

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday – May 18, 2010
Immediately Following Agenda Conference
Room 140 - Betty Easley Conference Center

REVISED

1. Approve May 4, 2010, Internal Affairs Meeting Minutes. (Attachment 1)
2. FPSC Draft Letter to the Florida Congressional Delegation regarding Transmission Provisions in the Climate/Energy Bills. (Attachment 2)
3. Response from Executive Director, General Counsel, and Inspector General To Commissioner Edgar's Request Regarding Interaction of Commissioners and Staff. (Attachment 3)
4. Draft of Internal Procedures Regarding Ex Parte Communications. (Attachment 4)
5. Other matters, if any.

TD/sa

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA

Tuesday – May 4, 2010

12:10 pm – 1:36 pm

Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT: Chairman Argenziano

Commissioner Edgar

Commissioner Skop

Commissioner Klement

Commissioner Stevens

STAFF PARTICIPATING: Devlin, Hill, Kiser, C. Miller, Pennington, Futrell, Harlow,
J. Miller, Hunter, Shafer

OTHERS PARTICIPATING: Gary Livingston and Andy Turnell – Gulf Power Company
Joe McGlothlin – Office of Public Counsel

1. Approve April 6, 2010, Internal Affairs Meeting Minutes.

Minutes were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

2. FPSC Draft Talking Points on Transmission Provisions in the Congressional Energy Bills. Guidance is sought.

The Commissioners voted to send a letter to Florida's Congressional delegation referring to the talking points noted in staff's recommendation and as discussed in the Internal Affairs Meeting. The letter is to be brought back to the next Internal Affairs Meeting for review by the Commissioners.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

3. Staff Analysis on the FCC's National Broadband Plan: Briefing only.

Briefing by staff, Ms. T. Hunter and Ms. J. Miller.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

4. Potential FPSC Action in *National Association of Regulatory Utility Commissioners v. U.S. Department of Energy* District of Columbia Circuit Court of Appeals (Case No. 10-1074). Guidance is sought.

The Commissioners voted to file an Amicus brief as recommended by staff including the amendments discussed at the Internal Affairs Meeting.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

5. Legislative Update.

Legislative briefing by staff, Ms. K. Pennington, on matters of interest to the Commission. The Executive Director, Mr. T. Devlin, discussed the Commission's budget that was approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

6. Other matters, if any.

Commissioner Skop advised the Commissioners that Florida Power & Light Company had reinstated their conversion projects for Cape Canaveral and Riviera Beach.

Commissioner Skop brought to the attention of the Commissioners that Florida Power & Light Company had filed a FERC Petition to move the New England Division into a more appropriate holding entity. Staff is to investigate and provide information to the Commissioners before a decision is made on how to proceed and whether to file a letter in support of the FPL petition.



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: May 10, 2010
TO: Timothy J. Devlin, Executive Director
FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM S.M.C.*
 Mark A. Futrell, Public Utilities Supervisor, Division of Regulatory Analysis *MA*
 Judy G. Harlow, Senior Analyst, Division of Regulatory Analysis *R.T. [signature]*
RE: FPSC Draft letter on Transmission Provisions in Congressional Energy Bills

CRITICAL INFORMATION: Please place on the May 18, 2010 Internal Affairs. Approval of letter is sought.

At the May 4, 2010, Internal Affairs, staff was asked to prepare a draft letter regarding the transmission provisions in the Congressional energy bills. Attached is a draft letter for consideration. Also, if you would like to include the comments of Florida's investor-owned utilities, we have provided a summary.

CM

Attachments – Draft letter

Summary of Florida's Investor-Owned Utilities' Comments

DRAFT LETTER FOR CONSIDERATION

The Honorable

Re: Electric Transmission Provisions in HR 2454, the American Clean Energy and Security Act and SB 1462, the American Clean Energy Leadership Act

Dear (Member of Florida Congressional delegation):

The Florida Public Service Commission (FPSC) wishes to offer you our comments on electric transmission siting issues in pending energy bills that could impact Florida citizens. The consequences of the transmission provisions in these bills ultimately fall on the retail ratepayers. Our comments focus on four transmission issues: back-stop siting, cost allocation, planning and regional approaches.

