Samantha Cibula

From: rpjrb@yahoo.com
Sent: Thursday, October 14, 2010 12:39 PM
To: Samantha Cibula
Cc: Lisa Bennett; Office Of Commissioner Edgar; Office of Commissioner Argenziano; Office of Commissioner Skop; Office Of Commissioner Graham; Office of Commissioner Brisé; Mary Anne Helton; Curt Kiser; Cindy Miller
Subject: RE: Communication Between Commission Employees and Parties

Dear Ms. Cibula,

Thank you for the information and I am looking forward to receiving a copy of the transcript from the workshop on rule 25-22.033. I noticed that during the workshop there was limited discussion on to how the proposed legislation was derived. Most outside people (ratepayers and/or shareholders) would need clear and concise language as to what would be acceptable communication with the Commission. I noticed that a ratepayer is still allowed to communicate with the Commissioner's under section 350.042 of the Florida Statutes. Here are some comments but I will continue to take a look at the rule.

Section (1) of 25-22.033 reads "Legal interest in the proceeding"?

What does this mean in plain language? Any ratepayer of any regulated entity would have a legal interest in a proceeding therefore they would be in a position to have communications with Commission staff and/or the Commissioner's based upon 350.042. A shareholder would also have a legal interest in a proceeding with regard to any ratemaking matters that might have an impact on the earnings of the Utility therefore they would also be in a position to have communications with Commission staff and/or the Commissioner's just like the Senior Management of the Utility. Since both a ratepayer and/or shareholder would have a legal interest in a rate case proceeding then any communication between Commission staff and/or the Commissioner's should be fully made part of the public record and available to all parties and interested parties. There should be no exception(s) as to what communications are being made part of the public record or not.

This would provide for full transparency which would be a requirement under 350.042. How come all of my correspondence with the Commission has not been fully made part of the public record? This is a very critical issue since if some of the communication is made part of the record and some is excluded it might lead to an "ex parte" communication in that some of the communication was made part of the public record and some was not. If you look at some of my communication that has not been made part of the public record you will notice that only certain emails have not been made part of the public record. If some are excluded and some are included then the person must be notified by the Commission as to why some of the communication (written and/or oral) was excluded from the public record.

I also noticed that an interested person's communication is made part of a Docket correspondence - Parties and Interested Persons. This file is often kept in the same chronological spot as the previous communications that have been populated in this file. A lot of the communications that I have sent had a chronological importance with regard to the testimony that was made by the Utility and/or Expert Witnesses. In order for there to be full transparency the communications or the file should be moved to most recent date of information that is placed into these files or the parties and/or interested parties might not be made fully aware of this information that might be pertinent to the rate case proceeding. This is very important since some of my email correspondence provided technical accounting responses to direct testimony. Some of it was excluded from these files and some was included. In order for there to be no "ex parte" communications all information has to be made part of the public record so that all parties and/or interested parties would have access to the information. Since these files are not being moved to the top Docket index the average party and/or interested party might not know where this pertinent information resides therefore they might not be made aware of an issue that might be pertinent to the rate case that they should have been made aware of.

How come some of my communications was made part of the public record and some was not?

Section (2)(c) of 25-22.033 reads:

> (c) "Impermissible Communication" means any communication with a party or interested person, if written, is not served on all parties, or, if oral, is made without notice to all parties or interested persons.

