

STATE OF FLORIDA

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Public Service Commission

July 11, 2022

Jamie L. Jackson, Chief Attorney
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400
JACKSON.JAMIE@leg.state.fl.us

VIA -E-MAIL

RECEIVED-FPSC
2022 JUL 11 PM 1:30
COMMISSION
CLERK

Re: Existing Rule Review, Public Service Commission,
Rules 25-22.001, .0021, .0022, .006, .029, .030, .032, .033, 036, and. 0376

Dear Ms. Jackson:

This letter responds to your May 26, 2022, letter concerning Rules 25-22.001, .0021, .0022, .006, .029, .030, .032, .033, 036, and. 0376, F.A.C. We offer the following comments.

25-22.001: This rule currently cites only section 120.525, F.S., as its law implemented, and does not include citation to any specific statute to the Commission. It is unclear whether this rule implements or interprets any specific powers or duties granted by section 120.525, F.S., *See* §120.52(8), Fla. Stat. (2021).

Response: This rule provides the Commission's noticing procedure for its meetings and workshops. It is an exception to the Uniform Rules of Procedure pursuant to Section 120.54(5), F.S., and Rule 25-40.001, F.A.C. Staff agrees that this rule implements section 120.525, F.S., which applies to meetings, hearings, and workshops of all agencies. Because the Commission is a collegial body that is subject to the public meetings requirements of the "Sunshine Law," this rule also implements Section 286.011(1), which requires reasonable notice for public meetings held by public boards and commissions including the Florida Public Service Commission. Therefore, staff anticipates that in the next few months we will make a technical change to the rule pursuant to section 120.54(3)(d)1., F.S., to include a citation to section 286.011(1), F.S., for the rule's law implemented.

25-22.002: Please see the comment for rule 25-22.001, F.A.C.

Response:

This rule provides that a majority vote of a quorum of the Commission is required to modify the presiding officer's decision to make a specific change to the agenda for the Commission's meetings. It is an exception to the Uniform Rules of Procedure pursuant to Section 120.54(5), F.S., and Rule 25-40.001, F.A.C. After review, staff believes this rule's content is more appropriate for the Commission's administrative procedures manual, and thus, the rule can be repealed. Staff anticipates that rulemaking will be initiated in the next few months to repeal this rule.

25-22.0021:

This rule currently cites provisions in sections 120.525, 120.569, and 120.57, F.S., as the law implemented by its content, and does not include citation to any statute specific to the Commission. Has this rule received an exception to the Uniform Rules pursuant to Section 120.54(5), F.S.? Please review and advise.

Response:

This rule provides the Commission's noticing procedure for participation at the Commission's agenda conferences, meetings and workshops. It is an exception to the Uniform Rules of Procedure pursuant to Section 120.54(5), F.S., and Rule 25-40.001, F.A.C. Staff agrees that this rule implements sections 120.525, F.S., 120.569, and 120.57, F.S. Staff determined that this rule also implements sections 286.0114(2) and (4), F.S., because the Commission is a collegial body subject to the public meeting requirements of Section 286.0114, F.S. Because the rule gives interested persons an opportunity to participate in the Commission's public meetings known as "agenda conferences," staff believes the rule remains necessary to comply with the requirements of Section 286.0114, F.S. Staff anticipates that we will make a technical change in the next few months to the rule pursuant to section 120.54(3)(d)1., F.S., to include citations to sections 286.0114(2) and (4), F.S., for the rule's law implemented.

25-22.0022:

Please see the comment for rule 25-22.021, F.A.C.

Response:

This rule provides the Commission's noticing procedure for oral argument. It is an exception to the Uniform Rules of Procedure pursuant to Rule 25-40.001, F.A.C. Staff agrees that the rule implements section 120.525, F.S., which applies to all agencies. However, unlike many other agencies, the Commission is quasi-judicial and acts as an adjudicatory body over Section 120.569, F.S., and Section 120.57, F.S., proceedings. The rule clarifies when the Commission will hear oral argument on matters that are quasi-judicial, such as dispositive motions and motions for reconsideration. For these reasons, Commission believes that this rule is necessary, up-to-date, and does not require amendment.

25-22.006(1)(a):

When updated, it appears that a reference to section 368.108, F.S., should be added to this definition.

Response:

Commission staff agrees that a reference to section 368.108, F.S., should be added to this definition. Staff anticipates we will make a technical

change in the next few months pursuant to section 120.54(3)(d)1., F.S., to include the correct references in the rule.

25-22.006(3)(a)2.: Please advise if the material incorporated by reference in this subparagraph reflects the version of the material currently utilized by the Commission.

Response: Commission staff has reviewed this rule and determined that the material incorporated by reference, Form PSC/APA 6 (2/95) is currently utilized by the Commission. Commission staff reviewed the form and believe it is up-to-date. The Commission uses the form to request data/documents in every audit it performs, and thus, the form is necessary. Staff believes that the rule does not need updating.

25-22.029: Law Implemented
The citation to section 364.05, F.S., should be removed, and the citation to section 367.0817(4)(a), F.S., requires updating in light of remission to that statute.