Back-stop siting authority: We strongly believe states should not be divested of siting authority, yet there may be instances where independent state denial of transmission siting could result in balkanization of a region. The Senate bill provides the Federal Energy Regulatory Commission (FERC) authority if a state: (1) fails to approve siting of a high-priority national transmission line included in an approved plan within one year of application; (2) rejects the application or (3) authorizes the project subject to conditions that unreasonably interfere with the development of a high-priority national transmission project. The FPSC believes that the House bill offers the better approach, which maintains the states as the primary siting authority for the Eastern Interconnection. The Senate bill is more preemptive. The bill has the potential to interfere with Florida's siting processes that could take more than one year to complete. The FPSC believes that the states should be allowed to work out the transmission needs first.

As an option, the FPSC would support a limited expansion of FERC's backstop siting authority for interstate transmission in the case where a single state or multiple states along a multi-state route deny approval, if FERC (with input from the affected states) finds the project to be in the national interest. However, intrastate siting and construction permitting should remain under the existing jurisdiction of states. States are in the best position to determine the need for such transmission facilities.

Cost Allocation: The FPSC has long taken the position that the cost of transmission should be assigned to those who benefit from it, using a "cost-causer pays" allocation model. We believe that the costs for new transmission facilities not needed for bulk system reliability should be borne by the entity requesting it. Further, states should be given deference in determining the extent to which their ratepayers benefit from new transmission facilities. The Senate bill requires the FERC to develop a one-size-fits-all methodology for allocating costs of transmission lines included in an approved plan, with certain conditions. Thus, we are concerned that the

Senate approach could lead to ratepayers subsidizing costs for transmission that does not benefit them. The House bill did not address cost allocation and retains the status quo, which we believe is the better approach.

Transmission planning: Florida's current transmission planning processes are intended to provide adequate, reliable power for Florida's ratepayers and appropriate interregional planning. The FPSC is concerned that the Senate version is unnecessarily preemptive and intrusive on the states' and utilities' planning processes. The Senate bill requires FERC to establish national electric grid planning principles and the FERC may order modifications to reconcile inconsistencies or to achieve policy goals. The FPSC does not support giving the FERC authority to order modifications to transmission plans that have been approved at the state, regional and inter-regional levels.

Regional approach: Florida is a unique region due to its peninsular nature. In general on these transmission issues, we ask that states be allowed to work out the transmission needs prior to the FERC stepping in. Again, we believe the House bill offers a better approach.

We appreciate the opportunity to relay our concerns on this legislation. Please contact my office if you have any questions or need additional information.

Sincerely,

Chairman Nancy Argenziano

Letter to Florida Congressional delegation

Florida Investor-Owned Utilities' Positions on the Provisions

Progress Energy has supported the principles adopted by the Coalition for Fair Transmission and Planning. Those principles include:

Transmission Planning Principles

- Any effort to improve transmission planning must build on existing successful, coordinated, open, and transparent regional processes, and be inclusive of all stakeholders.
- Transmission planning must be initiated at the local and regional level based on the needs of the customers who bear the burden and benefits of the decisions driven by the planning processes.
- Transmission must be planned to ensure cost-effective compliance with National Electric Reliability Council (NERC) reliability standards.
- Voluntary interconnection-wide coordination should be a complement to, and not a substitute for, local and regional processes.
- Alternative transmission solutions must be considered as part of the planning process.

Transmission Cost Allocation Principles

- Costs for new transmission investments required to meet NERC reliability standards must be allocated to the planning area(s) where the investments are required to meet the standards.
- Costs for new transmission investments not otherwise required to meet NERC reliability standards must be allocated to the parties (generation and/or load) in a manner that clearly aligns cost responsibility with cost causation.
- Deference should be provided to consensus regional cost allocation solutions developed through open and collaborative processes.

In general, Progress supports the House language on transmission planning. The Senate language extends FERC's reach and diminishes the utilities' planning ability. On siting, Progress favors the House language. It does not want the FERC to have the additional authority. On cost allocation, they support the House language. It does not want the FERC to have the additional authority and are concerned they will pay for transmission that does not benefit their customers. Also, on transmission back-stop siting, Progress believes no additional authority is needed by FERC.

Tampa Electric Company concurs with NARUC's letter. Tampa Electric has not taken a position on the House and Senate bills. They have worked with EEI and are generally supportive

of EEI's comments. On cost allocation, EEI has filed comments regarding variable energy resources (VERs), such as resources powered by wind and solar energy, which state:

- While some uniformity in regulations across regions may be warranted, integration solutions for VERs should be determined primarily on a regional basis. Regions are therefore in a good position to determine how to most effectively integrate VERs into the transmission grid and wholesale electric markets;
- All generation resources should be treated in a non-discriminatory manner in any new integration regulations.
- All costs of VER should be assigned to market participants on a cost-causation basis to ensure that no costs are unfairly assigned to other market participants. Rates applicable to VERs for transmission and ancillary services should reflect the true cost of that service.

