

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

UNDOCKETED

IN RE: INITIATION OF RULEMAKING TO AMEND RULE 25-22.061, F.A.C.,  
STAY PENDING JUDICIAL REVIEW

NOTICE OF PROPOSED RULE DEVELOPMENT

TO

ALL INTERESTED PERSONS

ISSUED: October 16, 2009

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission staff has initiated the development of Rule 25-22.061, Florida Administrative Code, to amend provisions relating to stay pending judicial review.

The attached Notice of Proposed Rule Development will appear in the October 23, 2009, edition of the Florida Administrative Weekly. A staff rule development workshop will be held at the following time and place:

Florida Public Service Commission  
December 10, 2009 - 9:00 a.m. – 12:00 p.m.  
Betty Easley Conference Center  
Room 148, 4075 Esplanade Way  
Tallahassee, Florida 32399-0850

One or more Commissioners may participate in the workshop. The person to be contacted regarding the proposed rule development is Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216, [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us).

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

DOCUMENT NUMBER-DATE

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By DIRECTION of the Florida Public Service Commission, this 16th day of October,  
2009.



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ANN COLE  
Commission Clerk

(SEAL)

KC

Notice of Development of Rulemaking

**PUBLIC SERVICE COMMISSION**

**RULE NO: RULE TITLE**

25-22.061: Stay Pending Judicial Review

**PURPOSE AND EFFECT:** To amend rule 25-22.061 to conform to amendments to Fla. R. App. P. 9.310, to revise for clarity, and to more accurately reflect current Commission practice.

Undocketed.

**SUBJECT AREA TO BE ADDRESSED:** The rule addresses: procedure for requesting and granting a stay of a final or nonfinal Commission order pending judicial review; factors which may be considered in determining whether to grant a stay, and; conditions upon which a stay may be granted by the Commission.

**SPECIFIC AUTHORITY:** 350.127(2), FS

**LAW IMPLEMENTED:** 120.68(3), FS

**A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:**

**DATE AND TIME:** December 10, 2009, 9:00 a.m. - 12:00 p.m.

**PLACE:** Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, FL.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6770. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE**

**DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:**

Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6216 or [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us)

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

**25-22.061 Stay Pending Judicial Review.**

(1) The issuance of a stay of a Commission order pending judicial review in the state courts shall be governed by Fla. R. App. P. 9.190 and 9.310, Section 120.68(3), Florida Statutes,

and this rule.

(~~24~~)(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, or and such other conditions as the Commission finds appropriate to secure the revenues collected by the utility subject to refund.

~~(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.~~

(~~32~~) Except as provided in subsection (~~24~~), a party seeking to stay a final or nonfinal order of the Commission pending judicial review may~~shall~~ file a motion with the Commission, which has ~~shall~~ have authority to grant, modify, or deny such relief. A stay pending review granted pursuant to this subsection may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions relevant to the order being stayed, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

(a) Whether the petitioner has demonstrated a likelihood of success on the merits ~~is likely to prevail~~ on appeal;

(b) Whether the petitioner has demonstrated a likelihood of sustaining ~~that he is likely to~~

suffer irreparable harm if the stay is not granted; and

(c) Whether the delay in implementing the order will likely cause substantial harm or be contrary to the public interest if the stay is granted.

~~(3)(a) When a public body or public official appeals an order involving an increase in a utility's or company's rates, which appeal operates as an automatic stay, the Commission shall vacate the stay upon motion by the utility or company and the posting of good and sufficient bond or corporate undertaking. When determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as those set forth in subparagraph (1)(b)2.~~

~~(b) When a public body or public official appeals an order that does not involve an increase in rates, the Commission may vacate the stay or impose any lawful conditions.~~

(4) (a) When a stay ~~or vacation of a stay~~ is conditioned upon the posting of a bond, ~~or corporate undertaking, or other appropriate form of surety~~, the Commission ~~shall~~ may at the time it grants the stay ~~or vacation of the stay~~, set the rate of interest to be paid by the utility or company pursuant to Rule 25-6.109(4), F.A.C., in the event that the Court's decision requires a refund to customers.

(5) Motions filed pursuant to ~~subsections (1) or (2)~~ of this rule shall be heard by those Commissioners who were on the deciding panel for ~~participated in the proceeding which resulted in the order being appealed. However, motions filed under subsection (3) of this rule may be ruled upon by the Chairman or the Commissioner assigned as the prehearing officer in the case.~~  
Rulemaking Specific Authority 350.127(2) FS. Law Implemented 120.68(3) FS. History—New 2-1-82, Formerly 25-22.61.