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# Public Service Commission

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CLERK

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** March 24, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Stern/Smith/Melson) *MKS ROR*  
Division of Economic Regulation (Hewitt) *CBA TGD*

**RE:** Docket No. 050108-OT – Proposed revisions to rules in Chapter 25-22 and Chapter 25-40, Florida Administrative Code

**AGENDA:** 04/05/05 – Regular Agenda – Rule Proposal – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\050108.RCM.DOC

### Case Background

This recommendation proposes amendments to two chapters of the Florida Administrative Code, Chapter 25-22, Rules Governing Practice and Procedure, and Chapter 25-40, Exceptions to the Uniform Rules of Procedure. The primary purposes of the amendments are to make the rules on agenda conference participation and oral argument more closely reflect current Commission practice, and to clarify provisions that have caused confusion in the past. In addition, staff proposes to allow the filing of a cross-petition when proposed agency action is protested.

Because the rules proposed for amendment are procedural, the Commission will have to file a petition with the Administration Commission for approval, and explain why the Uniform Rules of Procedure in Chapter 28-108, Florida Administrative Code, are not appropriate for the Commission. Chapter 25-40 contains the exceptions to the Uniform Rules that have previously been granted to the Commission. All of the existing rules proposed to be amended herein have previously been granted exceptions. The Administration Commission must approve the

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modifications. The new rule on oral argument has obviously never been granted an exception. Chapter 25-40 must be amended to reflect changes proposed to Chapter 25-22.

### **Discussion of Issues**

**Issue 1:** Should the Commission propose the amendments to Chapters 25-22 and 25-40, Florida Administrative Code, shown on Attachments 1 and 2 to this recommendation?

**Recommendation:** Yes. The Commission should propose the amendments to the Chapters as shown on Attachments 1 and 2 to this recommendation.

**Staff Analysis:** This analysis is organized into four parts. Part I explains the proposed changes to the text of Chapters 25-22 and 25-40. Part II addresses the petition to the Administration Commission. Part III identifies the statutory authority for the proposed rule amendments. Part IV summarizes the Statement of Estimated Regulatory Costs.

#### **I. Proposed Rule Amendments**

The primary purposes of the proposed rule amendments are to make the provisions on agenda conference participation (Rule 25-22.0021) and oral argument conform with current Commission practice, and to clarify provisions that seem to have caused confusion in the past. Provisions on oral argument, which are scattered throughout the existing Chapter 25-22, are now proposed to be consolidated into two rules, 25-22.0021 and 25-22.0022, the latter of which would be a brand new rule. In the process of rule development, an additional change was made. A provision allowing a cross-petition on proposed agency action is proposed to be added to Rule 25-22.029.

The changes made to each section are described below.

**Rule 25-22.0021 – Agenda Conference Participation** - This rule is being amended to more clearly delineate when a motion for oral argument is required in order to participate at an agenda conference, and when participation is informal, requiring no motion. The proposed amendments allow informal participation in the majority of circumstances. Informal participation is not allowed: 1) on dispositive motions; 2) when a post-hearing recommendation on the merits of a case is taken up by the panel (or full Commission); 3) when a petitioner is entitled to relief on a prima facie showing of facts (e.g., request for interim rate increase, declaratory statement); and 4) when the Commission votes on a recommended order.<sup>1</sup>

**Rule 25-22.0022 – Oral Argument Rule** – This is an entirely new rule that incorporates provisions on oral argument that are scattered throughout the existing Chapter 25-22. Rule 25-22.0022(7) expressly addresses oral argument at agenda conferences. The lack of a rule on oral argument at agenda conferences has created much confusion in the past, which this new rule aims to eliminate. Subsection (7) provides that oral argument at an agenda conference will only be entertained for recommended orders, and dispositive motions. For oral argument on recommended orders, the request for oral argument must be filed no later than 10 days after

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<sup>1</sup> This section would apply when the Commission considers a recommended order issued by an administrative law judge at the Division of Administrative Hearings, or in the rare instance when a single Commissioner sits as a hearing officer as provided for in Section 350.01(7), Florida Statutes.

exceptions are filed. This requirement is transferred from the existing rule on oral argument, 25-22.058, which is proposed to be deleted. Requests for oral argument on dispositive motions must be filed with the motion. Subsection (7) also advises the parties to come prepared to argue all issues associated with a proposed order or dispositive motion, even if the request for oral argument does not request that all issues be argued. Finally subsection (7) provides that when the published agenda shows that a request for oral argument will be an item taken up at an agenda conference, the published agenda serves as notice to the parties that they should come prepared for oral argument on all issues associated with the underlying motion. The remaining parts of the rule largely incorporate existing provisions on procedural matters.