Florida Power & Light has not taken a position on the House and Senate bills. However, Florida Power & Light believes that there is a need for effective federal transmission siting for the nation to build out backbone transmission that delivers regional benefits. However, they do not believe that states should be divested of transmission siting authority and believe that states do a good job with certain types of transmission projects, particularly facilities that are built by vertically integrated utilities whose benefits are limited to the siting state, like Florida.

The **Southern Company** (Southern) supports the continued use of "bottom-up" transmission planning processes. In their view, both the Senate and House bills would allow for the continued use of the existing processes, although the Senate bill would allow FERC to order certain modifications to such plans. Southern does not support that aspect of the Senate bill. On cost allocation issues, Southern believes that the costs should be allocated to those causing the costs to be incurred. As to transmission siting, Southern opposes a push to transfer transmission siting authority from the States to FERC. In opposition to this complete transfer, Southern has supported providing additional back-stop siting authority to FERC for the lines to integrate renewables should State authorization not be provided within a year. However, any such additional back-stop siting authority to FERC should also provide a right of first refusal to the incumbent transmission provider to construct any such line.

State of Florida



Public Service Commission

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

DATE: May 11, 2010

TO: Nancy Argenziano, Chairman
Lisa Polak Edgar, Commissioner
Nathan A. Skop, Commissioner
David E. Klement, Commissioner
Ben A. "Steve" Stevens III, Commissioner

FROM: Timothy J. Devlin, Executive Director *TJD*
S. Curtis Kiser, General Counsel *SK*
Steven J. Stolting, Inspector General *JS*

RE: Discussion paper regarding perception of undue influence by Commissioners over staff.

CRITICAL INFORMATION: Guidance of Commissioners is sought on whether staff should pursue new administrative procedures or rulemaking.

At the April 6, 2010, Internal Affairs meeting, Commissioner Edgar asked the Executive Director, General Counsel, and Inspector General to conduct an internal review and to determine if there are procedures that can be put in place to prevent the perception of undue influence by the Commissioners over staff. The purpose of this memorandum is to present to the Commissioners what we perceive are areas to consider for additional administrative procedural requirements and to initiate a dialogue among Commissioners. We expect follow up discussions will be necessary. Also, staff plans on bringing a similar document relating to ex parte communications to a future Internal Affairs meeting. This memorandum addresses three general areas:

- 1) Interaction of Commissioners and staff in dockets.
- 2) Commissioner requests of staff to obtain information or perform special analysis involving undocketed matters.
- 3) Commissioner involvement in personnel and/or administrative matters.

Interaction of Commissioners and staff in dockets

It is critical that staff remain independent of Commissioners in docketed matters so that the Commissioners and the general public have confidence in the independence of staff recommendations. However, we understand that Commissioners may have interest in staff

researching certain issues through discovery. Also, Commissioners may want to discuss certain aspects of a docket with staff.

Commissioner requests of staff to obtain information or perform special analysis outside of a docket.

Periodically, Commissioners ask staff to obtain information or conduct a special analysis including internal administrative type requests. We believe that full disclosure will afford better accountability and lessen the likelihood of perceived improper influence of Commissioners upon staff.

Commissioner involvement in personnel and/or administrative matters.

There are certain Commissioner practices that should be evaluated. These include Commissioner review of planned personnel actions including planned salary adjustments for certain staff and confirmation of Division Directors. There have been occasions where Commissioners have had some input into the hiring of staff, staff assignments or changes in the staff's organizational structure.

As part of our review, we surveyed several states to evaluate how other state PSCs address communications between Commissioners and Commission staff. From this limited survey, there appears to be a wide range of Commissioner/staff structures. A summary of this survey is attached.

The following are possible additions to the Commission's administrative procedures to address the above issues. We believe these options will aid in the transparency of the interaction between Commissioners and Commission staff and lessen the likelihood of any perceived improper influence of Commissioners upon staff:

ADMINISTRATIVE PROCEDURE 1: The requesting Commissioner should submit the request of staff in writing and send it to the Executive Director, and if appropriate, the General Counsel, and should copy the other Commissioners. If it relates to a docketed matter, the Clerk should also be copied. This request can be accomplished via email.

