

**Marguerite McLean**

100000-0T

**From:** WOODS.MONICA [WOODS.MONICA@leg.state.fl.us]  
**Sent:** Thursday, February 04, 2010 4:29 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** OPC Alternative Suggestions for Proposed Rule Development  
**Attachments:** OPC Alternative Suggestions for Proposed Rule Development.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Charles J. Rehwinkel, Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
(850) 488-9330  
[rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)

b. Undocketed

Notice of Proposed Rule Development

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 5 pages.

e. The document attached for electronic filing is **OPC Alternative Suggestions for Proposed Rule Development**. Thank you for your attention and cooperation to this request.

Monica R. Woods  
Administrative Assistant to Charles J. Rehwinkel, Associate Public Counsel.  
Office of Public Counsel  
Telephone: (850) 488-9330  
Fax: (850) 487-6419

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JEFF ATWATER  
President of the Senate



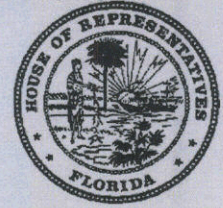
J.R. Kelly  
Public Counsel

STATE OF FLORIDA  
OFFICE OF PUBLIC COUNSEL

C/O THE FLORIDA LEGISLATURE  
111 WEST MADISON ST.  
ROOM 812  
TALLAHASSEE, FLORIDA 32399-1400  
1-800-540-7039

EMAIL: OPC\_WEBSITE@LEG.STATE.FL.US  
WWW.FLORIDAOPC.GOV

LARRY CRETUL  
Speaker of the  
House of Representatives



February 4, 2010

100000-OT

Ms, Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Ms. Cole:

Enclosed are the suggested alternative proposals of the Public Counsel (OPC) to Rule 25-22.033, F.A.C. Suggested alternative language is contained in red as underlines or ~~strike through~~ to the Proposed Rule Development version included in the January 27, 2010. Notice of the Rule Development Workshop.

The OPC offers these suggestions with the constructive purpose of assisting the Commission in revising its staff communication rules for the first time in nearly 17 years. Like the Commission, the Public Counsel believes that the fundamental purpose behind this Rule Development process is to continue to maintain the credibility, integrity and public confidence in the Commission's decision making process.

The OPC recognizes that these proposals need to be measured against the need of the Commission to efficiently and effectively fulfill its obligations. There may be better ways to capture the intent of the OPC's proposals. Even so, the OPC believes that, in order to maintain public confidence whatever rules are adopted must, at a minimum:

- Clearly prohibit ex parte Communications
- Provide a workable mechanism for reasonable and timely notice of intended communications
- Provide a level communications playing field for all with interests before the commission
- Prohibit circumvention of the clear intent of the rules

The Public Counsel looks forward to explaining the enclosed suggestions and is committed to constructively assisting in the rule development process.

Sincerely,

A handwritten signature in blue ink that reads "Charles Beck".

Charles Beck  
Deputy Public Counsel

Enclosure



**OFFICE OF PUBLIC COUNSEL ALTERNATIVE SUGGESTIONS**

1 **25-22.033 Commission Employee Communications with ~~Communications Between Commission~~**  
2 **~~Employees and Parties and Interested Persons.~~**

3 (1)The Commission recognizes that Commission employees must exchange information with  
4 parties and other persons who have an interest in Commission proceedings. However, the  
5 Commission also recognizes that all parties and interested persons to docketed adjudicatory  
6 proceedings need to be notified and given an opportunity to participate in certain communications.  
7 The intent of this rule is not to prevent or hinder in any way the exchange of information, but to  
8 provide all parties and interested persons to docketed adjudicatory proceedings notification of and  
9 the opportunity to participate in certain communications.

10 (2)~~(1)~~This rule shall govern ~~communications between~~ Commission employees'  
11 communications with ~~and~~ parties and interested persons to docketed proceedings before the  
12 Commission. This rule shall not apply to in emergency operation center activities, proceedings under  
13 ~~Sections 120.54, 120.565, proceedings under Section 367.0814, F.S. Florida Statutes, proposed~~  
14 ~~agency action proceedings before the Commission has voted to issue a proposed agency action order,~~  
15 ~~non-rate case tariffs, or workshops (other than rulemaking workshops), internal affairs meetings~~  
16 ,except for communications related to, but outside of, internal affairs meetings. Also ~~exempted~~ are  
17 docketed and undocketed audits, field telephone service evaluations, informal consumer complaints,  
18 ~~and~~ electric and gas safety inspections, and cases pending in the court system. Nothing in this rule is  
19 intended to modify or supersede the procedural requirements for formal discovery under Rules 1.280  
20 through 1.390, ~~the Commission's rules and applicable provisions of the Florida Rules of Civil~~  
21 ~~Procedure, or affect communications regarding discovery request, procedure, or other matters not~~  
22 ~~concerned with the merits of a case.~~

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



NOTICE OF PROPOSED RULE DEVELOPMENT  
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1           (3) For purposes of this rule, the following definitions shall apply:

2           (a) "Party" or "Parties" are those individuals or entities designated in the docket file of the  
3 proceeding or by order of the Commission as an Official Party of Record and includes employees,  
4 witnesses, consultants and persons acting in a representative capacity for individuals or entities  
5 designated in the docket file.

