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M E M O R A N D U M

June 22, 2000

TO : DIVISION OF RECORDS & REPORTING
FROM : MARY ANNE HELTON, ASSOCIATE GENERAL COUNSEL *MAH*
RE : DOCKET NO. 000533-PU - PROPOSED REPEAL OF RULE 25-22.036(3), F.A.C., INITIATION OF FORMAL PROCEEDINGS

Attached is an original and three copies of the certification of Rule 25-22.36(3). The Department of State must receive the original and two copies of the certification no later than 5:00 p.m., June 27, 2000. The Certification includes:

- (1) An original and two certified copies of Rule 25-22.036(3);
- (2) A summary of the rule;
- (3) A summary of the hearing on the rule; and
- (4) A written statement of the facts and circumstances justifying the rule.

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Attachments

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

I do hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

(2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

(a) Are filed not more than 90 days after the notice;
or

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

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of

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the final public hearing on the rule; or

 / (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

 / (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

 / (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

 / (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

 / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

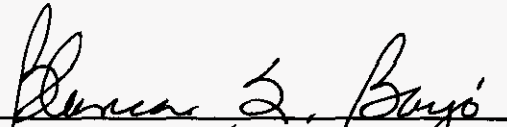
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-22.036(3)

Under the provision of subparagraph 120.54(3)(e)6., F.S.,
the rules take effect 20 days from the date filed with the
Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



BLANCA S. BAYÓ, Director
Division of Records & Reporting

Number of Pages Certified

(S E A L)

MAH

1 25-22.036 Initiation of Formal Proceedings.

2 (1) - (2) No Change.

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

10 (3)~~(4)~~ Form and Content.

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

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

13 Law Implemented: 120.569, 120.57, 350.123, 364.035, 364.05,
14 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071,
15 366.076, 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814,
16 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171, FS

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

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

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SUMMARY OF RULE

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 HEARINGS ON THE RULE

No hearing was offered and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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 repealing Rule 25-22.036(3) because it is

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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 is repealing this subsection.