Rob Smith Comments

Under this rule all written communications from an interested party has to be made available to all parties or interested parties. Correct? If the information received is made part of the public record then it would be permissible communication. If a Commissioner received written or oral Communication then this information should be made part of the public record so that all parties or interested parties have been made aware of the Communication. What happens if a Commissioner receives a written or oral communication and it is not shared with all parties? Does it become "impermissible Communication"? This should not happen since this might lead to information that might be pertinent to the rate case proceeding. I know that some of my email correspondence has been made part of the public record and some as of today has not been made part of the public record. Some of the email correspondence is very pertinent to some of the technical aspects of the Holding company concept at the Utility as it pertains to the Public Utility Holding Company Act of 1935 (PUHCA) or Public Utility Holding Company Act of 2005 ("PUHCA 2005"). This act is governed under FERC (Federal Energy Regulatory Commission). In order for there to be full transparency and to make sure that all parties and/or interested parties are provided full notice, all written and/or oral communication should be fully made part of the record. There should be no instance in which certain information would be excluded as part of the public record or not. Since some of my email correspondence has not been made part of the public record, what would be the Commission rule as to why some was made part of the public record and some was not? This in itself might lead to "ex parte" communication since all of my information has not been made part of the public record.

I am going to continue to look at the rule but I think that all communications should be made part of the public record and if not the Commission should provide a

response as to why certain information was excluded. This would be needed to make sure that there was no "ex parte" communications. If some information was excluded then some of the Commission staff and/or Commissioner's might be exposed to an "ex parte" communications issue since the information was not made fully transparent and disclosed. All parties, interested parties and any other party that has a "legal interest" in any rate case proceeding should have full access to all information that was made available to both the Commission staff and/or Commissioner's in any rate proceeding that is being administered by the Florida Public Service Commission. Without this approach the possibility exists that "ex parte" communication might exist. This might lead to the possibility of an impartial proceeding and/or lack of due process to protect the interests of both the ratepayers and/or shareholders of the Utility in the proceeding.

Please let me know if the information that I have provided that has not been made part of the public record is going to be part of the public record. If it is not going to be made part of the public record please let me know why it has not been made part of the public record. Please provide me with the rule that would support why some of the information was not made part of the public record. If you need copies of the emails that I have sent with regard to what is currently missing from the public record please do not hesitate to ask.

I will continue to look at the proposed rule.

If you have any questions please do not hesitate to email me at rpjrb@yahoo.com or give me a call.

As per SB 1034 of the Florida Statutes with regard to communication with a ratepayer:

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4 **SB 1034**
Fasano
(Identical H 565)

Section 350.042, F. S., provides for ex parte communications. The term "ex parte" is not defined in the statute but according to *Black's Law Dictionary* means "on one side only, by or for one party, done for, in behalf of, or on the application of, one party only." According to the *American Heritage Dictionary*, the term means "from or on one side only; one sided, partisan." Subsection (1) provides that a commissioner should accord to every person who is legally interested in a proceeding 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 any proceeding other than a proceeding under s. 120.54, F. S., (rulemaking) or 120.565, F.S., (declaratory statements by agencies), workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The subsection does not apply to commission staff.

Individual residential ratepayers are allowed to communicate with a commissioner, provided that the ratepayer is representing only himself or herself, without compensation. In addition, the section does not apply to oral communications or discussions in scheduled and noticed open public meetings of educational programs of a conference or other meeting of an association of regulatory agencies.

From: Samantha Cibula [mailto:SCibula@PSC.STATE.FL.US]
Sent: Thursday, October 14, 2010 8:21 AM
To: rpjrb@yahoo.com
Cc: Lisa Bennett; Office Of Commissioner Edgar; Office of Commissioner Argenziano; Office of Commissioner Skop; Office Of Commissioner Graham; Office of Commissioner Brisé; Mary Anne Helton; Curt Kiser; Cindy Miller
Subject: RE: Communication Between Commission Employees and Parties

Mr. Smith,

Per your request, please find attached the notice, agenda, and draft rule for the October 14, 2010, staff rule development workshop on Rule 25-22.033, F.A.C., Communications between Commission Employees and Parties. The workshop will be broadcast on the Commission's website, www.floridapsc.com (select the icon labeled "Watch Live Broadcast"). The workshop is also being transcribed. A copy of the transcript will be posted on the Commission's website (select "Agendas &

Hearings" at the top of the page, then select "Notice of Staff Workshops," then look under the notice for the October 14 workshop) and in Docket No. 100000, within 2 weeks of the workshop. Thank you for your interest in this workshop.