6           (b) "Interested persons" are those individuals or entities listed in the docket file of the proceeding  
7 but not designated as an Official Party of Record to the proceeding and persons, other than those persons  
8 specified in S.350.042 (2), F.S., who have, or could reasonably be presumed to have, an interest in the  
9 outcome of the proceeding in either their individual or representative capacity.

10           (c) "Ex parte Communication" means any communication that, if written, is not served on all  
11 parties and interested persons to a proceeding, and, if oral, is made without adequate notice to the parties  
12 and an opportunity to be present.

13           (4)(2)Written Communications -- Notice of any Ex parte written communications are  
14 prohibited. Written communications between Commission employees and parties or interested persons  
15 shall be transmitted to all other parties at the same time as the written communication is transmitted,  
16 whether by U.S. Mail or other means. Transmittal of the communications to all required persons and  
17 parties shall be in the same form, by the same means, and simultaneous with transmittal to the recipient,  
18 whether by U.S. Mail or other means.

19           (5)(3)Scheduled Meetings and Conference Calls All parties to the proceeding shall be given  
20 reasonable notice of the time and place of any meeting or conference call Commission employees and  
21 parties or interested persons. For purposes of this subsection, a conference call is defined as a telephone  
22 call involving three or more persons. The notice of the meeting or conference call shall be posted on the  
23 Commission's website, [www.floridapsc.com](http://www.floridapsc.com), prior to the meeting or conference call. (5)(3). Ex parte  
24 unwritten communications are prohibited. Notice of any meeting or telephone call shall be provided to  
25 parties and interested persons, and shall be posted on the Commission's web site, [www.floridapsc.com](http://www.floridapsc.com), a



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1 reasonable time prior to the meeting or telephone call. Meetings or calls that circumvent, or which are  
2 intended to circumvent, the fair and open communications purposes of this rule are prohibited.

3 (6) All written communications between Commission employees and parties or interested persons  
4 in proceedings in which the Commission is determining the substantial interests of a party pursuant to  
5 Sections 120.569 and 120.57, F.S., except discovery requests and discovery responses, shall be placed in  
6 the docket file to which the communication pertains by the person making the communication within ~~3~~ 7  
7 days of the date of the communication. If a Commission employee orally communicates with a party in  
8 such proceedings outside of a noticed meeting or conference call, the Commission employee shall  
9 summarize in writing the oral communication and file the summary in the docket file within ~~7~~ 3 days of  
10 the date of the communication. If the communication occurs less than ~~7~~ 3 days before a hearing or  
11 decision making point in the proceeding, the communication or the summary, if the communication is  
12 oral, shall be placed in the docket file within a reasonable time in advance of the hearing or decision  
13 making point. Nothing in this section is intended to provide a cure for an otherwise unlawful or prohibited  
14 communication.

15 (7) No Commission employee shall contact a party and no party shall contact a Commission  
16 employee on any matter at issue in a Section 120.569 or 120.57, F.S., proceeding during the period of  
17 time between the conclusion of the hearing in the proceeding and the issuance of the final order in the  
18 proceeding unless all parties to the proceeding are included in the communication. The prohibitions in  
19 this subsection shall not apply to those communications between Commission employees and parties to  
20 investigate and assist in the resolution of informal consumer complaints.

21 (8)(4) Response to Communications - Any party to a proceeding may prepare a written response  
22 to any communication between a Commission employee and another party or interested person. Notice of  
23 any such ~~Written~~ responses shall be transmitted to all parties at the same time as the written response,  
24 whether by U.S. Mail or other means.

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1           (9)(5)Prohibited Communications - No Commission employee shall directly or indirectly relay to  
2 a Commissioner any communication from a party or an interested person which would otherwise be a  
3 prohibited ex parte communication under Section 350.042, F.S. ~~Florida Statutes~~. Nothing in this  
4 subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending  
5 case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a  
6 staff member who testifies in a case or who has acted in a prosecutorial role in a license revocation or  
7 suspension proceeding or a proceeding imposing administrative fines or penalties shall not discuss the  
8 merits of that case with any Commissioner during the pendency of that case.

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

10 Law Implemented 120.569, 120.57,350.042 FS.

11 History-New 3-24-93, Amended .

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