

# ORIGINAL

## NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050108-OT

RULE TITLE:	RULE NO.:
Agenda Conference Participation	25-22.0021
Oral Argument Rule	25-22.0022
Point Entry Into Proposed Agency Action Proceedings	25-22.029
Reconsideration of Non-Final Orders	25-22.0376
Motion for Reconsideration <u>of Final Orders</u>	25-22.060

PURPOSE AND EFFECT: The purpose of the proposed rules are to clarify when and how participation at agenda conferences will proceed and to clarify when a motion for oral argument must be filed. The proposed rules also allow filing of a cross-petition following a protest of Commission proposed agency action.

SUMMARY: These rules clearly delineate the Commission's practice regarding participation in Commission proceedings. The rules explain when informal participation is allowed, and when a motion for oral argument must be filed. The rules consolidate a number of existing provisions

MP \_\_\_\_\_ into one location, and delete those provisions where they are presently located. A new section is

OM \_\_\_\_\_ added to allow the filing of a cross-petition when a protest of proposed agency action is filed.

TR \_\_\_\_\_ SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SERC was

CR \_\_\_\_\_ prepared.

CL \_\_\_\_\_ Any person who wishes to provide information regarding the statement of estimated regulatory

OC \_\_\_\_\_ costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within

OA \_\_\_\_\_ 21 days of this notice.

OC | \_\_\_\_\_

OH \_\_\_\_\_

DOCUMENT NUMBER-DATE

09806 OCT 25 8

FPSC-COMMISSION CLERK

SPECIFIC AUTHORITY: 120.54(5)(a)3, 350.01(7), 350.127(2), FS

LAW IMPLEMENTED: 120.80(13)(b), 120.525, 120.569, 120.57, 364.05, 366.06, 367.081, 367.0817(4)(a), 367.0817, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, 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 THESE PROPOSED RULES IS: Larry Harris, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6076.

THE FULL TEXT OF THESE PROPOSED RULES ARE:

**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](http://www.psc.state.fl.us/agendas), at least seven days before the agenda conference.

(2) Any person who may be affected by an item set for agenda conference will be allowed to address the Commission informally concerning that item when it is taken up for discussion, except as provided in subsections (3) – (8), 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.

(3) Informal participation is not permitted on dispositive motions and motions for reconsideration. Participation on such items is governed by Rule 25-22.022, F.A.C.

(4) Informal participation is not permitted when a recommended order is taken up by the Commission. For purposes of this rule and Rule 25-22.022, F.A.C., a recommended order is one prepared by an administrative law judge at the Division of Administrative Hearings, or by a Commissioner appointed by the Chair to conduct a hearing pursuant to Section 350.01(7), Florida Statutes. Participation on such items is governed by Rule 25-22.022, F.A.C.

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

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

(7) 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.

(8) 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.

(9) 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 cases 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 \_\_\_\_\_.

#### 25-22.0022 Oral Argument Rule

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

(2) The Commission may request oral argument on matters over which it presides. The

Prehearing Officer may request oral argument on matters over which he or she presides. The parties will be notified directly when oral argument is scheduled.

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

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

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

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

(7) Oral argument at an agenda conference.

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

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

(c) If a request for oral argument filed by a party is scheduled to be taken up at an agenda conference, and the request is granted at that time, the oral argument will occur at that agenda

conference. At the agenda conference where the request is taken up, parties should be prepared to proceed with oral argument on all issues pertaining to the dispositive motion or recommended order, whether raised in the request for oral argument or not. Notice that such a 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 25-22.0021(1), F.A.C.

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

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

Law Implemented 120.525 FS

History – New

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, tThe time for requesting a Section 120.569 or 120.57, Florida Statutes, hearing shall be 14 days from issuance of the notice. for 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) The Commission will require a utility to publish notice of the decision in newspapers of general circulation in its service area if the Commission finds that it is necessary in order to afford adequate notice. ~~Any such publication may be used in establishing the date of receiving~~

notice.

(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 person substantially affected by the proposed agency action 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 a notice 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, 367.0817(4)(a), 367.0817, 120.80(13)(b) 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) The Commission will not entertain a motion for reconsideration of a notice of proposed agency action.

~~(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.

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, Repealed\_\_\_\_\_.

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 ~~that~~ ~~which~~ 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 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(75), Florida Statutes and Rule ~~28-103.006~~25-22.012, 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,\_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULES: Larry Harris

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULES:

Florida Public Service Commission.

DATE PROPOSED RULES APPROVED: March 24, 2005

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 30,  
Number 34, August 20, 2004

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing 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).

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## Submit FAW Notices

**Step 5: Acknowledgement of Submittal**

The Administrative Code and Weekly Unit has received your notice for publication in the FAW.

A confirmation number has been provided below which may be used to reference this submittal in any communications with the Unit. Use the your browser *'Print'* button or the *'Print this Acknowledgement'* button at the bottom of this page to generate a receipt for your records. A record of this transmittal will be maintained for approximately 30 days and may be accessed from the 'Submittal Listing' item in the FAW Online menu on the left of this page.

<b>Confirmation No</b>	<b>Proposed3614</b>
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