

ORIGINAL

STATE OF FLORIDA

COMMISSIONERS:
LISA POLAK EDGAR
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW



OFFICE OF THE GENERAL COUNSEL
MICHAEL G. COOKE
GENERAL COUNSEL
(850) 413-6199
RECEIVED FPSC
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COMMISSION
CLERK

Public Service Commission

October 25, 2006

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket No. 050108-OT – Proposed Revisions to Rules in Chapter 25-22 and 25-40,
F.A.C.

Dear Mr. Boyd:

Enclosed are the following materials concerning the above referenced proposed rules:

1. A copy of the rules.
2. A copy of the Administration Commission Final Order.
3. A copy of the F.A.W. notice.
4. A statement of facts and circumstances justifying the proposed rules.
5. A federal standards statement.
6. No statement of estimated regulatory costs was prepared.

CMP _____
 COM _____
 CTR _____
 ECR _____
 GCL _____
 OPC _____
 RCA _____
 SCR _____
 SGA _____
 SEC 1
 OTH _____

If there are any questions with respect to these rules, please do not hesitate to call me.

Sincerely,

Larry D. Harris
Associate General Counsel

050108 JAPC ltr.lth.doc

Enclosures

cc: Division of the Commission Clerk and Administrative Services

DOCUMENT NUMBER - DATE

09830 OCT25 06

FPSC - COMMISSION CLERK

1 **25-22.0021 Agenda Conference Participation.**

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

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

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

15 (4) Informal participation is not permitted when a recommended order is taken up
16 by the Commission. For purposes of this rule and Rule 25-22.022, F.A.C., a recommended
17 order is one prepared by an administrative law judge at the Division of Administrative
18 Hearings, or by a Commissioner appointed by the Chair to conduct a hearing pursuant to
19 Section 350.01(7), Florida Statutes. Participation on such items is governed by Rule 25-
20 22.022, F.A.C.

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

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

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

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

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

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

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

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

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

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

24 Law Implemented 120.525 FS.

25 History—New 3-23-93, Amended _____.

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1 25-22.0022 Oral Argument Rule

2 (1) Oral argument must be sought by separate written request filed concurrently
3 with 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
14 the 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
16 on 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.

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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, as explained in Rule 25-**
8 **22.0021(1), F.A.C.**

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, as explained in Rule 25-**
15 **22.0021(1), F.A.C.**

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

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

20 **Law Implemented 120.525 FS**

21 **History – New**

22
23 **25-22.029 Point of Entry Into Proposed Agency Action Proceedings.**

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

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1 advising all parties of record that, except for PAA orders establishing a price index pursuant to
2 Section 367.081(4)(a), Florida Statutes, they have 21 days after issuance of the notice in which
3 to file 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, ~~t~~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.

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1 Law Implemented 120.569, 120.57, 364.05, 366.06, 367.081, 367.0817(4)(a), 367.0817,
2 120.80(13)(b) FS.

3 History–New 12-21-81, Formerly 25-22.29, Amended 7-8-92, 5-3-99,_____.

4

5 **25-22.0376 Reconsideration of Non-Final Orders.**

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

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

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

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

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

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

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

23 Law Implemented 120.569, 120.57 FS.

24 History–New 9-3-95, Amended 7-11-96,_____.

25

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1 **25-22.058 Oral Argument.**

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

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

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

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

15 Law Implemented 120.569, 120.57 FS.

16 History—New 12-21-81, Formerly 25-22.58, Amended 3-23-93, Repealed.

17

18

19 **25-22.060 Motion for Reconsideration of Final Orders.**

20 (1) Scope and General Provisions.

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

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

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

5 (c) A final order shall not be deemed rendered for the purpose of judicial review
6 until the Commission disposes of any motion and cross motion for reconsideration of that
7 order, but this provision does not serve automatically to stay the effectiveness of any such
8 final order. The time period for filing a motion for reconsideration is not tolled by the filing of
9 any other motion for reconsideration.