ADMINISTRATIVE PROCEDURE 2: An individual Commissioner may not demand or require any member of the Commission staff, other than the Commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to any substantive matter pending before the Commission or panel of Commissioners. (This language comes from HB 7209 and will clarify the relationship boundaries between Commissioners and staff in docketed matters: Although this bill did not become law, the Senate and the House were in agreement on this particular language.)

ADMINISTRATIVE PROCEDURE 3: The Executive Director shall have the sole authority with respect to employment, compensation, supervision, and direction of agency personnel other than the Commissioners and those personnel employed by the Commissioners and the General Counsel. The General Counsel shall, in consultation with the Executive Director, employ attorneys, paralegals, legal secretaries, and other personnel reasonably necessary to assist the

Commission in the performance of its duties. (This language comes from HB 7209 and better defines the relationship between Commissioners and staff with respect to personnel matters. Although this bill did not become law, the Senate and the House were in agreement on this particular language.)

ADMINISTRATIVE PROCEDURE 4: In the event any staff member believes there has been a noncompliance with any of the above procedures which are adopted, that staff member should advise, in confidence, the Inspector General. Subsequent to any such report, Inspector General will meet with the Executive Director and General Counsel to assess whether a violation of policy may have occurred. If all three agree that there is reasonable cause to believe there has been an infraction, a joint memorandum will be addressed to the Ethics Commission and to the Chief Inspector General in the Executive Office of the Governor.

COMPARATIVE TABLE ON RESPONSES FROM
OTHER STATE COMMISSIONS

		Georgia Public Service Commission	New Hampshire Public Utilities Commission	Illinois State Corporation Commission	Virginia Commerce Commission	North Carolina Utilities Commission	Indiana Utility Regulatory Commission
1.	Does your Commission have any procedures that provide guidance in how Commissioners and staff interact with respect to dockets, personnel matters, and other matters?	Agency Head rotates annually. Purchasing procedures: Executive Director can only approve purchase amounts less than \$500 and recommends other requests to the full Commission.	Statute provides that Commission can designate any staff member as an advocate depending on positions taken in a case. Will provide statute reference later.	Ex parte rules between staff and commissioners. Commissioner must request assistance and then a staff member is assigned to help (not assigned to case).	Have ex parte rules. Commissioners are not allowed to talk with staff or companies about pending dockets. Commissioners have hired a general counsel that works directly for them. Companies and staff must go through the General Counsel and he has to be present at all meetings to assure no ex parte.	Split staff since 1977. No internal procedures on ex parte. Public staff is treated like a party (not part of Commission).	Indiana has separation of staff. (Consumer Advocates does audits and testifies.) No prohibition.
2.	Do Commissioners go directly to staff in docketed matters to, let's say, requesting staff pursue a certain issue? Do they put requests in writing or do they go through the Executive Director or General Counsel?	Yes, although ex-parte rules were recently approved. There is also a "closed period" where there are no communications with staff from the end of the hearing through reconsideration decisions.	Yes. Small Commission, fairly informal.	No. Requests must be made by letter to the docket file. However, it is never done. It would usually be done in a policy meeting but they have not had one of these lately.	No. Commissioners do not go directly to staff. Commissioners put concern in an order and file it in the docket file for all to see.	Yes. Only in the rare instance of a staff person testifying are Commissioners not allowed to go directly to staff.	Fairly informal. Normally have one Commissioner assigned to each case who conducts case meetings. Commissioner assigned can ask for issues to be pursued. Other Commissioners don't normally get involved but can.

		Georgia Public Service Commission	New Hampshire Public Utilities Commission	Illinois State Corporation Commission	Virginia Commerce Commission	North Carolina Utilities Commission	Indiana Utility Regulatory Commission
3.	What are the Commissioners' roles with respect to personnel decisions such as hiring, firing, promotions, raises, etc.?	All requests for hiring go before the Commission (Administrative Affairs). Generally, all requests are approved and are rarely turned down. Since all Commissioners are involved, less likelihood of special favors (hirings) requested by one.	Salary increases are standard pending a favorable performance review. No Commissioner input. Executive Director hires and fire with Commission's confirmation.	No input. Executive Director is under contract by Commissioners to handle all personnel matters.	To some extent. Have hired an administrative person to handle. Only increases above 10% go to the Commissioners at internal affairs meetings. The Commissioners do not hire or fire except for appointed positions. (Administrator, Directors, etc.)	Chairman by statute is the one that has total control. Chairman is picked by Governor for four-year term. However, other Commissioners believe they should be involved.	Chairman has complete control. Other Commissioners review. See response to #2 above.
4.	What are the remedies, if any; staff has if they feel a Commissioner could be exerting undue influence on them?	There is a separate Advocacy Team (a party) and they are held to the closed period. The smaller Advisory staff is considered an extension of the Commissioners with no restriction on communications.	None.	Would have to take to state ethics board. No rule on how it is done. Commissioners don't do this anyway. It would be done by Commissioners' staff, which is not covered.	No need.	No formal procedures. It happens, but staff has to stand their ground and not give in to particular wishes of a Commissioner.	No rule covering this situation. Does not believe that there is any.

