

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

UNDOCKETED

IN RE: UNDOCKETED – AMENDMENT OF RULES 25-22.0021, 25-22.029,
25-22.0376, AND 25-22.060, AND REPEAL OF RULE 25-22.058

NOTICE OF PROPOSED RULE DEVELOPMENT

TO

ALL INTERESTED PERSONS

ISSUED: August 13, 2004

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission staff has initiated the amendment of Rules 25-22.0021, 25-22.029, 25-22.0376, and 25-22.060, and the repeal of Rule 25-22.058, Florida Administrative Code, relating to participation at agenda conference and filing of cross-petitions on proposed agency action.

The attached Notice of Proposed Rule Development will appear in the August 20, 2004, edition of the Florida Administrative Weekly. If timely requested and not deemed unnecessary by the Commission, a rule development workshop will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., September 17, 2004
Betty Easley Conference Center
Room 152, 4075 Esplanade Way
Tallahassee, Florida 32399-0850

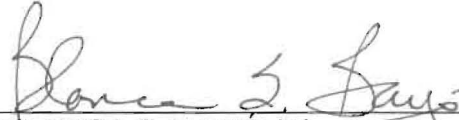
The request must be submitted in writing to Marlene Stern, Office of the General Counsel, Florida Public Service Commission, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, and should be submitted for receipt by the Commission no later than September 3, 2004.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

DOCUMENT NUMBER-DATE
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By Direction of the Florida Public Service Commission, this 13th day of August, 2004.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

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FLORIDA PUBLIC SERVICE COMMISSION

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RULE TITLE:	RULE NO.:
Agenda Conference Participation	25-22.0021
Point of Entry Into Proposed Agency Action Proceedings	25-22.029
Reconsideration of Non-Final Orders	25-22.0376
Oral Argument	25-22.058
Motion for Reconsideration of <u>Final Orders</u>	25-22.060

PURPOSE AND EFFECT: The proposed rules clarify when and how participation at agenda conferences will proceed, and how participation on motions for reconsideration will be handled. The proposed rules also allow filing of a cross-petition when the Commission takes proposed agency action.

SUBJECT AREA TO BE ADDRESSED: Participation at agenda conferences and filing of cross-petitions on proposed agency action.

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

LAW IMPLEMENTED: 120.525, 120.569, 120.57, 364.05, 366.06, 367.081, 367.081(4)(a), 367.0817, FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: September 17, 2004 at 9:30 a.m.

PLACE: Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, Florida

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING TO MARLENE STERN, OFFICE OF THE GENERAL COUNSEL, FLORIDA PUBLIC SERVICE COMMISSION, 2540 SHUMARD OAK BLVD., TALLAHASSEE, FL 32399-0862.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Marlene Stern, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, (850)413-6230.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

CHAPTER 25-22

Part I – General Provisions

25-22.0021 Agenda Conference Participation.

(1) Participation at agenda conferences may be informal or by oral argument. The Commission determines when and whether participation is allowed in accordance with this rule. The notice for each agenda conference contains a list of items to be discussed, and identifies the type of participation allowed. The notice is available in hard copy or on the Commission's internet site, www.psc.state.fl.us/agendas, at least seven days before the agenda conference.

(2) Oral argument at agenda conference.

(a) Oral argument at agenda conference will only be entertained for dispositive motions such as motions to dismiss, motions for summary final order, and for motions for reconsideration of non-final or final orders. Only parties to the docket may participate in the oral argument. Participation at agenda conference for all other types of items shall be informal.

(b) Oral argument must be requested by separate written motion filed concurrently with the motion on which argument is requested. The motion for oral argument shall state with particularity why oral argument would aid the Commissioners in understanding and evaluating the issues to be decided. Granting or denying a motion for oral argument is at the sole discretion of the Commission. If the motion for oral argument is granted at an agenda conference, the oral argument may occur at that agenda conference.

(c) The Commission may, at any time, request discussion on any issue to be decided by a dispositive motion. Parties are advised to come to the agenda conference prepared to address all issues associated with a dispositive motion on the agenda, even if a motion for oral argument has not been made by a party, or if a motion made by a party pertains to a limited number of issues.

(d) When a motion for reconsideration of a non-final or final order is filed, a party that fails to file a written response to a written argument for reconsideration shall be precluded from responding to that argument during oral argument.

(e) The staff attorney assigned to the docket may participate in any oral argument.