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

12 (e) A motion for reconsideration of an order adopting, repealing, or amending a
13 rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under
14 Section 120.54(75), Florida Statutes and Rule ~~28-103.00625-22.012~~, F.A.C.

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

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

20 (3) Time. A motion for reconsideration of a final order shall be filed within 15
21 days after issuance of the order. A response to a motion for reconsideration or a cross motion
22 for reconsideration shall be served within 7 days of service of the motion for reconsideration
23 to which the response or cross motion is directed. A response to a cross motion for
24 reconsideration shall be served within 7 days of service of the cross motion.

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

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1 Law Implemented 120.569, 120.57 FS. History–New 12-21-81,
2 Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96,_____.

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1 **25-40.001 Exceptions to the Uniform Rules of Procedure.**

2 The following provisions of the Commission's rules are exceptions to the uniform rules of
 3 procedure:

UNIFORM RULE	COMMISSION RULE THAT IS AN EXCEPTION
4 5 6 7 CHAPTER 28-102 8 AGENDA AND SCHEDULING OF 9 MEETINGS AND WORKSHOPS 10	25-22.0021 Agenda Conference Participation.
11 <u>CHAPTER 28-102 - AGENDA AND</u> 12 <u>SCHEDULING OF MEETINGS AND</u> 13 <u>WORKSHOPS AND CHAPTER 28-106</u> 14 <u>- DECISIONS DETERMINING</u> 15 <u>SUBSTANTIAL INTERESTS</u> 16	<u>25-22.0022</u> <u>Oral Argument Rule</u>
17 28-102.001 18 Notice of Public Meeting, Hearing, or 19 Workshop. 20 21	25-22.001 Notice of Meeting or Workshop.
22 28-102.002(2) 23 Agenda of Meetings, Hearings, and 24 Workshops. 25	25-22.002 Agenda of Meetings.

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1		
2	CHAPTER 28-103	25-22.017
3	RULEMAKING	Rulemaking Proceeding -- Adoption
4		
5	CHAPTER 28-106	25-22.006
6	DECISIONS DETERMINING	Confidential information
7	SUBSTANTIAL INTERESTS	25-22.029
8		Point of Entry into Proposed Agency
9		Action Proceedings.
10		25-22.0376
11		Reconsideration of Non-Final Orders.
12		25-22.0406(7)-(8)
13		Notice and Public Information on General
14		Rate Increase Requests by Electric, Gas
15		and Telephone Companies
16		25-22.0407(8) and (10)
17		Notice of and Pubic Information for
18		General Rate Increase Requests by Water
19		and Wastewater Utilities.
20		25-22.058
21		Oral Argument
22		25-22.060
23		Motion for Reconsideration
24		
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1	28-106.104	25-22.028
2	Filing	Filing, Number of Copies
3		
4	28-106.205	25-22.039
5	Intervention	Intervention.
6		
7	28-106.208	25-22.029
8	Notice of Hearing	Point of entry into PAA Proceeding.
9		25-22.0405
10		Notices of Hearing
11		
12	28-106.212	25-22.045
13	Subpoenas	Subpoenas
14		
15	CHAPTER 28-107 LICENSING	25-22.075 Transmission Line Permitting
16		Proceedings.
17		25-22.080 Electrical Power Plant
18		Permitting Proceedings.
19		
20		

21 Specific Authority 120.54(5)(a)3, FS

22 Law Implemented 120.54(5)(a)3, FS

23 History – New 4-28-99, Amended.

24

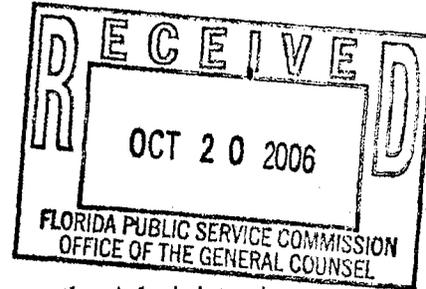
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STATE OF FLORIDA
ADMINISTRATION COMMISSION

IN RE: Petition to Amend Exceptions
and for Exception to Uniform Rules of
Procedure, PUBLIC SERVICE
COMMISSION.

