

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 25, 2019
TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.C.*
RE: Docket No. 19980500-PU

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

COMMISSION
CLERK

2019 SEP 25 PM 4: 06

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TONI JENNINGS
President



Representative Jerrold Burroughs, Chairman
Senator Charles Williams, Vice Chairman
Senator Ginny Brown-Waite
Senator Fred R. Dudley
Representative Adam H. Putnam
Representative Jamey Westbrook

DANIEL WEBSTER
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

May 26, 1998

Ms. Christiana T. Moore
Associate General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Public Service Commission Rule 25-22.0406, F.A.C.

Dear Ms. ^{Chris} Moore:

Pursuant to the authority of the Committee in subsection 120.545, F.S., to examine existing rules, I have reviewed the referenced rule, for which the Commission is seeking an exception to the Uniform Rules of Procedure, and the statutes which the Commission cites as authority for this rule, and have concluded that the rule is not authorized by the cited statutes.

The rule is entitled: "Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies." It requires utilities seeking a general rate increase to give notice to their customers and to publish hearing information in a newspaper of general circulation. It also requires utilities to place copies of the Minimum Filing Requirements in various specified locations and provides: "the Commission may require that copies of the MFRs be placed at other specified locations."

The petition cites sections 364.035(1), 364.19, 366.05(1) and 366.06, F.S., as authority. The only provisions I have found in any of those statutes which address notice require the Commission to provide notice to the public and to the public utility of rate hearings. See subsection 366.06(2). If you are aware of any other authority for these rule provisions please provide me with a citation. In the absence of a specific law to be implemented by this rule, these provisions appear to violate the "map-tack" provision in subsection 120.536(1), F.S., which states:

FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

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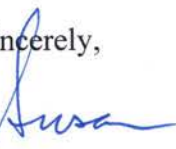
Ms. Christiana T. Moore
Rule 25-22.0406, F.A.C.
May 26, 1998
Page Two

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

In addition, the language quoted in the second paragraph of this letter, which appears in paragraph (3)(b) of the rule, vests unbridled discretion in the Commission to require that additional copies of MFRs be placed in some other, as yet unspecified locations.

Please call me if you have any questions.

Sincerely,



Susan Stafford
Staff Attorney

STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF APPEALS
DAVID SMITH
DIRECTOR
(850) 413-6245

Public Service Commission

December 9, 1998

Ms. Susan Stafford
Staff Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Re: Public Service Commission Rule 25-22.0406

Dear Ms. *Susan* Stafford:

This letter is written to respond to your letter dated May 26, 1998, about the above rule for which the Commission was, at that time, seeking an exception to the Uniform Rules of Procedure. The exception was subsequently granted, and we will add several statutes to the Law Implemented citations in order to address your concerns.

This rule requires utilities seeking a rate increase to give notice to their customers of the proposed rates and information about any hearings. The Commission believes it has the authority to require utilities to do this pursuant to the following statutes:

364.01(4)(c) Directs the Commission to exercise its jurisdiction to "[p]rotect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective . . . service regulation."

364.035(1) Authorizes the Commission, in fixing reasonable rates to be charged by all public utilities for their service, to consider efficiency, sufficiency, and adequacy of the facilities and services rendered and the value of such service to the public. This section also provides that the Commission has the duty to hear customer complaints about the utility's service during any proceedings involving its rates and charges.

364.04 (3) and (4) Requires every telecommunications company to keep posted, as the Commission designates, a notice giving information about the rate schedules, which shall be accessible to the public at such places as may be designated by the Commission.

Susan Stafford
December 9, 1998

- 364.05(1) and (2) Requires publication of notice as required by 364.04 for 60 days, which notice must state the changes to be made in the schedule and the time they are to take effect. The Commission is also authorized to allow changes without requiring that notice and publication by an order that specifies the manner in which the change shall be filed and published.
- 364.19 Authorizes the Commission to regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.
- 366.03 Requires each public utility to furnish its customers reasonably sufficient, adequate, and efficient service upon terms as required by the Commission.
- 366.06 (1) Requires the Commission to consider the value of the service to the utility's customers and the public acceptance of rate structures.
- 366.041(1) Authorizes the Commission, in fixing reasonable rates to be charged by all public utilities for their service, to consider efficiency, sufficiency, and adequacy of the facilities and services rendered and the value of such service to the public. This section also provides that the Commission has the duty to hear customer complaints about the utility's service during any proceedings involving its rates and charges.
- 366.05 (1) Gives the Commission the power to prescribe service rules and regulations to be observed by each public utility; and to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter.

Part of providing adequate service is informing customers of the rates being charged and proposed to be charged. In order to administer and enforce the chapter, the Commission must be able to require the utilities--which are monopoly providers of basic services--to notify their customers when they propose to change their rates, so that the customers can "complain" about their service and can testify about the adequacy and the value of the utility's service.