Rule 25-22.029 – Point of Entry Into Proposed Agency Action Proceedings – The proposed revisions to this rule allow a substantially affected person or Commission staff to file a cross-petition within 10 days of service of the initial petition on proposed agency action (PAA). For most agencies, when a PAA order is protested parties are free to litigate any issue they want, whether it is raised in the protest or not. There is no need to file a cross-petition to raise an issue. Thus, the Uniform rules do not address filing of cross-petitions

The Commission is different. Under Section 120.80(13)(b), Florida Statutes, issues which are not expressly called into dispute by a petition are deemed stipulated. If a protest is filed on the last day of the protest period, as is often the case, then the only issues that can be litigated are those identified in the protest. Under the proposed rule, substantially affected persons, who may not have protested but may not have been happy with the order, can file a cross-petition within 10 days of the filing of the initial protest if they want to raise additional issues.

Florida Power & Light (FPL) commented that the opportunity to file a cross-petition should only be available to parties to the PAA proceeding, not to all substantially affected persons. FPL suggested that staff's proposed language would give a non-party an additional 10 day protest window that is not available to a party. Staff disagrees. The reasons for filing a protest and cross-petition differ, and are not related to the status of a person in the PAA proceeding. The best way to illustrate this is by example. A gas company petitions the Commission for a \$100 million rate increase. The Commission's PAA order grants a \$50 million increase and allocates a relatively high percentage to industrial customers. An industrial customer may decide that, overall, the PAA decision does not impose an unacceptable detriment on it. However, if the gas company protests the PAA order on the last the last day allowed, and only disputes the revenue requirement, then the industrial customer is subject to the risk of increased detriment. The industrial customer can intervene but cannot raise the issue of cost allocation because it was not raised in the protest. Allowing this industrial customer 10 days to file a cross-petition gives it the chance to raise the issue of cost allocation. There is no reason why this customer, who would have accepted the PAA order as issued, should be required to have become a party before the protest in order to file a cross-petition. For this reason staff recommends that any substantially affected person be allowed to file a cross-petition.

Rule 25-22.0367 – Reconsideration of Non-Final Orders – Subsection (5) of this rule, pertaining to oral argument on motions for reconsideration of non-final orders, is proposed for deletion but is incorporated into the newly proposed Oral Argument Rule, 25-22.0022. Under the proposed

amendments, a motion for reconsideration of a non-final order is considered a dispositive motion and, if a request for oral argument on the motion is filed in accordance with Rule 25-22.0022, the oral argument may occur at an agenda conference. Informal participation on a motion for reconsideration of a non-final order is not permitted under the proposed revisions.

Another proposed change to this rule is deletion of the following sentence: "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." BellSouth asked that this provision be eliminated because it is possible for a party to raise a few key issues and many less significant issues in its motion, the latter having little or no support. In such situations, explains BellSouth, a responding party might concentrate on what it believes are the most important issues, and not address every single issue raised by the motion. If the moving party then based its oral argument on some of the minor issues, the responding party would be precluded from arguing before the Commission. Thus, the purpose of an oral argument, to better inform the Commission, would be circumvented. Staff agrees with BellSouth on this point. Furthermore, in practice the Commission does not appear to follow this part of the existing rule. For these reasons the sentence was eliminated.

25-22.058 – Oral Argument – Staff proposes to repeal this rule in its entirety and replace it with proposed Rule 25-22.0022. The first and second subsections of the existing rule, dealing with procedures for filing a request for oral argument and notice, are addressed in subsections (1), (2) and (7) of proposed Rule 25-22.0022. Subsection (2) of the existing rule limits oral argument to 15 minutes unless otherwise specified. Subsection (1) of proposed Rule 25-22.0022 requires the movant to state the time needed for oral argument. The Commission can decide whether to grant that part of the request or set a different time limit when ruling on the request. Subsection (3) of the existing rule, that deals with recommended orders, is incorporated into proposed rules 25-22.0022 (2), (3), (5) and (7).