AC Case No. APA-05-019



FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission ("Commission) on October 17, 2006, in Tallahassee, Florida, pursuant to Section 120.54(5)(a)2, Florida Statutes, and Chapter 28-108, Florida Administrative Code, upon the Public Service Commission (PSC's) "Petition to Amend its Exceptions and Create an Exception to the Uniform Rules of Procedure." Having considered the Petition and arguments of counsel, and being otherwise fully advised in the premises, it is ORDERED and ADJUDGED that:

1. An amendment to Rule 25-22.0021 (Agenda Conference Participation) is hereby granted, based upon the most efficient operation of the agency. *See* A.C. Case No. APA-98-007.
2. An exception from Chapters 28-102 (Agenda and Scheduling of Meetings and Workshops) and 28-106 (Oral Argument Rule) is hereby granted for Rule 25-22.0022, based upon the most efficient operation of the agency.

3. An amendment to Rule 25-22.029 (Point of Entry Into Proposed Agency Action Proceedings) is hereby granted, based upon the most efficient operation of the agency. *See* A.C. Case No. APA-98-007.
4. An amendment to Rule 25-22.0376 (Reconsideration of Non-Final Orders) is hereby granted, based upon the most efficient operation of the agency. *See* A.C. Case No. APA-98-007.
5. The exception created by Rule 25-22.058 (Oral Argument), A.C. Case No. APA-98-007, is hereby repealed, based upon the most efficient operation of the agency.
6. An amendment to Rule 25-22.060 (Motion for Reconsideration) is hereby granted, based upon the most efficient operation of the agency. *See* A.C. Case No. APA-98-007.
7. An amendment to Rule 25-40.001 (Exceptions to the Uniform Rules of Procedure) is hereby granted based upon the most efficient operation of the agency. *See* A.C. Case No. APA-98-007.

NOTICE OF RIGHTS

Any party to this Order has the right to seek Judicial review of the Final Order pursuant to section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Policy and Budget, Executive Office of the Governor, The Capitol, Room 1801, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. Notice of Appeal must be filed within 30 days of the day this Order is filed with the Clerk of the Commission.

DONE AND ENTERED this 18th day of October, 2006.

Jeresa B. Linker
for MICHAEL P. HANSEN, Secretary
Administration Commission

FILED with the Clerk of the Administration Commission this 18th day of October, 2006.

Barbara Lighty
Clerk, Administration Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was delivered to the following persons by United States Mail, hand delivery, or electronic delivery this 18th day of October, 2006.

Honorable Jeb Bush
Governor
The Capitol
Tallahassee, Florida 32399

Michael G. Cooke, General Counsel
Larry D. Harris, Associate General Counsel
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Honorable Tom Gallagher
Chief Financial Officer
The Capitol
Tallahassee, Florida 32399

Gladys Perez, Esquire
Governor's Legal Office
Room 209, The Capitol
Tallahassee, Florida 32399-0001

Honorable Charlie Crist
Attorney General
The Capitol
Tallahassee, Florida 32399

Scott Boyd, Executive Director and
General Counsel
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Honorable Charles H. Bronson
Commissioner of Agriculture
The Capitol
Tallahassee, Florida 32399

Florida Administrative Law Reports
Post Office Box 385
Gainesville, Florida 32602

Jeresa B. Dinker
for MICHAEL P. HANSEN, Secretary
Administration Commission

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 into one location, and delete those provisions where they are presently located. A new section is added to allow the filing of a cross-petition when a protest of proposed agency action is filed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SERC 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: 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, 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, 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, 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, ~~t~~The 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 ~~28-103.00625-22.012~~, 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).