Sincerely,
Samantha M. Cibula

From: rpjrb@yahoo.com [mailto:rpjrb@yahoo.com]
Sent: Wednesday, October 13, 2010 6:05 PM
To: Samantha Cibula
Cc: Lisa Bennett; Office Of Commissioner Edgar; Office of Commissioner Argenziano; Office of Commissioner Skop; Office Of Commissioner Graham; Office of Commissioner Brisé
Subject: Communication Between Commission Employees and Parties

Dear Ms. Cibula,

Please provide me with a copy of the agenda for the meeting below. Will this meeting be made available to the public or will there be minutes at this meeting?

Is the agenda the link below? If so, then will minutes be published on what is discussed at the meeting or will the meeting be made available for the public?

Thanks in advance.

Robert H. Smith

Undocketed - Between Commission/Parties October 14, 2010 - 9:25 AM Agenda

Notice: 9088529
Notice of Meeting/Workshop Hearing

Department: PUBLIC SERVICE COMMISSION
Chapter: RULES GOVERNING PRACTICE AND PROCEDURE

VIEW NOTICE

RULE: 25-22.033 Communications Between Commission Employees and Parties

The Florida Public Service Commission announces a workshop to which all persons are invited.

DATE AND TIME:	Thursday, October 14, 2010, 9:30 a.m.
PLACE:	Florida Public Service Commission, Betty Easley Conference Center, 4025 Esplanade Way, Room 148, Tallahassee, FL 32399-0862
Subject:	The staff workshop is to discuss potential amendments to Rule 25-22.033, F.A.C., Communications Between Commission Employees and Parties. One or more Commissioners may be in attendance and participate at the workshop. This workshop was previously scheduled for September 10, 2010 and has

A copy of the agenda may be obtained by contacting: Samantha Cibula, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6202, scibula@psc.state.fl.us. The agenda and rule draft are available at the agency's website: www.floridapsc.com.

PRINT PUBLISH DATE: 9/10/2010 Vol. 36/35

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: October 14, 2010 Staff Workshop Regarding Rule 2522.033, Florida Administrative Code, Communications Between Commission Employees and Parties	UNDOCKETED FILED: November 18, 2010

COMMENTS BY THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), submit these comments in response to the Rule Development Workshop held October 14, 2010, regarding Rule 25-22.033, Florida Administrative Code, Communications Between Commission Employees and Parties.

DISCUSSION

The Public Counsel's Office appreciates the Commission undertaking this rulemaking and the spirit of cooperation and dialogue exemplified by the other interested parties in the workshop and rulemaking process.

The OPC supports the (Draft) of Rule 25-22.033, F.A.C. (Rule), in substantially the same form that has been proposed by Staff as of the October 14th workshop. Although in prior written and spoken comments we have asked for the Commission to consider and adopt certain measures we contend would improve the process, we realize that the Commission must engage in a balancing exercise. Fairness, due process and public confidence must be preserved in a way that also allows the Commission to discharge its regulatory responsibilities in an informed and

effective way.

The proposal that the Staff has developed with the input of all the parties who have chosen to participate is a reasonable compromise and a good start. It is also a recognition that technology has evolved and that electronic notification is much more practical than was the case when the Rule was adopted 17 years ago.

Nevertheless, the OPC believes it is important to emphasize that we believe that the Commission should be vigilant and continuously look for opportunities to fine tune the notice and participation procedures relating to the Proposed Agency Action (PAA) process. It is important to recognize that the PAA process is used more today than it was 17 years ago when the original Rule was adopted. The PAA process that has evolved at the Commission was designed not to create presumptions within the Proposed Agency Action order, but instead to make the administrative process more efficient. While it has done that, all participants should keep in mind that nothing about the PAA was intended to circumvent the due process rights of a party or the inherent fairness of any proceeding. Regardless of how the Rule is ultimately revised, the OPC urges the Commission to continually look for ways to utilize technology to make the process – including the PSC website -- more transparent and user friendly – both for participants and the public.