(f) Oral argument will not be entertained on a motion for oral argument.

(3) Informal Participation.

(a) Any person who may be affected by an item set for agenda conference will be allowed to address the Commission concerning that item when it is taken up for discussion, except as

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provided in (3)(b)-(d) and (4), below. To participate informally, affected persons need only appear at the agenda conference and request the opportunity to address the Commission on an item listed on the agenda.

(b) Parties may not participate when the Commission staff presents a post-hearing recommendation on the merits of a case after the close of the record.

(c) When an item pertains to a docket set for hearing or in which a hearing has been held, only parties may participate, except that parties may not participate in the deliberations on post-hearing recommendations on the merits of a case after the close of the record, and parties may not participate informally on dispositive motions as described in (2)(a) of this rule .

(d) In certain types of cases in which the Commission issues an order based on a given set of facts without hearing, such as declaratory statements and interim rate orders, the Commission allows informal participation at its discretion.

(4) The Commission reserves the discretion to limit or restrict informal participation as needed to ensure the orderly disposition of matters before it. In limiting or restricting informal participation the Commission will consider such things as the number of persons who wish to address the Commission on an item, the number of items to be taken up at the agenda conference, the procedural status of the docket to which the item pertains, and the complexity of the issues addressed in an item.

(5) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.

~~(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate~~

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~~eases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.~~

~~(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.~~

~~(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.~~

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.525 FS. History—New 3-23-93, Amended _____.

25-22.029 Point of Entry Into Proposed Agency Action Proceedings.

(1) After agenda conference, the Division of the Commission Clerk and Administrative Services shall issue written notice of the proposed agency action (PAA), advising all parties of record that, except for PAA orders establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, they have 21 days after issuance of the notice in which to file a request for a Section 120.569 or 120.57, Florida Statutes, hearing. For PAA orders establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, ~~the~~ time for requesting a Section 120.569 or 120.57, Florida Statutes, hearing shall be 14 days from issuance of the notice ~~for~~ of PAA orders establishing a price index, ~~pursuant to Section 367.081(4)(a), Florida Statutes~~. The Commission will require a utility to serve written notice of the PAA on its customers if the Commission finds that it is necessary in order to afford adequate notice.

(2) No change.

(3) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a Section 120.569 or 120.57, Florida Statutes, hearing, in the form provided by Rule 28-106.201, F.A.C. Any such petition shall be filed within the time stated in the notice issued pursuant to subsection (1), of this rule, and shall identify the particular issues in the proposed action that are in dispute. Within 10 days of service of the initial petition, any other party or Commission staff may file a cross-petition identifying additional particular issues on which a hearing is requested. Issues in the proposed action that are not identified in the petition or a cross-petition shall be deemed stipulated.

(4) The Commission will not entertain a motion for reconsideration of proposed agency action.

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57, 364.05, 366.06, 367.081, 367.081(4)(a), 367.0817 FS. History–New 12-21-81, Formerly 25-22.29, Amended 7-8-92, 5-3-99.

25-22.0376 Reconsideration of Non-Final Orders.

(1) – (4) No change.

~~(5) Oral argument on any motion filed pursuant to this rule may be granted at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument.~~

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History–New 9-3-95, Amended 7-11-96.

~~**25-22.058 Oral Argument.**~~

~~(1) The Commission may grant oral argument upon request of any party to a Section 120.57, Florida Statutes, formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.~~

~~(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.~~

~~(3) Requests for oral argument on recommended or proposed orders and exceptions pursuant to Section 120.58(1)(e), Florida Statutes, must be filed no later than 10 days after exceptions are filed.~~

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History—
New 12-21-81, Formerly 25-22.58, Amended 3-23-93.

25-22.060 Motion for Reconsideration of Final Orders.

(1) Scope and General Provisions.

(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. The Commission will not entertain any motion for reconsideration of any order which that disposes of a motion for reconsideration. ~~The Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, F.A.C., regardless of the form of the Notice and~~

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~~regardless of whether or not the proposed action has become effective under subsection 25-22.029(6), F.A.C.~~

(b) - (d) No change.

(e) A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under Section 120.54(5 7), Florida Statutes, and Rule ~~25-22.012~~ 28-103.006, F.A.C.

~~(f) Oral argument on any pleading filed under this rule shall be granted solely at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.~~

(2) – (3) No change.

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History–
New 12-21-81, Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96.