Deletion of this rule and replacement with the proposed Rule 25-22.0022 should eliminate much of the confusion associated with oral argument at agenda conferences. The existing rule creates confusion because it is the most detailed rule we have on oral argument but it is located in Part IV.D of Chapter 25-22, which pertains to post-hearing procedures. Thus, the rule's application is intended to be limited to post-hearing procedures. However, attempts are made to apply the rule in many more situations than post-hearing because the need for oral argument arises in other situations as well. Compounding the problem is the provision in Rule 25-22.0021(2), proposed for deletion, that prohibits oral presentation on a post-hearing recommendation at an agenda conference by anyone other than non-testifying staff. Thus, under the existing rules, we have a rule seeming to allow post-hearing oral argument and another rule which prohibits post-hearing oral argument by the parties. Under the proposed rules, the oral argument rule is in Part 1 of Chapter 25-22, General Provisions, so it is clear that oral argument is not limited to one phase of a proceeding. The prohibition on post-hearing oral argument is included in the newly proposed rule.

Rule 25-22.060 – Motion for Reconsideration – The title of this rule is proposed to be changed to "Motion for Reconsideration of Final Orders" because it is located in the post-hearing section of Chapter 25-22. In addition, there is already a rule titled "Reconsideration of Non-Final Orders"

and this proposed change makes clear that Rule 25-22.060 is not intended to apply to reconsideration of both types of orders.

Three provisions of this rule pertaining to PAA orders and oral argument are being amended as follows: 1) in paragraph 25-22.060(1)(a), the language prohibiting reconsideration of PAA orders is being moved to Rule 25-22.029, which deals with proposed agency action; 2) the first sentence of provision 25-22.060(1)(f), stating that granting or denying a request for oral argument is at the sole discretion of the Commission, is moved to 25-22.0022(3); and 3) the last sentence of provision 25-22.060(1)(f), stating that a party who fails to file a written response to a point on reconsideration is precluded from responding to that point during oral argument, is proposed to be deleted. The proposed amendments to Rule 25-22.0021, Agenda Conference Participation, make clear that informal participation on motions for reconsideration is not allowed, and that a request for oral argument must be filed if a party wants to discuss such a motion before the Commission.

Rule 25-40.001 – Exceptions to the Uniform Rules of Procedure – This existing rule consists entirely of a table listing the procedural rules approved by the Administration Commission, and the corresponding provisions of the Uniform Rules that they replace. The table has to be amended to include the newly proposed oral argument rule, Rule 25-22.0022, and to delete the existing oral argument rule, Rule 25-22.058. All the other amendments proposed herein are to rules already included in the table.

## II. Petition for Exceptions From the Uniform Rules of Procedure

The Uniform Rules of Procedure are found in Chapter 28, Florida Administrative Code, and are procedural rules that all agencies must follow. The rules became effective in 1997 and all agencies were required to comply with them by 1998. Section 120.54(5)(b), Florida Statutes, allows agencies to seek exceptions from one or more of the Uniform Rules in three situations: 1) to the extent necessary to implement statutes other than Chapter 120; 2) to the extent necessary to obtain federal funds or certain federal tax benefits; and 3) as required for the most efficient operation of the agency as determined by the Administration Commission.

The Commission petitioned the Administration Commission for exceptions when the Uniform Rules first became effective. All of the existing rules proposed for amendment herein were granted exceptions in 1998. The table below summarizes why each rule was granted an exception in 1998. The underlined text in the table shows the additions that are applicable to the rules proposed in this recommendation. Text that is struck through shows existing rules that are proposed to be repealed in this recommendation. This table summarizes the changes that the Administration Commission would have to approve in order for the proposed amendments in this docket to become effective.

<b>Rule</b>	<b>Reason for Granting Exception</b>	<b>Uniform Rule from Which Exception was Granted</b>
25-22.0021 - Agenda Conference Participation	Most efficient operation of the agency	Chapter 28-102, Agenda and Scheduling of Meetings

