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CERTIFICATION OF

PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES

COMMISSION
CLERK

FILED WITH THE

DEPARTMENT OF STATE

I do hereby certify:

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

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

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

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

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

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

COM _____
CTR _____
ECR _____ // (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

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

SGA _____

SEC 1 _____

OTH _____

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

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

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

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

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

Rule Nos.

25-22.0021

25-22.0022

25-22.029

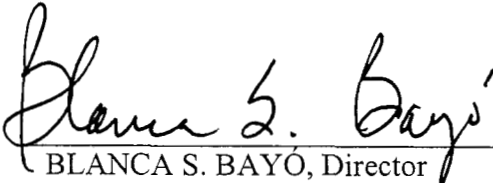
25-22.0376

25-22.058

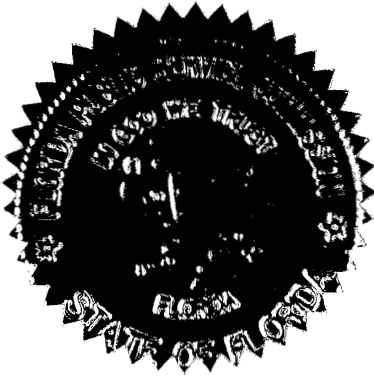
25-22.060

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

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



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



LDH

Number of Pages Certified

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.

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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 ~~120.569(1), 120.57(1), 120.57(2)(a) 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 120.569(1), 120.57(1), 120.57(2)(a) 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, ~~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,_____.

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from existing law.

1 **25-22.058 Oral Argument.**

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

3 Law Implemented 120.569, 120.57 FS.

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

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7 **25-22.060 Motion for Reconsideration of Final Orders.**

8 (1) Scope and General Provisions.

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

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

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

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

25 (e) A motion for reconsideration of an order adopting, repealing, or amending a

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1 rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under
2 Section 120.54(75), Florida Statutes and Rule 28-103.00625-22.012, F.A.C.

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

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

8 (3) Time. A motion for reconsideration of a final order shall be filed within 15
9 days after issuance of the order. A response to a motion for reconsideration or a cross motion
10 for reconsideration shall be served within 7 days of service of the motion for reconsideration
11 to which the response or cross motion is directed. A response to a cross motion for
12 reconsideration shall be served within 7 days of service of the cross motion.

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

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25-22.058 Oral Argument.

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

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

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

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

25-22.060 Motion for Reconsideration.

(1) Scope and General Provisions.

(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. The Commission will not entertain any motion for reconsideration of any order which 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) A party may file a response to a motion for reconsideration and may file a cross motion for reconsideration. A party may file a response to a cross motion for reconsideration.

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

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

(e) A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under Section 120.54(5), Florida Statutes and Rule 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) Contents. Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds for reconsideration, and the signature of counsel, if any.

(3) Time.

A motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. A response to a motion for reconsideration or a cross motion for reconsideration shall be served within 7 days of service of the motion for reconsideration to which the response or cross motion is directed. A response to a cross motion for reconsideration shall be served within 7 days of service of the cross motion.

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.

25-22.061 Stay Pending Judicial Review.

(1)(a) When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

(b) In determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as:

1. Terms that will discourage appeals when there is little possibility of success; and

2. A rate of interest that takes into consideration:

a. The use of the money that the stay permits;

b. The prime and other prevailing rates of interest at commercial banks and other potential sources of capital in the amount involved in the appeal.

(2) Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

(a) Whether the petitioner is likely to prevail on appeal;

Rules 25-22.0021, 25-22.0022, 25-22.029,
25-22.0376, 25-22.058, 25-22.060
Docket No. 050108-OT

SUMMARY OF RULE

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 HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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.

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