

MEMORANDUM

July 2, 1998

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RECORDS AND REPORTING

TO : DIVISION OF RECORDS AND REPORTING

FROM : MARY ANNE HELTON, DIVISION OF APPEALS *MAH*

RE : DOCKET NO. 990500-PU

Attached is the Final Order of the Administration Commission disposing of the Commission's Petition for Exceptions to the Uniform Rules. It should be filed in the above-referenced docket file.

Attachment

- cc: Blanca Bayó
- Martha Carter Brown
- Noreen Davis
- Bob Elias
- Kay Flynn
- Lila Jaber
- Ralph Jaeger

- ACK _____
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- APP _____
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U.S. GOVERNMENT PRINTING OFFICE

STATE OF FLORIDA
ADMINISTRATION COMMISSION

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In Re: Petition for Exceptions from the
Uniform Rules of Procedure,
FLORIDA PUBLIC SERVICE
COMMISSION

AC Case No. APA-98-007

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission ("Commission") on June 24, 1998, in Tallahassee, Florida, pursuant to Section 120.54(5)(a)2, Florida Statutes ("F.S."), and Chapter 28-108, Florida Administrative Code ("F.A.C."), upon the Petition for Exceptions from the Uniform Rules of Procedure filed by the Florida Public Service Commission ("PSC"). Having considered the Petition and any arguments of counsel, and being otherwise fully advised in the premises, it is ORDERED and ADJUDGED that:

1. Chapter 28-102, F.A.C.: An exception from Rule 28-102.001, F.A.C., is hereby granted for Rule 25-22.001(3) and (4), F.A.C. (defining "meetings" and "workshops"). An exception from Rule 28-102.002(2), F.A.C., is granted for Rule 25-22.002(3), F.A.C. (changes to agenda). An exception from Chapter 28-102, F.A.C., is granted for Rule 25-22.0021, F.A.C. (agenda conference participation). The foregoing exceptions are based on the most efficient operation of the agency.

2. Chapter 28-103, F.A.C.: An exception from Chapter 28-103, F.A.C., is granted for Rule 25-22.017(1) and (2), F.A.C. (rule adoption), on the basis of the most efficient operation of the agency.

3. Chapter 28-105, F.A.C.: The request for an exception for Rule 25-22.022(3), F.A.C. (oral argument in proceedings for declaratory statements), is denied for lack of justification.

4. Chapter 28-106, F.A.C.:

a. The PSC has **withdrawn** its request for exceptions for Rules 25-22.008(1), (1)(a), (1)(c), and (2) (class A practitioners), 25-22.026(3) and (4) (role of staff in proceedings), 25-22.029(1) (point of entry into proceedings), 25-22.035(1) and (3) (disqualification, Florida Rules of Civil Procedure), 25-22.0355 (assignment of formal proceedings), 25-22.046 (witnesses, fees), and 25-22.048(3) (evidence), F.A.C. It is appropriate to place the content of withdrawn Rule 25-22.0355 in the PSC's Statement of Agency Organization and Operation.

b. An exception from Chapter 28-106, F.A.C., is granted for Rule 25-22.006, F.A.C. (confidential information), and Rules 25-22.0376 and 25-22.060, F.A.C. (reconsideration of orders), as necessary to implement statutes, Sections 350.01(5), 364.183, 366.093, 367.156, and 368.108, F.S., and for the most efficient operation of the agency. Exceptions are granted from Rule 28-106.104 for PSC Rules 25-22.028(1) (filing requirements) and 25-22.0375(3) (filing of pleadings), and from Chapter 28-106 for PSC Rule 25-22.058, F.A.C. (oral argument), based on the most efficient operation of the agency.

c.(1). The PSC's request for an exception for Rule 25-21.004, F.A.C. (disqualification), is denied and is unnecessary, as this matter is adequately addressed in Sections 120.569(2)(a) and 120.665, F.S.

(2) The request for an exception for Rule 25-22.029(2) and (4), F.A.C. (point of entry), is granted to allow 21 days after issuance of the notice in which to file a request for a 120.57 hearing and the shortening of the petition deadline from 21 to 14 days for the establishment of a price index pursuant to Section 367.081(4)(a), F.S., on the basis of statute and most efficient operation of the agency. The request for an exception for Rule 25-22.029(2) and (4-6) is in all other respects denied on account of duplication of the uniform rules.

(3) The request for an exception for Rule 25-22.036(1-7) and (9-10), F.A.C. (initiation of proceedings), is denied. Sections (3), (5), (6), (7)(b), (7)(c), and (7)(e) of Rule 25-22.036 apply to applications, complaints, orders, or notices which do not involve, or which precede, proposed or final agency action determining substantial interests. The remaining provisions of this rule are adequately covered by statute and the provisions of Rules 28-106.111, 28-106.201, and 28-106.301, F.A.C.

(4) The request for an exception for Rule 25-22.037(1) and (2), F.A.C. (answers and motions), is denied for lack of justification. The provision for motions is adequately covered by Rules 28-106.204 and 28-106.303, F.A.C.

(5) The request for an exception for Rule 25-22.038, F.A.C. (prehearing matters), is denied and is unnecessary, as the PSC may issue prehearing orders of a nature provided in its rule by the authority of Rules 28-106.209, 28-106.211, and 28-106.305, F.A.C.