Response: Rule 25-22.029, F.A.C., provides a point of entry for parties in to the Commission's Proposed Agency Action (PAA) Proceedings. It is an exception to the Uniform Rules of Procedure pursuant to Section 120.54(5), F.S., and Rule 25-40.001, F.A.C. Commission staff has reviewed this rule and agrees that the citation to section 364.015, F.S., should be removed, and the citation to section 367.0817(4)(a), F.S., should also be removed. Pursuant to section 120.54(3)(d)1., F.S., staff anticipates we will make a technical change in the next few months to make these corrections.

25-22.030: Rulemaking Authority
It appears the sections 364.015, 366.05(1) and 367.121(1)(j), F.S., should be included as providing rulemaking authority for this rule's content.

Response: Commission staff has reviewed this rule and agrees that sections 364.015, 366.05(1), and 367.121(1)(j), F.S., should be included in the rule's rulemaking authority. Pursuant to section 120.54(3)(d)1., F.S., staff anticipates making a technical change in the next few months to include citations to sections 364.015, 366.05(1), and 367.121(1)(j), F.S., in the rule's rulemaking authority.

Law Implemented
Please review whether section 367.121(1)(i), F.S., is appropriately cited as a law implemented by this rule.

Response: Commission staff has reviewed this rule and determined that section 367.121(1)(i), F.S., should be modified to cite section 367.121(1)(j), F.S., as a law implemented by this rule. Pursuant to section 120.54(3)(d)1., F.S., staff anticipates we will make a technical change to cite section 367.121(1)(j), F.S., as law implemented in the next few months.

25-22.032:

Law Implemented

Please review whether the citations to chapter 120, F.S., are appropriate as laws implemented by the content of this rule. Section 364.01, F.S., should be removed as a law implemented as it consists of legislative intent. *See* §120.52(8), Fla. Stat. (2021).

Response:

We agree that the references to sections 120.54, 120.569, 120.57, 120.573, 364.01, F.S., as well as the reference to section 364.01, F.S., should be removed as a law implemented as it consists of legislative intent. Pursuant to section 120.54(3)(d)1., F.S., staff anticipates making a technical change to the rule in the next few months to remove those references.

25-22.032(8)(a):

Please advise if the material incorporated by reference in this subparagraph reflects the version of the material currently utilized by the Commission.

Response:

Commission staff has reviewed this rule and determined that the material incorporated by reference in this subparagraph is currently utilized by the Commission and is up-to-date. Staff does not plan on amending the rule at this time.

25-22.033:

The rule cites sections 120.569, 120.57, and 350.042, F.S., as the laws implemented by its content. Neither section 120.569, F.S., nor section 120.57, F.S., appear to contain specific powers or duties implemented by the content of this rule. Section 350.042, F.S., specifically concerns ex parte communications between Commissioners and other parties, and does not address the conduct of Commission staff. The treatment of ex parte communication in administrative proceedings is set forth by section 120.66, F.S. Please review and advise as to the Commission's authority for this rule's content and whether the Commission has obtained an exception to the Uniform Rules pursuant to section 120.54(5), F.S.

Response:

The Commission does not have an exception for this rule in accordance with the Uniform Rules pursuant to section 120.54(5), F.S. Commission staff has reviewed this rule and agrees that this rule's law implemented is incorrect. Staff also believes that the rule lacks authority, is outdated and unnecessary, and should be repealed. Staff anticipates that rulemaking will be initiated in the next few months to repeal this rule.

25-22.036:

Please advise as to the necessity of this rule. It appears to restate the content set forth by chapter 120, F.S., and the Uniform Rules.

Response:

Commission staff has reviewed this rule and believes that this rule is still necessary. The title of the rule includes the word "formal," because this rule gives customers an opportunity for disposition of their complaint by the Commission at a public meeting. In other words, unlike the customer complaint process set forth by Rule 25-22.032, F.A.C., which is for resolution of complaints by the Commission's Consumer Assistance office, the complaints addressed by Rule 25-22.036, F.A.C., are resolved

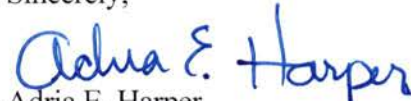
by the Commission at their public meetings, not informally by staff. Also, Rule 25-22.036, F.A.C., provides more detail than the content set forth by chapter 120, F.S., and the Uniform Rules, which is especially helpful for pro se filers/customers that use this rule to file various applications at the Commission. For example, the rule mentions both an “application” process (subsection (1) of the rule) and “complaint” process (subsection (2) of the rule), which is frequently used by filers needing assistance with where and how to file water/wastewater complaints. The Uniform Rules provide a completely different, more generic, process for petitions than this rule. Staff does not plan on amending the substance of the rule at this time.

25-22.0376: This rule currently cites sections 120.569, and 120.57, F.S., as the laws implemented by its content, and does not include citation to any statutes specific the Commission. Has this rule received an exception to the Uniform Rules pursuant to section 120.54(5), F.S.? Please review and advise.

Response: This rule provides the Commission’s procedure for reconsideration of non-final orders. It is an exception to the Uniform Rules of Procedure pursuant to Rule 25-40.001, F.A.C. Commission staff has reviewed this rule and determined that this rule is necessary, up-to-date, does not need any amendments.

Please contact me at (850) 413-6082 or aharper@psc.state.fl.us if you have any questions or concerns.

Sincerely,


Adria E. Harper
Senior Attorney

cc: Office of Commission Clerk (undocketed 20220000-OT)