		and Workshops
<u>25-22.0022 – Oral Argument Rule</u>	<u>Most efficient operation of the agency</u>	<u>Chapter 28-102, Agenda and Scheduling of Meetings and Workshops and Chapter 28-106, Decisions Determining Substantial Interests</u>
25-22.029(1), (3) <u>and (4)</u>	Necessary to implement Section 367.081(4)(a), Florida Statutes, and for most efficient operation of the agency; <u>necessary to implement Section 120.80(13)(b) and for most efficient operation of the agency</u>	Chapter 28-106, Decisions Determining Substantial Interests
25-22.029(2)	Most efficient operation of the agency	Chapter 28-106, Decisions Determining Substantial Interests
25-22.0376	Necessary to implement Sections 350.01(5), 364.183, 366.093, 367.156 and 368.108, Florida Statutes, and for the most efficient operation of the agency.	Chapter 28-106, Decisions Determining Substantial Interests
25-22.058	<del>Most efficient operation of the agency.</del>	<del>Chapter 28-106, Decisions Determining Substantial Interests</del>
25-22.060	Necessary to implement Sections 350.01(5), 364.183, 366.093, 367.156 and 368.108, Florida Statutes, and for the most efficient operation of the agency.	Chapter 28-106, Decisions Determining Substantial Interests

### III. Statutory Authority

The specific authority for all the proposed rule amendments comes from Sections 350.01(7) and 350.127(2), Florida Statutes. Section 350.01(7) allows the Chair to appoint a Commissioner to serve as a hearing officer. Section 350.127(2) authorizes the Commission to adopt rules implementing the duties conferred upon it by law.

The laws implemented are shown below.

<u>Rule</u>	<u>Laws Implemented</u>
25-22.0021	120.525
25-22.0022	120.569, 120.57

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25-22.029	120.569, 120.57, 120.80(13)(b), 364.05, 366.06, 367.081, 367.081(4)(a), 267.0817
25-22.0376	120.569, 120.57
25.22.060	120.569, 120.57

IV. Statement of Estimated Regulatory Costs

The Statement of Estimated Regulatory Costs is in Attachment 3. The proposed rule should make the agenda conference process more efficient and less time consuming and thus less costly for utilities. The Commission would benefit by the more timely and efficient manner of participation. The total cost savings are unknown.



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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no comments or requests for hearing are filed, the rule as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

**Staff Analysis:** Unless comments or requests for hearing are filed, the rule as proposed may be filed for adoption with the Secretary of State. The docket may then be closed.

1 CHAPTER 25-22

2 *Part I – General Provisions*

3 **25-22.0021 Agenda Conference Participation.**

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

10 (2) Any person who may be affected by an item set for agenda conference will be  
11 allowed to address the Commission informally concerning that item when it is taken up for  
12 discussion, except as provided in subsections (3) - (8), below. To participate informally,  
13 affected persons need only appear at the agenda conference and request the opportunity to  
14 address the Commission on an item listed on the agenda.

15 (3) Informal participation is not permitted on dispositive motions and motions for  
16 reconsideration. Participation on such items is governed by Rule 25-22.0022.

17 (4) Informal participation is not permitted when a recommended order is taken up by  
18 the Commission. For purposes of this rule and Rule 25-22.0022, a recommended order is one  
19 prepared by an administrative law judge at the Division of Administrative Hearings, or by a  
20 Commissioner appointed by the Chair to conduct a hearing pursuant to Section 350.01(7),  
21 Florida Statutes. Participation on such items is governed by Rule 25-22.0022.

22 (5) Informal participation is not permitted in a rulemaking proceeding after the record  
23 has been closed.

24 (6) Informal participation, except by non-testifying staff, is not permitted when the  
25 Commission considers a post-hearing recommendation on the merits of a case after the close

1 of the record.

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

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

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

13 ~~(1) Persons who may be affected by Commission action on certain items on the agenda~~  
 14 ~~for which a hearing has not been held (other than actions on interim rates in file and suspend~~  
 15 ~~rate cases and declaratory statements) will be allowed to address the Commission concerning~~  
 16 ~~those items when taken up for discussion at the conference.~~

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

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

24 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.525 FS. History–New 3-  
 25 23-93, Amended \_\_\_\_\_

1 **25-22.0022 Oral Argument Rule**

2 (1) Oral argument must be sought by separate written request filed concurrently with  
3 the motion on which argument is requested, or no later than 10 days after exceptions to a  
4 recommended order are filed. Failure to timely file a request for oral argument shall constitute  
5 waiver thereof. Failure to timely file a response to the request for oral argument waives the  
6 opportunity to object to oral argument. The request for oral argument shall state with  
7 particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the  
8 Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating  
9 the issues to be decided, and the amount of time requested for oral argument.

10 (2) The Commission may request oral argument on matters over which it presides.  
11 The Prehearing Officer may request oral argument on matters over which he or she presides.  
12 The parties will be notified directly when oral argument is scheduled.

