CABINET MEETING.

ATTACHMENT B

**DRAFT**

BEFORE THE ADMINISTRATION COMMISSION  
OF THE STATE OF FLORIDA

IN THE MATTER OF: THE FLORIDA  
PUBLIC SERVICE COMMISSION'S  
REQUEST FOR EXCEPTIONS TO  
UNIFORM RULES OF PROCEDURE

AC CASE# \_\_\_\_\_

FILED: \_\_\_\_\_

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FINAL ORDER

A Petition of the Florida Public Service Commission, seeking exceptions to the Uniform Rules of Procedure, came for hearing before the Administration Commission on May 22, 1998. After hearing, upon motion duly made, seconded, and adopted, the Administration Commission hereby grants the exceptions requested in the Petition for the reasons set forth therein. The Florida Public Service Commission's Petition for Exceptions to Uniform Rules of Procedure is incorporated in this Final Order.

DONE and ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1998, in Tallahassee, Florida.

\_\_\_\_\_  
Robert B. Bradley, Secretary  
Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by U.S. Mail or hand-delivered this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Honorable Lawton Chiles  
Governor  
The Capitol  
Tallahassee, FL 32399

Honorable Sandra B. Mortham  
Secretary of State  
The Capitol  
Tallahassee, FL 32399

Honorable Robert Milligan  
Comptroller  
The Capitol  
Tallahassee, FL 32399

Honorable Bill Nelson  
Insurance Commissioner  
The Capitol  
Tallahassee, FL 32399

Honorable Bob Butterworth  
Attorney General  
The Capitol  
Tallahassee, FL 32399

Honorable Frank Brogan  
Commissioner of Education  
The Capitol  
Tallahassee, FL 32399

Honorable Bob Crawford  
Commissioner of Agriculture  
The Capitol  
Tallahassee, FL 32399

David Schwartz, Esquire  
Governor's Legal Office  
The Capitol, Room 209  
Tallahassee, FL 32399

Carroll Webb, Executive Director  
and General Counsel  
Joint Administrative Procedures  
Committee  
Holland Building, Room 120  
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ROBERT B. BRADLEY  
SECRETARY  
ADMINISTRATION COMMISSION