The OPC also commends the Staff for the internal procedures and internal policies that they have developed to fulfill the intent of the Rule in dealing with parties in Proposed Agency Action and other proceedings. The OPC urges the Staff to continue these best practices

regardless of their literal inclusion in the current or future revised Rule. We hope that Staff will continue to adhere to those, whether they are in the Rule or not. The Staff's practices demonstrate a recognition that it is important to protect not only the rights of the parties, but the perception and the integrity of the process.

SPECIFIC SUGGESTED REVISION

During the October 14th workshop, it was noted that the current definition of "Impermissible Communication" seemed to be too open ended and could prohibit even the most innocent of conversations. The OPC believes that this is not the intent and would suggest inclusion of parallel language (and a suggested grammatical addition) from section (7) of the Draft as follows:

> (c) "Impermissible Communication" means any communication on any matter at issue in a proceeding conducted pursuant to Section 120.569, or 120.57, F.S. with a party or interested person which, if written, is not served on all parties, or, if oral, is made without notice to all parties or interested persons.

This revision should fairly limit the scope of prohibited communications to matters that the Commission will be expected to adjudicate and for which the Staff will have an advisory or recommending role.

Regarding the remaining concerns raised by the parties, the OPC would prefer to comment once suggestions are offered on the Draft or participate in further phases of the rulemaking.

CONCLUSION

In conclusion, the OPC urges the Staff to recommend that the Commission approve the revisions to the Rule in substantially the same form and substance that is contained in the Draft, as may be modified to accommodate practical concerns that do not erode the preservation of due process, fairness and credibility in the Commission's procedures.

Respectfully Submitted,

J.R.KELLY
PUBLIC COUNSEL

Charles J. Rehwinkel
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

Attorneys for the Citizens of the
State of Florida

BEGGS & LANE
A REGISTERED LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 12950
PENSACOLA, FLORIDA 32591-2950

501 COMMENDENCIA STREET
PENSACOLA, FLORIDA 32502
TELEPHONE (850) 432-2451
TELECOPIER (850) 469-3331

RUSSELL A. BADDERS
MARY JANE BASS
ELIZABETH C. CALLAHAN
JAMES S. CAMPBELL
JODI D. COOKE
J. NIXON DANIEL, III
JOHN P. DANIEL
TERRIE L. DIDIER
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MATTHEW D. VINSON
JAMES M. WEBER
CHARLES T. WIGGINS
JOHN F. WINDHAM
JOHN R. ZOESCH, III

W. SPENCER MITCHEM
OF COUNSEL

E. DIXIE BEGGS
1908-2001

BERT H. LANE
1917-1981

November 18, 2010

Ms. Samantha Cibula
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Undocketed Rule Development Workshop regarding Commission Employee Communications with Parties and Interested Persons

Dear Ms. Cibula:

At the outset, we once again express our appreciation for the opportunity to participate in this ongoing rule development process. The dialogue fostered through the series of workshops initiated by the Commission Staff and the Commission held to date has been helpful. We look forward to continuing to engage in this useful dialogue, and offer these comments as part of that effort.

As we have stated in the past, it is important for any rule that results from this process to recognize a distinction between the Commissioners and the Commission Staff. The Commissioners themselves are the ultimate decision makers on both policy matters and the merits of contested matters and are therefore appropriately subject to statutory restrictions regarding ex parte communications. On the other hand, the Commission Staff is relied upon by the Commissioners to gather and present information to allow the Commissioners to make their decisions in a fully informed manner. These separate and distinct roles warrant different considerations in the communications process. For example, in a judicial setting, a ban on "ex parte" communications typically applies only to the ultimate decision maker (e.g. the judge or jury in a criminal case). There are other important participants in the judicial process that are not subject to similar restrictions on

communications (e.g. the prosecutor's office in a criminal setting). The role of government oversight is not improved by restricting the efficient and necessary flow of information.