13 (3) Granting or denying a request for oral argument is within the sole discretion of the  
14 Commission or the Prehearing Officer whichever presides over the matter to be argued.

15 (4) The staff attorney assigned to the docket may participate in any oral argument on  
16 that docket.

17 (5) Oral argument will not be entertained on a post-hearing recommendation on the  
18 merits of the case. However, when the Commission votes on a recommended order requests  
19 for oral argument will be entertained.

20 (6) Oral argument will not be entertained on a request for oral argument.

21 (7) Oral argument at an agenda conference.

22 (a) Oral argument at agenda conference will only be entertained for recommended  
23 orders and dispositive motions, such as motions to dismiss, motions for summary final order,  
24 and motions for reconsideration of non-final or final orders. Only parties to the docket and the  
25 staff attorney may participate in the oral argument.

1        (b) The Commission can request oral argument on any issue to be decided by a  
 2 dispositive motion or recommended order. The listing of the dispositive motion or  
 3 recommended order on the notice of the agenda conference shall serve as notice to the parties  
 4 to be prepared for oral argument on all issues associated with the dispositive motion or  
 5 recommended order on the agenda, even if a request for oral argument has not been made by a  
 6 party, or if a request made by a party pertains to a limited number of issues. Notice of the  
 7 agenda conference can be found at [www.psc.state.fl.us/agendas](http://www.psc.state.fl.us/agendas), as explained in Rule 25-  
 8 22.0021(1).

9        (c) If a request for oral argument filed by a party is scheduled to be taken up at an  
 10 agenda conference, and the request is granted at that time, the oral argument will occur at that  
 11 agenda conference. At the agenda conference where the request is taken up, parties should be  
 12 prepared to proceed with oral argument on all issues pertaining to the dispositive motion or  
 13 recommended order, whether raised in the request for oral argument or not. Notice that such a  
 14 request will be taken up is provided at [www.psc.state.fl.us/agendas](http://www.psc.state.fl.us/agendas), as explained in Rule 25-  
 15 22.0021(1).

16        (d) This rule does not restrict the scheduling of oral arguments to agenda conferences.  
 17 Oral arguments can be scheduled at any time, in which case the parties will be directly notified  
 18 of the time and place.

19 New \_\_\_\_\_

20 *Part III – Declaratory Statements (no changes)*

21 *Part IV – Decisions Determining Substantial Interests*

22 *IV. A. General Provisions*

23 **25-22.029 Point of Entry Into Proposed Agency Action Proceedings.**

24        (1) After agenda conference, the Division of the Commission Clerk and Administrative  
 25 Services shall issue written notice of the proposed agency action (PAA), advising all parties of

1 record that, except for PAA orders establishing a price index pursuant to Section  
 2 367.081(4)(a), Florida Statutes, they have 21 days after issuance of the notice in which to file  
 3 a request for a Section 120.569 or 120.57, Florida Statutes, hearing. For PAA orders  
 4 establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, ~~the time for~~  
 5 requesting a Section 120.569 or 120.57, Florida Statutes, hearing shall be 14 days from  
 6 issuance of the notice, ~~for PAA orders establishing a price index pursuant to Section~~  
 7 ~~367.081(4)(a), Florida Statutes~~. The Commission will require a utility to serve written notice  
 8 of the PAA on its customers if the Commission finds that it is necessary in order to afford  
 9 adequate notice.

10 (2) The Commission will require a utility to publish notice of the decision in  
 11 newspapers of general circulation in its service area if the Commission finds that it is  
 12 necessary in order to afford adequate notice. ~~Any such publication may be used in establishing~~  
 13 ~~the date of receiving notice.~~

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

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

25 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57, 364.05,

1 366.06, 367.081, 367.081(4)(a), 367.0817, 120.80(13)(b) FS. History—New 12-21-81,  
 2 Formerly 25-22.29, Amended 7-8-92, 5-3-99,\_\_\_\_\_.

3 ***IV. B. Prehearing Procedures***

4 **25-22.0376 Reconsideration of Non-Final Orders.**

5 (1) Any party who is adversely affected by a non-final order may seek reconsideration  
 6 by the Commission panel assigned to the proceeding by filing a motion in support thereof  
 7 within 10 days after issuance of the order. The Commission shall not entertain a motion for  
 8 reconsideration of an order disposing of a motion for reconsideration.