State of Florida



Public Service Commission

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

DATE: May 14, 2010

TO: Timothy Devlin, Executive Director

FROM: Katherine Pennington, Government Liaison
Curt Kiser, General Counsel *sek*

RE: Discussion of Procedures or Rulemaking for Commissioner Conduct and Communication

CRITICAL INFORMATION: Please place on the May 18, 2010 Internal Affairs meeting. Guidance of the Commissioners is requested to consider new administrative procedures or rulemaking regarding the conduct and communication of Commissioners.

At the April 6, 2010, Internal Affairs meeting, Commissioner Edgar requested the Executive Director, General Counsel, and Inspector General to determine if there are procedures regarding the conduct and communication of Commissioners that the Commission could consider regardless of the outcome of the legislative session. The 2010 regular Legislative session adjourned on April 30, 2010, without the passage of any PSC reform or change to existing standards of conduct or ex parte communication restrictions.

At the request of the General Counsel, I reviewed provisions in filed legislation to determine if the Commission could adopt any of the proposed reforms administratively, whether through an internal procedure or administrative rulemaking. Where the House and Senate contained identical or similar provisions, I incorporated these provisions into the attached document.

The following pages contain options for a “code of conduct” or “code of ethics” for Commissioners’ consideration. I considered the various legislative proposals discussed during the regular session and identified some provisions that the Commission may wish to consider.

Section 350.041, Florida Statutes specifically addresses standards of conduct for Commissioners. Commissioners are also subject to Part III of Chapter 112, Florida Statutes, by virtue of their being public officers and full-time employees of the legislative branch of government. Section 350.042, Florida Statutes places identifies ex parte communication restrictions for Commissioners. This section further provides that this restriction does not apply to “commission staff.” It is therefore unclear if the Commission can administratively apply these same ex parte restrictions on communication to members of a Commissioner’s direct reporting staff.

DRAFT 05 14 2010

CODE OF COMMISSIONER CONDUCT

A. PURPOSE

To provide guidance to commissioners and to provide a structure for regulating conduct and communication between Commissioners and representatives of regulated entities, and Commissioners and the professional and technical staff of the Commission.

B. BACKGROUND

The provisions of Part III of Chapter 112, Florida Statutes, are applicable to Public Service Commissioners by virtue of their being public officers and full-time employees of the legislative branch of government. Additionally, the standards of conduct provided in Section 350.041, Florida Statutes, govern the conduct of Public Service Commissioners. This section also provides that nothing shall prohibit the standards of conduct from being more restrictive than Part III of Chapter 112, Florida Statutes. The law further states that in the event of a conflict between Part III of Chapter 112 and Section 350.041, Florida States, the more restrictive provisions apply.

Section 350.042, Florida Statutes, prohibits ex parte communication between Commissioners and regulated entities, whether initiated by individual Commissioners or by representatives of regulated entities. The Commission on Ethics receives and investigates sworn complaints of violations of this section. A Commissioner may be assessed a civil penalty, not to exceed \$5,000, for violations of this section. (*Attempts during the 2010 regular legislative session to include penalties for violations of this section by a regulated entity or a representative of a regulated entity, were unsuccessful.*)

C. STANDARDS OF CONDUCT

Section 350.001, Florida Statutes – Legislative Intent:

“The Florida Public Service Commission has been and shall continue to be an arm of the legislative branch of government. The Public Service Commission shall perform its duties independently...”

1. To ensure that each Commissioner, as a member of a collegial body, is afforded the benefit of unbiased and independent analysis and advice from its professional and technical staff, an individual Commissioner may not demand or require any member of Commission staff, other than a member of the Commissioner’s direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to any substantive matter pending before the Commission or a panel of Commissioners.