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050108-OT

RULE TITLE:

RULE NO.:

Exceptions to the Uniform Rules of Procedure

25-40.001

PURPOSE AND EFFECT: To revise the list of Commission rules that are exceptions from the Uniform Rules of Procedure.

SUMMARY: Rule 25-40.001, Exceptions to the Uniform Rules of Procedure, is being amended to reflect the new exception for Rule 25-22.0022, Oral Argument, and to reflect the repeal of an existing exception, Rule 25-22.058, Oral Argument.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No SERC 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: 120.54(5)(a)3, FS

LAW IMPLEMENTED: 120.54(5)(a)3, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE 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:

25-40.001 Exceptions to the Uniform Rules of Procedure.

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

UNIFORM RULE	COMMISSION RULE THAT IS AN EXCEPTION
CHAPTER 28-102 AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS	25-22.0021 Agenda Conference Participation.
<u>CHAPTER 28-102 - AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS AND CHAPTER 28-106 – DECISIONS DETERMINING SUBSTANTIAL INTERESTS</u>	<u>25-22.0022</u> <u>Oral Argument Rule</u>
28-102.001 Notice of Public Meeting, Hearing, or Workshop.	25-22.001 Notice of Meeting or Workshop.

28-102.002(2) Agenda of Meetings, Hearings, and Workshops.	25-22.002 Agenda of Meetings.
CHAPTER 28-103 RULEMAKING	25-22.017 Rulemaking Proceeding -- Adoption
CHAPTER 28-106 DECISIONS DETERMINING SUBSTANTIAL INTERESTS	25-22.006 Confidential information 25-22.029 Point of Entry into Proposed Agency Action Proceedings. 25-22.0376 Reconsideration of Non-Final Orders. 25-22.0406(7)-(8) Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies 25-22.0407(8) and (10) Notice of and Pubic Information for General Rate Increase Requests by Water and Wastewater Utilities. 25-22.058

	<p>Oral Argument</p> <p>25-22.060</p> <p>Motion for Reconsideration</p>
<p>28-106.104</p> <p>Filing</p>	<p>25-22.028</p> <p>Filing, Number of Copies</p>
<p>28-106.205</p> <p>Intervention</p>	<p>25-22.039</p> <p>Intervention.</p>
<p>28-106.208</p> <p>Notice of Hearing</p>	<p>25-22.029</p> <p>Point of entry into PAA Proceeding.</p> <p>25-22.0405</p> <p>Notices of Hearing</p>
<p>28-106.212</p> <p>Subpoenas</p>	<p>25-22.045</p> <p>Subpoenas</p>
<p>CHAPTER 28-107 LICENSING</p>	<p>25-22.075 Transmission Line Permitting Proceedings.</p> <p>25-22.080 Electrical Power Plant Permitting Proceedings.</p>

Specific Authority 120.54(5)(a)3, FS

Law Implemented 120.54(5)(a)3, FS

History – New 4-28-99, Amended_____.

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,
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Rules 25-22.0021, 25-22.0022, 25-22.029,
25-22.058, 25-22.0376, 25-22.060, 25-
40.001

Docket No. 050108-OT

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE

Currently, the provisions on oral argument appear in 3 separate rules, and each of those rules is in a different Part of Chapter 25-22. Because of this dispersal throughout the Chapter, the provisions are confusing and misleading. Moving all the provisions on oral argument into one rule will help to resolve some of the confusion.

In addition to the dispersal problem, the rules are not specific enough about when and whether a motion for oral argument is required to participate at an agenda conference and when it is not. The proposed revisions are more specific in this regard and will enable parties to better prepare for agenda conferences.

On a different topic, challenging PAA orders, there is no specific provision for filing cross-petitions. If a protest is filed on the last day of the protest period, as it often is, a party or substantially affected person cannot file a cross-petition. This becomes problematic when parties who would ordinarily not protest find it in their best interests to do so, to protect themselves from the possibility of another party's protest altering the decision. The proposed rule revisions address this problem by allowing a cross-petition to be filed within 10 days of the original protest.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.