9 (2) A party may file a response to a motion for reconsideration within 7 days after  
 10 service of the motion for reconsideration.

11 (3) Failure to timely file a motion for reconsideration or a response shall constitute a  
 12 waiver of the right to do so.

13 (4) Any motion or response filed pursuant to this rule shall contain a concise statement  
 14 of the grounds therefore and the signature of counsel or other person filing the motion.

15 (5) The Commission will not entertain a motion for reconsideration of a notice of  
 16 proposed agency action.

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

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

22 ***IV. C. Conduct of Formal Proceedings (no change)***

23 ***IV. D. Post-hearing Procedures***

24 **25-22.058 Oral Argument.**

25 Commission may grant oral argument upon request of any party to a Section

1 120.57, Florida Statutes, formal hearing. A request for oral argument shall be contained on a  
 2 separate document and must accompany the pleading upon which argument is requested. The  
 3 request shall state with particularity why oral argument would aid the Commission in  
 4 comprehending and evaluating the issues before it. Failure to file a timely request for oral  
 5 argument shall constitute waiver thereof.

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

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

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

14 **25-22.060 Motion for Reconsideration of Final Orders.**

15 (1) Scope and General Provisions.

16 (a) Any party to a proceeding who is adversely affected by an order of the Commission  
 17 may file a motion for reconsideration of that order. The Commission will not entertain any  
 18 motion for reconsideration of any order that ~~which~~ disposes of a motion for reconsideration.  
 19 ~~The Commission will not entertain a motion for reconsideration of a Notice of Proposed~~  
 20 ~~Agency Action issued pursuant to Rule 25-22.029, F.A.C., regardless of the form of the~~  
 21 ~~Notice and regardless of whether or not the proposed action has become effective under~~  
 22 ~~subsection 25-22.029(6), F.A.C.~~

23 (b) A party may file a response to a motion for reconsideration and may file a cross  
 24 motion for reconsideration. A party may file a response to a cross motion for reconsideration.

25 (c) A final order shall not be deemed rendered for the purpose of judicial review until



1 the Commission disposes of any motion and cross motion for reconsideration of that order, but  
 2 this provision does not serve automatically to stay the effectiveness of any such final order.  
 3 The time period for filing a motion for reconsideration is not tolled by the filing of any other  
 4 motion for reconsideration.

5 (d) Failure to file a timely motion for reconsideration, cross motion for  
 6 reconsideration, or response, shall constitute waiver of the right to do so.

7 (e) A motion for reconsideration of an order adopting, repealing, or amending a rule  
 8 shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under  
 9 Section 120.54(7.5), Florida Statutes, and Rule 28-103.006 ~~25-22.012~~, F.A.C.

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

13 (2) Contents. Any motion or response filed pursuant to this rule shall contain a concise  
 14 statement of the grounds for reconsideration, and the signature of counsel, if any.

15 (3) Time. A motion for reconsideration of a final order shall be filed within 15 days  
 16 after issuance of the order. A response to a motion for reconsideration or a cross motion for  
 17 reconsideration shall be served within 7 days of service of the motion for reconsideration to  
 18 which the response or cross motion is directed. A response to a cross motion for  
 19 reconsideration shall be served within 7 days of service of the cross motion.

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

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23 Oral Argument Rule/text second draft.mks.doc

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1 **CHAPTER 25-40**  
 2 **EXCEPTIONS TO THE UNIFORM RULES OF PROCEDURE**