2. Although the Commission shall perform its duties independently, Commissioners, as a collegial body, or as a panel of commissioners, may direct commission staff to pursue a course of action consistent with direction by provided by the collegial body.
3. This section is not intended to prohibit a panel of one or more commissioners from any otherwise lawful communication with Commission staff relating to any substantive matter pending before the Commission.
4. The Executive Director, General Counsel, and Inspector General may employ clerical, technical, and professional personnel necessary to assist the commission in the performance of its duties.
5. The Inspector General of the Commission shall receive and investigate complaints of violations of this section.

Section 350.041 (2) (g), Florida Statutes:

(g) A commissioner may not conduct himself or herself in an unprofessional manner at any time during the performance of his or her official duties. *(This language was included in House and Senate proposals during the 2010 legislative session and appears to track Canon 3, including commentary, of the Code of Judicial Conduct.)*

1. Commissioners shall maintain high standards of conduct and personally observe these standards to preserve the integrity and impartiality of the Commission.
2. The Chairman of the Commission shall require order and decorum in proceedings. In the absence of the chair, the commissioner presiding over a proceeding shall require order and decorum.
3. Commissioners shall be patient, dignified, and courteous to litigants, other commissioners, witnesses, lawyers, commission staff, and others with whom the Commissioner deals in an official capacity.
4. Commissioners shall perform his or her official duties without bias or prejudice, and may not, by words or conduct, manifest bias or prejudice.

Section 350.041 (2) (h), Florida Statutes:

(h) A commissioner must avoid impropriety in all of his or her activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission. *(This language was included in House and Senate proposals during the 2010 legislative session, and appears to further track Canon 2A of the Code of Judicial Conduct Commentary on this Canon says that "behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.")*

1. A Commissioner may not, with respect to parties or classes of parties, cases, controversies, or issues likely to come before the commission, make pledges, promises, or commitments inconsistent with impartial performance of his or her official duties.
2. A Commissioner may not be swayed by partisan interests, public clamor, or fear of criticism.

D. EX PARTE COMMUNICATIONS

Section 350.042, Florida Statutes:

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in an proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she know will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

1. "Legally interested person" is defined as any party or a representative of a party to a proceeding. This definition includes corporations, partnerships, limited liability companies, elected or appointed officials of state governments, and other public and elected officials. *(This definition was proposed by the PSC and was included in both House and Senate bills during the 2010 regular session. Although the legislation did not pass, this definition was not considered controversial.)*
2. "Ex parte communication" is defined as any communication regarding a docketed matter that, if written, is not served on all parties to a proceeding, and, if oral, is made without adequate notice to the parties and without an opportunity for them to be present and heard. *(This definition was proposed by the PSC and was included in both House and Senate bills during the 2010 regular session. Although the legislation did not pass, this definition was not considered controversial.)*
3. Any ex parte communication regarding scheduling, administrative purpose, or emergency is not prohibited if ALL of the following criteria are met. *(This language was included in House language, but not Senate language during the 2010 regular session.):*
 - a. The communication does not deal with any substantive matter or issue on the merits of a proceeding,
 - b. If no party will gain a procedural or tactical advantage as a result of the communication, and
 - c. The commissioner makes prompt provision to notify all parties of the substance of the ex parte communication and, where possible, allows the parties an opportunity to respond.

4. Commissioners must prepare a written summary of any communication related to a documented emergency or a communication related to a brief, unscheduled follow-up to a previously scheduled meeting or previously scheduled telephone conference call. The Commission must post the written summary on the Commission's website within 72 hours after the communication was made or received (*This language was included in Senate language, but not House language during the 2010 regular session.*).
5. Any oral or written communication between a Commissioner and a representative of a regulated entity must be available to the public and all legally interested parties. To accomplish this, such communication must be posted to the Commission's website within 72 hours after the communication was made or received. (*This language was included in Senate language, but not House language during the 2010 regular session.*)
6. Notice must be posted on the Commission's website at least 72 hours prior to any meeting or telephone conference call between a commissioner and a representative of a regulated entity. (*This language was included in Senate language, but not House language during the 2010 regular session.*)

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

NOTE: The records reflect that no outside persons addressed the Commission at this Internal Affairs meeting.

III. Supplemental Materials Provided During Internal Affairs

NOTE: The records reflect that there were no supplemental materials provided to the Commission during this Internal Affairs meeting.