

**Undeliverable mail returned from the U.S. Postal Service.
Address is consistent with the Master Commission Directory and/or the
Case Management System.**

FILED 8/12/2022
DOCUMENT NO. 05427-2022
FPSC - COMMISSION CLERK

State of Florida
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

NEOPOST FIRST-CLASS MAIL
07/25/2022
US POSTAGE \$003.60
ZIP 32399
041M11467390

RTS

RECEIVED-FPSC
2022 AUG 12 PM 1:38
COMMISSION CLERK

Hardee Power I, Inc.
(HP I) P. O. Box 111
Tampa FL 33601-0111

DK # 20220127

-R-T-S- 336015041-1N 08/07/22
RETURN TO SENDER
UNABLE TO FORWARD
UNABLE TO FORWARD
RETURN TO SENDER



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: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) *SMC*
Office of Commission Clerk (Teitzman) *AJT*
Division of Administrative and IT Services (Kissell) *LK*

RE: Docket No. 20220127-PU – Proposed repeal of Chapter 25-25, F.A.C., concerning purchasing procedures; proposed repeal of Rule 25-22.002, F.A.C., Agenda of Meetings; proposed repeal of Rules 25-22.100, 25-22.101, 25-22.1035, 25-22.104, 25-22.105, and 25-22.107, F.A.C., concerning management of records; and proposed repeal of Rule 25-22.033, F.A.C., Communications Between Commission Employees and Parties.

AGENDA: 08/02/22 – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

The Joint Administrative Procedures Committee (JAPC) staff recently reviewed, pursuant to Section 120.545, Florida Statutes (F.S.), the Commission's rules in Chapter 25-25, Florida Administrative Code (F.A.C.), Purchasing – General Purchasing Procedures, and Chapter 25-22, F.A.C., Rules Governing Practice and Procedure, and submitted letters to the Commission, questioning the authority, necessity, and form of certain rules in those chapters.

Rules 25-25.001 through 25-25.030, F.A.C., address the Commission's procurement and purchase procedures of goods and services.¹ The Commission has statutory authority to implement procedures for the purchase of goods and services pursuant to Section 350.0603, F.S., and Chapter 287, F.S.² In the 1980s and early 1990s, Rules 25-25.001 through 25-25.030, F.A.C.,³ (Chapter 25-25 or purchasing rules) were adopted to implement the Commission-specific purchasing procedures.

On February 4, 2022, the Commission received a letter from JAPC staff, requesting that the Commission review and respond as to whether certain purchasing rules require amendment or repeal. At the time it received the JAPC letter, Commission staff was already in the process of reviewing the entire chapter of the Commission's purchasing rules and had concluded that the entirety of Chapter 25-25, F.A.C., should be repealed.

Rule 25-22.002, F.A.C., Agenda of Meetings, was adopted in 1981 and has not been amended since 1999. The 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 in the agenda. On May 26, 2022, the Commission received a letter from JAPC⁴ indicating that it is unclear what statute this rule implements and questioned the rulemaking authority for this rule. Because the rule is outdated and the content of this rule is already addressed by the Administrative Procedures Manual (APM) 2.11-6 "Changes Affecting Agenda Items," staff is recommending that this rule be repealed.

Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., address management of Commission records and orders as set forth by the Department of State archives rules. On June 28, 2022, the Commission received a letter from JAPC stating that the Commission may lack rulemaking authority for these rules and that the rules contain unnecessary and obsolete requirements. The

¹ This recommendation does not address every provision required for state agency contracts contained in Chapters 110, 121, 215, 216, and 252, F.S. Rather, the focus of this rulemaking is the purchasing statutes that relate to Rules 25-25.001 through 25-25.030, F.A.C., only.

² Because the Commission is not an executive agency, not all of Chapter 287, Florida Statutes, is applicable to the Commission. However, the Commission follows the Chapter 287 purchasing procedures and corresponding DMS rules that address competitive bidding.

³ These rules are 25-25.001, Purpose; 25-25.002, Intent; 25-25.003, Definitions; 25-25.004, Procurement Organization; 25-25.005, Delegation of Authority; 25-25.006, Formal Bids Required; 25-25.0061, Purchasing Threshold Amounts and Procedures for Automatic Annual Adjustments; 25-25.007, Legal Advertisements; 25-25.008, Contracts for Class Printing; 25-25.009, Source Selection, Bid Openings and Contract Awards; 25-25.010, Single Source Procurement; 25-25.011, Emergency Procurement, 25-25.012, Responsibility of Bidders and Offertory; 25-25.013, Multi-term Contracts; 25-25.014, Cancellation Clause; 25-25.015, Installment Sale and Purchase Contracts; 25-25.016, Exemptions from Competitive Bid Requirements; 25-25.017, Bid Borrowing; 25-25.018, Use of the Terms "or equivalent" and "no substitute"; 25-25.019, Purchases Not Requiring Formal Bids; 25-25.020, Determinations; 25-25.021, Protest of Commission Decision; 25-25.022, Acquisition of Printing, Duplicating and Reproduction Equipment; 25-25.023, Vendors and Suppliers; 25-25.024, Contractual Services; 25-25.025, Minority Business Companies; and 25-25.030, Leases for Real Property.

⁴ The May 26, 2022 letter from JAPC also discusses the staff communication rule, Rule 25-22.033, F.A.C., which is addressed by this recommendation. With regard to the other Chapter 25-22, F.A.C., rules that JAPC commented on in its letter (Rules 25-22.001, 25-25-22.0021, 25-22.0022, 25-22.006, 25-22.029, 25-22.030, 25-22.032, 25-22-.036, 25-22.0376, F.A.C), staff consulted with and responded to JAPC that no amendments to the rules were required, and, in some instances, technical amendments would be made to the rules. Technical amendments can be made to the rules without going through the rulemaking process in Section 120.54, F.S.

rules have not been amended since the 1990s, and Commission staff was already in the process of reviewing Rules 25-22.100 through 25-22.107, F.A.C. Staff concluded that these rules should be repealed.

Rule 25-22.033, F.A.C., addresses communications between commission employees and parties. The letter from JAPC indicated that Rule 25-22.033, F.A.C., lacks statutory authority, contains unnecessary and obsolete requirements, and does not appear to implement statutes for which the Commission has rulemaking authority. Staff is recommending that the rule be repealed.

This recommendation addresses whether Rules 25-25.001 through 25-25.030, F.A.C., Rule 25-22.002, F.A.C., Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., and Rule 25-22.033, F.A.C., should be repealed. The publication of a notice of rule development in the Florida Administrative Register is not required to initiate rulemaking for the proposed repeal of rules.⁵ The Commission has jurisdiction pursuant to Section 120.54, F.S.

⁵ Section 120.54(2)(a), F.S.