3 25-40.001 Exceptions to the Uniform Rules of Procedure

4 **25-40.001 Exceptions to the Uniform Rules of Procedure.**

5 The following provisions of the Commission’s rules are exceptions to the uniform rules of  
 6 procedure:

<b>UNIFORM RULE</b>	<b>COMMISSION RULE THAT IS AN EXCEPTION</b>
<p>9 <b>CHAPTER 28-102</b>                      10 <b>AGENDA AND SCHEDULING OF</b>                      11 <b>MEETINGS AND WORKSHOPS</b></p>	<p>25-22.0021                      Agenda Conference Participation.</p>
<p>12 <u>CHAPTER 28-102 - AGENDA AND</u>                      13 <u>SCHEDULING OF MEETINGS AND</u>                      14 <u>WORKSHOPS AND CHAPTER 28-106</u>                      15 <u>- DECISIONS DETERMINING</u>                      16 <u>SUBSTANTIAL INTERESTS</u></p>	<p><u>25-22.0022</u>  <u>Oral Argument Rule</u></p>
<p>17 <b>28-102.001</b>                      18 Notice of Public Meeting, Hearing, or                      19 Workshop.</p>	<p>25-22.001                      Notice of Meeting or Workshop.</p>
<p>20 <b>28-102.002(2)</b>                      21 Agenda of Meetings, Hearings, and                      22 Workshops.</p>	<p>25-22.002                      Agenda of Meetings.</p>
<p>23 <b>CHAPTER 28-103</b>                      24 <b>RULEMAKING</b></p>	<p>25-22.017                      Rulemaking Proceeding -- Adoption.</p>

1	<b>CHAPTER 28-106</b>	<b>25-22.006</b>
2	<b>DECISIONS DETERMINING</b>	Confidential Information.
3	<b>SUBSTANTIAL INTERESTS</b>	<b>25-22.029</b>
4		Point of Entry Into Proposed Agency Action
5		Proceedings.
6		<b>25-22.0376</b>
7		Reconsideration of Non-Final Orders.
8		<b>25-22.0406(7)-(8)</b>
9		Notice and Public Information on General
10		Rate Increase Requests by Electric, Gas and
11		Telephone Companies.
12		<b>25-22.0407(8) and (10)</b>
13		Notice of and Public Information for
14		General Rate Increase Requests by Water
15		and Wastewater Utilities.
16		<del>25-22.058</del>
17		<del>Oral Argument.</del>
18		<b>25-22.060</b>
19		Motion for Reconsideration.
20	<b>28-106.104</b>	<b>25-22.028</b>
21	Filing.	Filing, Number of Copies.
22	<b>28-106.205</b>	<b>25-22.039</b>
23	Intervention.	Intervention.
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CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1	<b>28-106.208</b>	<b>25-22.029</b>
2	Notice of Hearing.	Point of Entry into PAA Proceeding.
3		<b>25-22.0405</b>
4		Notices of Hearings.
5	<b>28-106.212</b>	<b>25-22.045</b>
6	Subpoenas.	Subpoenas.
7	<b>CHAPTER 28-107 LICENSING</b>	<b>25-22.075</b> Transmission Line Permitting
8		Proceedings.
9		<b>25-22.080</b> Electrical Power Plant Permitting
10		Proceedings.

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*Specific Authority 120.54(5)(a)3. FS.*  
*Law Implemented 120.54(5)(a)3. FS.*  
*History-New 4-28-99. Amended \_\_\_\_\_*

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State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** March 1, 2005  
**TO:** Office of General Counsel (Stern)  
**FROM:** Division of Economic Regulation (Hewitt) *CEH*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Amendments to Rules 25-22.0021, 22.0022, 22.029, 22.0367, 22.060 and Repeal of Rule 25- 22.058, F.A.C., Agenda Conference Participation and Procedures; Docket No. 050108-OT

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### SUMMARY OF THE RULE

The rules in 25-22, F.A.C, contain the procedures for participating in Commission Agenda Conferences. The provisions for oral argument are dispersed in 3 separate parts of Chapter 25-22 and the provisions can be confusing and misleading. In addition, when challenging Proposed Agency Action (PAA) orders, there is no specific provision for filing cross-petitions.

The proposed rule amendments would streamline the provisions and eliminate confusion over participation at agenda conferences by clarifying and making specific when a motion for oral argument is required for participation and when it is not. The proposed rule revisions also address the filing of cross-petitions when a PAA order is challenged.

### ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

All regulated companies and interested parties participating in Commission Agenda Conferences would potentially be affected by the proposed rule changes. There are approximately 1990 companies regulated by the Commission and any of their customers would be affected if they participate in an Agenda Conference and come under the rules for participation.

### RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commissioners and staff would benefit because Agenda Conferences would proceed in a more timely and efficient manner.

There should be no negative impact on other state and local government entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Regulated companies currently appear before the Commission and incur costs in doing so. The proposed rule changes would improve the understanding of the participation process and by increased efficiency should decrease the cost to participate by some unknown amount.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be a benefit to the regulated small businesses participating in Agenda Conferences with no negative impacts on unregulated small businesses, small cities, or small counties. The Commission would benefit by the streamlined participation process.

CH:kb

cc: Mary Andrews Bane  
Chuck Hill  
Hurd Reeves