The manner of providing notice is also an economic measure which is the least costly alternative. The rule is written so that the utility that is seeking a rate increase can provide the required notice to customers in the billing statement that is sent each month to every customer. If the Commission were to provide the notice itself, a separate, additional mailing would be required and the utility would have to furnish its customer list to the Commission. Whereas the only cost to a utility for furnishing notice in a bill "stuffer" is the extra printing, in addition to that cost the Commission would have the additional postage cost. This would total approximately \$1.12 million for just Florida Power and Light Company's 3.5 million customers. This is a cost the customers

Susan Stafford
December 9, 1998

ultimately bear because the Commission is funded through regulatory assessment fees paid by the utilities and collected by them in the rates charged their customers. The much less costly methods provided for in this rule are considered rate case expenses which the utility is reimbursed for in rates paid by the customers and approved at the conclusion of a rate case.

In addition, you noted that the rule provides that the Commission may require the utilities to place copies of minimum filing requirements at other specified locations. Staff will be recommending that the Commission amend that section to add the underlined language:

(b) In addition to the locations listed above, if the Commission determines that the locations listed above will not provide adequate access, the Commission will ~~may~~ require that copies of the MFRs be placed at other specified locations.

Whether and when the rule may be applied depends, of course, on the particular facts of the individual utility's service area at the time the utility petitions for a rate increase. I do not believe the Commission can more precisely state in the rule where other copies must be placed because the particular location will depend upon those specific facts, which vary by utility and can change from rate case to rate case of the same utility and thus must be determined--by the Commission, in a public meeting--on a case-by-case basis.

I hope this response satisfactorily addresses your concerns. Please do not hesitate to call me if you have questions.

Sincerely yours,



Christiana T. Moore
Associate General Counsel

CTM/

c: Rob Vandiver
Noreen Davis
Bill Talbott

STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



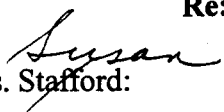
DIVISION OF APPEALS
DAVID SMITH
DIRECTOR
(850) 413-6245

Public Service Commission

December 10, 1998

Ms. Susan Stafford
Staff Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Re: Public Service Commission Rule 25-22.0407


Dear Ms. Stafford:

This letter is written to respond to your letter dated May 26, 1998, about the above rule for which the Commission was, at that time, seeking an exception to the Uniform Rules of Procedure. The exception was subsequently granted, and we will add several statutes to the Law Implemented citations in order to address your concerns.

This rule requires water and wastewater utilities seeking a rate increase to give notice to their customers of the proposed rates and information about any hearings. The Commission believes it has the authority to require utilities to do this pursuant to the following statutes:

367.081(2)(a) Requires the Commission, in every proceeding fixing rates, to consider the value and quality of the service.

367.0814(1) Authorizes the Commission to establish rules by which certain water or wastewater utilities may obtain staff assistance for the purpose of changing its rates and charges.

367.0817(2) Requires the Commission to determine whether the proposed rates are reasonable and in the public interest.

367.091(1) and (2) Provides that all applications for new rates or changes in rates must be made to the Commission as prescribed by rule and that each utility's customer service policies must be approved by the Commission.

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PSC Website: www2.scri.net/psc

Internet E-mail: contact@psc.state.fl.us

Susan Stafford
December 10, 1998

367.121(1)(a) Authorizes the Commission to prescribe service rules to be observed by each utility.

Part of providing adequate service is informing customers of the rates being charged and proposed to be charged. In order to administer and enforce the chapter, the Commission must be able to require the utilities--which are monopoly providers of basic services--to notify their customers when they propose to change their rates, so that the customers can inform the Commission about their service and can testify about the adequacy and the value of the utility's service.

The manner of providing notice is also an economic measure which is the least costly alternative. The rule is written so that the utility that is seeking a rate increase can provide the required notice to customers in the billing statement that is sent each month to every customer. If the Commission were to provide the notice itself, a separate, additional mailing would be required and the utility would have to furnish its customer list to the Commission. Whereas the only cost to a utility for furnishing notice in a bill "stuffer" is the extra printing, in addition to that cost the Commission would have the additional postage cost. For a utility the size of Florida Water Services Corporation, for example, this would total \$80,000 for approximately 250,000 customers. This is a cost the customers ultimately bear because the Commission is funded through regulatory assessment fees paid by the utilities and collected by them in the rates charged their customers. The much less costly methods provided for in this rule are considered rate case expenses which the utility is reimbursed for in rates, also paid for by the customers, and approved at the conclusion of a rate case.

