

Commissioners:
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LILA A. JABER



DIVISION OF APPEALS
DAVID SMITH
DIRECTOR
(850) 413-6245

Public Service Commission

May 19, 2000

Mr. Carroll Webb
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, Florida 32399-1300

Re: Docket No. 000533-PU - Proposed Repeal of Rule 25-22.036(3), F.A.C., Initiation of Formal Proceedings

Dear Mr. Webb:

Enclosed is an original copy of the following materials concerning the above referenced proposed rules:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. No statement of estimated regulatory costs was prepared.

If there are any questions with respect to this rule, please do not hesitate to call on me.

Sincerely,

Mary Anne Helton,
Associate General Counsel

AFA _____
 APP _____
 CAF _____
 CMU _____
 CTR _____
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 SEC _____
 WAW _____
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ADM22036.MAH
Enclosures
cc: Division of Records & Reporting

DOCUMENT NUMBER - DATE
06219 MAY 19 2000
FPSC-RECORDS/REPORTING

1 25-22.036 Initiation of Formal Proceedings.

2 (1) Application. An application is appropriate when a person
3 seeks authority from the Commission to engage in an activity
4 subject to Commission jurisdiction.

5 (2) Complaints. A complaint is appropriate when a person
6 complains of an act or omission by a person subject to Commission
7 jurisdiction which affects the complainant's substantial interests
8 and which is in violation of a statute enforced by the Commission,
9 or of any Commission rule or order.

10 ~~(3) Orders and Notices. Upon its own motion, the Commission~~
11 ~~may issue an order or notice initiating a proceeding. Such order~~
12 ~~or notice shall be served upon all persons named therein. The~~
13 ~~Commission may also transmit notice of its action to other persons~~
14 ~~requesting such notice, and may publish such notice in appropriate~~
15 ~~newspapers of general circulation and the Florida Administrative~~
16 ~~Weekly.~~

17 (3)(4) Form and Content.

18 (a) Application. An application shall be governed by the
19 statute or rules applicable to applications for authority. In the
20 absence of a specific form and content, the application shall
21 conform to this rule.

22 (b) Complaint. Each complaint, in addition to the
23 requirements of paragraph (a) above shall also contain:

24 1. The rule, order, or statute that has been violated;
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CODING: Words underlined are additions; words in ~~struck~~
~~through~~ type are deletions from existing law.

- 1 | 2. The actions that constitute the violation;
- 2 | 3. The name and address of the person against whom the
- 3 | complaint is lodged;
- 4 | 4. The specific relief requested, including any penalty
- 5 | sought.

6 | Specific Authority: 350.01(7), 350.127(2), F.S.

7 | Law Implemented: 120.569, 120.57, 350.123, 364.035, 364.05,
8 | 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071,
9 | 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814,
10 | 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171, F.S.

11 | History--New 12-21-81, Formerly 25-22.36, Amended 05-03-99,_____.

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NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000533-PU

RULE TITLE:

RULE NO.:

Initiation of Formal Proceedings

25-22.036

PURPOSE AND EFFECT: To repeal subsection (3) of Rule 25-22.036,
F.A.C.

SUMMARY: Subsection (3) provides notice that the Commission may initiate a proceeding on its own motion, and states the procedure the Commission may follow in doing so.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Costs was prepared.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.01(7), 350.127(2), FS.

LAW IMPLEMENTED: 120.569, 120.57, 350.123, 364.035, 364.05, 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071, 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814, 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171, F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

NO HEARING WILL BE HELD BECAUSE THIS RULE RELATES EXCLUSIVELY TO THE COMMISSION'S ORGANIZATION, PROCEDURE, OR PRACTICE.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-22.036 Initiation of Formal Proceedings.

(1) - (2) No Change.

~~(3) Orders and Notices. Upon its own motion, the Commission may issue an order or notice initiating a proceeding. Such order or notice shall be served upon all persons named therein. The Commission may also transmit notice of its action to other persons requesting such notice, and may publish such notice in appropriate newspapers of general circulation and the Florida Administrative Weekly.~~

(3)~~(4)~~ Form and Content.

(a) - (b) 4. No Change.

Specific Authority: 350.01(7), 350.127(2), FS.

Law Implemented: 120.569, 120.57, 350.123, 364.035, 364.05, 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071, 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814, 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171, FS

History--New 12-21-81, Formerly 25-22.36, Amended 5-3-99,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mary Anne Helton

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: May 16, 2000.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

Volume 26, Number 15, April 14, 2000.

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

In Docket No. 981890-EU - In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida, Florida Power & Light Company (FPL), Florida Power Corporation, and Tampa Electric Company contested the Commission's reliance on Rule 25-22.036(3) to initiate the investigation. Prior to the Commission's approval of the stipulation that closed the reserve margin investigation, FPL challenged Rule 25-22.036(3) at the Division of Administrative Hearings (DOAH) pursuant to Section 120.56(3), Florida Statutes. The DOAH Administrative Law Judge dismissed FPL's challenge on the grounds that the gravamen of FPL's complaint was the application of the rule rather than the validity of the rule on its face. FPL has appealed this DOAH order to the First District Court of Appeal. Briefs have been filed, and Oral Argument is scheduled for July 25, 2000.

The Commission is proposing the repeal of Rule 25-22.036(3) because it is unnecessary. Sections 350.123, 364.058, 366.076, and 367.0822, Florida Statutes, give the Commission authority to initiate proceedings on its own motion. The rule simply provides information about the procedure the Commission will follow when initiating a proceeding.

The Legislature's policy is that agencies should not retain unnecessary rules or rules that are redundant of statutes. See Section 120.74(1)(c) and (d), Florida Statutes. Because Rule 25-22.036(3) is unnecessary and because it has generated needless litigation, the Commission has proposed the repeal of this subsection.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.