We continue to urge the Commission to exercise care in its rulemaking to ensure that the information gathering function is not handicapped by complex and difficult to interpret rules that have the potential to detract from the goal of a fully informed decision making process. Likewise, it is important not to create a system that complicates communications to the point that administrative efficiency is destroyed. The resulting rules should not discourage efficient questions and answers between Staff and the possessors of information that Staff needs in order to ensure that the Commission continues to be well informed in an efficient and timely manner prior to its decisions on important issues.

Any rule that restricts communications should be carefully drafted and applied so as to avoid the unintended consequence of preventing the Commission Staff from becoming sufficiently informed on matters of importance to the regulatory process. While imposing structure and restrictions in the context of a discussion of the merits for a matter that is clearly contested may be appropriate, adding such structure to communications regarding potential matters at too early a stage may be counter-productive and may ultimately increase the cost to consumers through administrative inefficiency or ill-informed decision making. It is not appropriate to assume that every matter that comes before the Commission Staff is going to be the subject of a contested matter. Even in the context of a matter that has become part of a docketed proceeding, whatever additional structure that is imposed on communications should allow the Commission Staff sufficient flexibility regarding communications to allow it to be fully informed in an efficient manner in order maintain efficiency and control costs.

The concept of "interested persons" injects too much vagueness to a potential rule and should be rejected.[1] Persons with a legally recognizable interest in a proceeding should be required to identify themselves and demonstrate their legal standing in order to be entitled to notice regarding permitted communications. While we agree that parties to a proceeding should be assured that they are given prompt notice of all communications to or from the Commission Staff regarding the merits of the proceeding and an opportunity to respond, such status and entitlement to notice should not be lightly applied to other persons. It is neither necessary nor appropriate to require parties to a proceeding to incur the burden of providing notice to non-parties who have not demonstrated a legal entitlement to such notice.

[1] This comment should not be construed to suggest an approach that might interfere with the unique statutory role of the Office of Public Counsel. We continue to believe that compliance with both the spirit and the letter of the law set forth in F.S. 350.0613 is important to the fair administration of justice and the efficient operation of the regulatory process at the Florida Public Service Commission.

If changes in the current rules are ultimately adopted, it is important that the resulting rule be simple to understand and easily applied. The resulting rule should allow for communication to and from the Staff, with notice to parties in any contested matter of any discussions relating to the merits of the proceeding. Other communications should not be subject to a stigma or presumption that they are impermissible. In those instances where notice of communications is required, it should be clear that such notice is intended to allow for an adequate opportunity to respond to such information on the merits prior to any forwarding of such information to the decision makers, whether in the form of a recommendation or an answer to a question when a decision is being considered. The opportunity to respond should be recognized as sufficient to avoid any stigma or taint to the communications for which a response is deemed appropriate. There should be symmetry in the application of the rules to all parties (including members of any associations appearing as a party in a proceeding).

Once again, thank you for the opportunity to participate in this process.

Very truly yours,

Jeffrey A. Stone
For the firm

AUSLEY & MCMULLEN
ATTORNEYS AND COUNSELORS AT LAW
123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

November 18, 2010

HAND DELIVERED

Ms. Ann Cole, Director
Division of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: UNDOCKETED – October 14, 2010 Workshop Regarding Rule 25-22/033, Florida Administrative Code, Communications between Commission Employees and Parties

Dear Ms. Cole:

Enclosed for filing in the above-styled matter are the original and five (5) copies of Comments by Tampa Electric Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp
Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: October 14, 2010 Workshop Regarding Rule 25-22.033, Florida Administrative Code, Communications Between Commission Employees and Parties	))))))	UNDOCKETED Filed: November 18, 2010

COMMENTS BY TAMPA ELECTRIC COMPANY

Tampa Electric Company (Tampa Electric or the Company) submits these comments in response to the rule development workshop held October 14, 2010, regarding Rule 25-22.033, Florida Administrative Code, Communications Between Commission Employees and Parties.