(6) The request for an exception for Rule 25-22.042, F.A.C. (dismissal for failure to comply with orders), is denied and is unnecessary, since the PSC may utilize the provisions of Rules 28-106.206 and 28-106.211, F.A.C.

(7) The request for an exception for Rule 25-22.045(2-3) and (5), F.A.C. (subpoenas) is denied and is unnecessary, as the PSC may issue subpoenas pursuant to Rule 28-106.212, F.A.C. The request for an exception for Rule 25-22.045(1) is granted on the basis of most efficient operation of the agency.

(8) The request for an exception for Rule 25-22.048(4), F.A.C. (format for evidence), is denied and is unnecessary, by reason that the PSC may utilize the provisions of Rules 28-106.209, 28-106.211, and 28-106.305, F.A.C.

(9) The request for an exception for Rule 25-22.056, F.A.C. (post-hearing filings), is denied for duplication of Rule 28-106.215, F.A.C., and conflict as to waiver of positions the 14 day deadline for filing exceptions to the recommended order. The request is otherwise unnecessary, since these matters may be addressed pursuant to Rules 28-106.209, 28-106.211, 28-106.215, 28-106.305, and 28-106.307, F.A.C.

(10) The request for an exception for Rule 25-22.037(3) and (4), F.A.C. (answers and motions), is denied on account of the default provision for failure to respond to a petition for hearing. An exception to implement the show cause and penalty provisions of Sections 350.127(1), 364.285, 366.095, 367.161, and 368.111, F.S., is unnecessary, since such provisions may be implemented pursuant to Rule 28-106.111(4), F.A.C. Rule 28-106.111(4) contemplates a default in the event no written request for hearing or mediation is filed within the 21 day time period.

d. The request for exception for Rule 25-22.036(8) (amendment of petitions) is denied for duplication of the uniform rules. However, by separate action of the Commission on this date, the Commission has authorized the Secretary to initiate rulemaking proceedings to amend

the uniform rules to require leave of the presiding officer to amend a petition once a responsive pleading is filed. The request for exception for Rule 25-22.039, F.A.C. (intervention) is granted, and the Commission has authorized the Secretary to initiate rulemaking proceedings to amend the uniform rule to permit a 5 day prior to hearing deadline for intervention. Upon completion of successful rulemaking and final rule adoption, the exception for Rule 25-22.039, F.A.C., will be moot.

e. The requests for exceptions for Rules 25-22.008(1)(b) and (3) (class B practitioners) and 25-22.008(4) and (6), F.A.C. (self-representation, practitioner as witness), are denied for lack of statutory authority and for lack of sufficient justification. The subjects of counsel and qualified representatives are adequately addressed in Rules 28-106.105 and 28-106.106, F.A.C. The requests for exceptions for Rules 25-22.029(3) (publication of notice of proposed agency action) and 25-22.0405 (notices of public hearings), F.A.C., are granted to allow the PSC to require a utility to provide notice on the basis of most efficient operation of the agency; the remaining portion of 25-22.029(3) is denied as such notices are required by statute or to the extent that the PSC may, on its own, opt to provide additional notice.

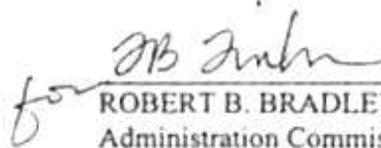
f. The requests for exceptions for Rules 25-22.0406(1)-(6) and 25-22.0407(1)-(7) and (9) (notice and public information) are denied and are unnecessary to the extent that such provisions apply to notice requirements which precede proposed or final agency action determining substantial interests. The requests for exceptions for Rules 25-22.0406(7)-(8) and 25-22.0407(8) and (10) are granted for the most efficient operation of the agency.

5. Chapter 28-107, F.A.C.: Exceptions from Chapter 28-107, F.A.C., are hereby granted for Rules 25-22.075 (transmission lines) and 25-22.080 (electric power plants), F.A.C., on the basis of statute and the most efficient operation of the agency.

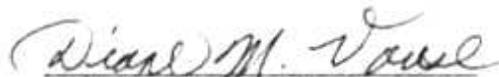
NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of this Final Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Planning and Budgeting, Executive Office of the Governor, the Capitol, Room 2105, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days of the day this Final Order is filed with the Clerk of the Commission.

DONE and ORDERED this 24th day of June, 1998.


ROBERT B. BRADLEY, Secretary
Administration Commission

FILED with the Clerk of the Administration Commission on this 25th day of June, 1998.


CLERK, Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was delivered to the following persons by United States Mail or hand delivery this 25th day of June, 1998.

Honorable Lawton Chiles
Governor
The Capitol
Tallahassee, Florida 32399

Honorable Sandra Mortham
Secretary of State
The Capitol
Tallahassee, Florida 32399

Honorable Bob Milligan
Comptroller
The Capitol
Tallahassee, Florida 32399

Honorable Bill Nelson
Insurance Commissioner
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Honorable Bob Butterworth
Attorney General
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Honorable Frank Brogan
Commissioner of Education
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Honorable Bob Crawford
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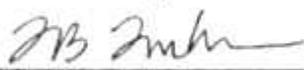
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ROBERT B. BRADLEY, Secretary
Administration Commission