In addition, you noted that the rule provides that the Commission may require the utilities to place copies of minimum filing requirements at other specified locations. Staff will be recommending that the Commission amend that section to add the underlined language:

(3) If the Commission determines that these locations will not provide adequate access, t~~The Commission will~~ may require that copies of the MFRs be placed at other specified locations.

Whether and when the rule may be applied depends, of course, on the particular facts of the individual utility's service area at the time the utility petitions for a rate increase. I do not believe the Commission can more precisely state in the rule where other copies must be placed because the particular location will depend upon those specific facts, which vary by utility and can change from rate case to rate case of the same utility and thus must be determined--by the Commission, in a public meeting--on a case-by-case basis.

Susan Stafford
December 10, 1998

I hope this response satisfactorily addresses your concerns. Please do not hesitate to call me if you have questions.

Sincerely yours,



Christiana T. Moore
Associate General Counsel

CTM/

c: Rob Vandiver
Noreen Davis
Bill Talbott

TONI JENNINGS
President



Senator Walter "Skip" Campbell, Chairman
Representative Bill Posey, Vice Chairman
Senator Ginny Brown-Waite
Senator Lisa Carlton
Representative O. R. "Rick" Minton, Jr.
Representative Adam H. Putnam

JOHN THRASHER
Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

April 7, 1999

Ms. Christiana T. Moore
Division of Appeals
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule 25-22.036

Dear Ms. Moore:

I have completed a review of the Commission's proposed amendments to rule chapter 25-22 and prepared the following comments for your consideration and response.

25-22.036(3): Please explicate the criteria governing when the Commission will transmit notice of its action to persons requesting such notice. Likewise, please explicate the criteria governing when the Commission will publish the notice in newspapers and the FAW.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rosner".

John Rosner
Staff Attorney

#118585
JR: CW S: ATTY25-22.JR

August 13, 1998

Ms. Jesslyn A. Krouskroup
Staff Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Re: Rule 25-22.056, Post-Hearing Filings

Dear Ms. Krouskroup:

This letter is in response to your comments about the Commission's use of the word "may" and the meaning of "good cause" in Rule 25-22.056.

First, I think it is important to recognize that this is a procedural rule. While the word "may" does connote discretion, it is not unbridled, and it is given, appropriately, to the prehearing or presiding officer acting in a quasi-judicial role. In this context, the word means 'the presiding officer has the authority to modify the limit. "For good cause shown" means if there is a legitimate reason.

The word "may" has been used in this context in numerous rules in the Florida Administrative Code, as has the term "for good cause." See, for example, Rule 28-5.210 of the Model Rules of Procedure. That rule provides that "[t]he presiding officer may in his or her discretion grant a continuance of a hearing for good cause shown," Other examples of the use of these words appear in Model Rules 28-2.003(2) ("For good cause stated in the record, items on the agenda may be considered out of their stated order with the approval of the person designated to preside."); 28-2.003(4) ("The person designated to preside may make specific changes in the agenda after it has been made available for distribution, only for 'good cause' shown."); and 28-5.208, F.A.C, ("The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay,")

Similarly, the Division of Administrative Hearings' rules governing hearing procedures employ the term "may". Rule 22I-6.024, entitled "Conduct of Proceedings," provides that "[t]he Hearing Officer before whom the case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy and inexpensive determination of all aspects of the case." On a topic similar to the Commission's rule, the length of documents, Florida Rule of Appellate Procedure 9.210(a)(5) states "[l]onger briefs may be permitted by the court."

The above examples are just a few of the many rules where "may" is used to mean "has the authority" and "good cause" to mean "a legitimate reason." This use is particularly appropriate in a

Ms. Jesslyn A. Krouskroup
March 11, 1993

procedural rule governing the conduct of hearings, where the presiding officer must have some discretion in directing the fair and orderly progress of the proceeding to a timely conclusion.

The addition of the language in question to paragraphs (1)(d) and (3)(a) was specifically requested by parties who frequently participate in Commission proceedings. Moreover, the use of the word "may" in paragraph (3)(b) of Rule 25-22.056 is not new. Since the rule was first adopted in 1981, it has provided that if a party fails to file a post-hearing statement, the party **may** be dismissed from the proceeding. I am not aware of any problems that have resulted, and no party raised a concern about this language before it was adopted--although there was ample opportunity to do so.

I hope that this explanation satisfies your concerns and that you will call me if you have questions or wish to discuss my response.

Sincerely,

Christiana T. Moore
Associate General Counsel

cc: Bill Talbott
Rob Vandiver
Noreen Davis

Ms. Jesslyn A. Krouskroup
March 11, 1993

re Good Cause - RA:rule is as precise as it could be in order to .
. . . and, at the same time, allow for flexibility in determining the
best interests of / the public interest. It would be an
impossible, if not futile, task to attempt to catalog the various
situations in which . . . would be justified.