Introduction

Tampa Electric submitted comments to the Commission on December 15, 2009, in response to the November 24, 2009, workshop and on April 20, 2010, in response to the March 23, 2010, workshop. Since the Commission began to consider changing Rule 25-22.033, Florida Administrative Code, Tampa Electric has encouraged the Commission to adhere to three guiding principles:

- The benefits to be gained from extending the requirements of the rule, or applying similar requirements, to the proceedings and activities that are currently exempt should be weighed against the impact on the costs and efficiency of the regulatory process;
- New requirements regarding communications between Staff and parties should take into account similar processes employed by other agencies of the State of Florida; and
- Application of the rule should be symmetrical in all respects.

Tampa Electric continues to believe that these principles are appropriate. In addition, Tampa Electric believes the regulatory process will be best served by a rule that is clear and practicable. To the extent the rule is difficult to understand or exposes stakeholders to risks that they may

inadvertently violate the rule, the information needed by the Commission to regulate the industry may not be communicated effectively.

Tampa Electric appreciates the Commission staff's efforts to arrive at a workable rule that accommodates the various comments and concerns expressed by the stakeholders. The August 26, 2010, draft rule (hereafter referred to as "the draft") reflects staff's attempt to strike a balance between the competing interests and serves as a reasonable platform for further dialogue; however, Tampa Electric has concerns about certain aspects of the draft and offers the following comments for consideration.

Applicability of the Rule and Exemptions

Being able to understand when Rule 25-22.033, FAC applies is vitally important so that parties or interested persons communicating with staff do not inadvertently violate the rule. Currently, the provisions relating to the scope of proceedings covered by the rule are included in one place in the rule and are relatively straightforward and understandable. The proposed amendments to the rule make it more difficult to understand when the rule applies. Subsection (1) contains provisions detailing matters to which the rule does not apply; subsection (3) includes matters governed by the rule as well as matters that are exempt; and subsection (9) provides notice requirements for communications that are previously exempted in subsection (3). Furthermore, subsection (3) states that the rule governs docketed matters, then proceeds to include some undocketed matters among the list of matters that are exempt from the rule, implying that there may be other undocketed matters that are covered by the rule.

Similarly, subsection (1) states that the rule does not apply to internal agency communications, yet subsection (10) deals with prohibited communications between Commissioners and Commission employees and subsection (11) states that the rule applies to all

Commission employees unless specifically exempted by the rule. Finally, the exemption in subsection (7) for communications between employees and parties to investigate and assist in the resolution of informal consumer complaints appears to duplicate the same exemption included in subsection (3).

Tampa Electric believes the numerous provisions dealing with the scope and applicability of the rule and exemptions to the rule could be simplified and made more understandable by consolidating the provisions relating to the scope of proceedings covered by the rule. The rule should clearly state in subsection (3) that it applies only to communications between Commission staff and parties or interested persons regarding docketed matters and should list, in the same subsection, the docketed matters or activities that are exempt from the rule. If the rule is written so that it clearly applies only to communications between staff and parties or interested persons regarding docketed proceedings, it is unnecessary to exempt wholly undocketed matters such as internal agency communications and internal affairs meetings. Following this approach, the list of exemptions included in subsection (3) should include, proceedings under Sections 120.54, 120.565, 367.0814, F.S.; proposed agency action (PAA) proceedings in which there has not been a notice of an interested person, a request to intervene or a request for a hearing filed in the docket; communications regarding procedure; communications with the Office of the Commission Clerk; workshops; audits; field service evaluations; informal consumer complaints; electric and gas safety inspections; and cases pending in a tribunal other than the Commission.

As indicated above, Tampa Electric believes the rule should govern only docketed matters. The notice requirement pertaining to "meetings and conference calls pertaining to changes in rates which occur outside of a docketed proceeding or during a proposed agency action proceeding exempt under subsection (3)" creates yet another exemption to the general rule

(an exception to an exemption), making compliance more difficult. Moreover, the term "changes is rates" in subsection (8) is vague and unclear.

