

100062-07

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION

ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

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

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

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

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

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(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

(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

(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

(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 Regulatory Advisory Committee.

DOCUMENT NUMBER-DATE

4744 JUN-80

FPSC-COMMISSION CLERK

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 No.

25-22.061

Under the provision of Section 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:

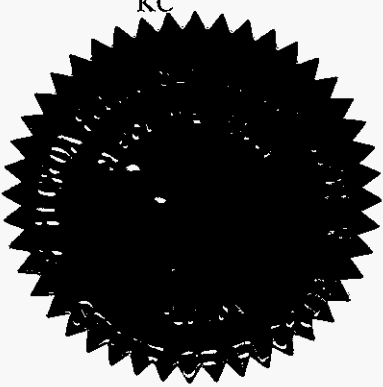
Effective: _____
(month) (day) (year)



COMMISSION CLERK

Number of Pages Certified

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1 25-22.061 Stay Pending Judicial Review.

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

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

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

10 2. ~~A rate of interest that takes into consideration:~~

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

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

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

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

22 (b) Whether the petitioner has demonstrated a likelihood of sustaining ~~that he is likely to suffer~~
23 irreparable harm if the stay is not granted; and

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

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

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

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

8 ~~(34) When a stay or vacation of a stay is conditioned upon the posting of a bond, or corporate~~
9 ~~undertaking, or other appropriate form of surety, the Commission shall~~may ~~at the time it grants the stay or~~
10 ~~vacation of the stay, set the rate of interest to be paid by the utility or company pursuant to Rule 25-4.114(4),~~
11 F.A.C., for telecommunication companies, Rule 25-6.109(4), F.A.C., for electric public utilities, Rule 25-
12 7.091(4), F.A.C., for gas public utilities, and Rule 25-30.360(4), F.A.C., for water and wastewater utilities in the
13 ~~event that the Court's decision requires a refund to customers.~~

14 ~~(45) Motions filed pursuant to subsections (1) or (2) of this rule shall be heard by those Commissioners~~
15 ~~who were on the deciding panel for participated in the proceeding which resulted in the order being appealed.~~
16 ~~However, motions filed under subsection (3) of this rule may be ruled upon by the Chairman or the~~
17 ~~Commissioner assigned as the prehearing officer in the case.~~

18 Rulemaking Specific Authority 350.127(2), 366.05(1), 368.05(2), FS. Law Implemented 120.68(3), 350.01(5),
19 364.01(4), 366.04(1), 366.05(1), 366.06(1), 367.011(2), 367.081(2), 367.0814, 367.121(1)(g), 368.05(2) FS.

20 ~~History—New 2-1-82, Formerly 25-22.61.~~

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

SUMMARY OF RULE

25-22.061, Stay Pending Judicial Review, is amended to delete provisions concerning automatic stays pending judicial review granted to public entities filing of a notice of appeal in administrative actions under Chapter 120, F.S. The amendments state the factors which the Commission may consider in determining whether to grant a stay, under what conditions the Commission may condition a stay, and list the factors that the Commission may consider in setting an interest rate when granting a stay conditioned upon the posting of a bond or corporate undertaking. The rule clarifies that motions for stay shall be heard by those Commissioners who were on the deciding panel for the order being appealed.

SUMMARY OF HEARINGS ON THE RULE

No hearing was requested and none was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

25-22.061, Stay Pending Judicial Review, is amended for consistency with Fla. R. App. P. 9.310, which has been amended to provide that the timely filing of a notice of appeal does not operate as a stay pending judicial review in administrative actions under Chapter 120, F.S., when the state, any public officer in an official capacity, board, commission, or other public body seeks review. The amendments clarify the factors which the Commission may consider in determining whether to grant a stay, under what conditions the Commission may condition a stay, and amend the factors that the Commission may consider in setting an interest rate when granting a stay conditioned upon the posting of a bond or corporate undertaking. The rule clarifies that motions for stay shall be heard by those Commissioners who were on the deciding panel for the order being appealed.