If the Commission believes a notice provision is necessary for undocketed matters, Tampa Electric believes the requirements should apply symmetrically. As is stands, the draft rule appears to only address situations where the staff has a meeting or conference call with a regulated utility. The rule should also apply to situations where the staff meets with any intervenor group or interested person and notice should be provided to the affected utility as well as OPC.

Scope of Communications

Subsection (3) of the draft rule states that the rule shall "govern Commission employee communications with parties and interested persons to docketed proceedings before the Commission." Taken literally, this statement would result in the rule applying to any communication between a Commission employee and an individual who either is or works for a party or an interested person listed in any Commission proceeding. Tampa Electric believes the scope of communications covered by the rule is overly broad. It would be more reasonable and practicable for the rule to apply to communications regarding matters at issue in the proceeding.

PAA Notification

Tampa Electric supports the exemption of PAA proceedings before they become contested proceedings. Establishing the date a notice of interested person or a request for intervention is filed as the point at which a PAA proceeding is no longer exempt from the notice requirements may be a reasonable compromise among the positions discussed by the stakeholders. However, the company is concerned that there presently is no clear mechanism to readily determine with certainty whether a particular docket is or will become a PAA

proceeding. To make this provision more workable, Tampa Electric suggests that the Commission consider providing an indication within the electronic docket file as to whether the matter is a PAA proceeding or not. Such an indication in the docket file would help to minimize inadvertent violations of the rule.

Definition of "Impermissible Communications"

Subsection (2) of the draft rule includes a definition of "impermissible communication" as "any communication with a party or interested person, if written, is not served on all parties, or, if oral, is made without notice to all parties or interested persons." This term is only used once in the rule where subsection (4) states that "Commission employees shall not engage in impermissible communications." Tampa Electric believes the inclusion of the definition and the prohibition in subsection (4) is redundant of provisions contained in other sections of the draft rule and is, therefore, unnecessary. Other provisions of the rule effectively specify the notice provisions for allowable communications and when certain communications are prohibited.

Applicability to Interested Persons

The draft rule acknowledges the fairness associated with increasing transparency with respect to communications between staff and interested persons. Interested persons, by definition, are interested in a proceeding, but are either not inclined or are unable to intervene as a party. Tampa Electric supports the application of the rule to interested persons; however, the rule does not include interested persons to the extent that it should. The draft rule requires that interested persons receive notice for meetings and telephone calls between Commission employees and parties, as well as for meetings and telephone calls between Commission employees and interested persons. The requirements relating to written communications between Commission employees and parties is not extended to interested persons, however.

Tampa Electric believes extending the notice provisions for written communications to interested persons is a logical extension of the rationale for making the notice provisions for meetings and telephone calls applicable to interested persons. Similarly, to the extent there is a ban on communications between the conclusion of the hearing and issuance of the final order, the ban should apply to interested persons as well as parties.

Conclusion

Tampa Electric thanks the Commission for the opportunity to submit these comments. We look forward to continued dialogue with the Commission and other stakeholders to achieve a workable process that maintains the flow of information necessary for the Commission to effectively regulate the industry.

Respectfully submitted this 18th day of November, 2010

JAMES D. BEASLEY
J. JEFFRY WAHLEN
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
850-224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

at&t

Tracy W. Hatch
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (850) 577-5508
thatch@att.com

November 18, 2010

Ms. Samantha Cibula
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Undocketed Rule Development for Rule 25-22.033, Florida Administrative Code

Dear Ms. Cibula:

Enclosed are BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Comments in response to the Rule Development Staff Workshop conducted on October 14, 2010. If you have any questions please do not hesitate to call me at (850) 425-6360.

Sincerely,

Tracy W. Hatch

Enclosure

cc: Jerry D. Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Rule 25-22.033, Florida Administrative Code) Communications Between Commission Employees) And Parties.)	Undocketed
)	November 18, 2010

POST-WORKSHOP COMMENTS OF AT&T FLORIDA

At the proposed rule development workshop held on October 14, Staff requested comments from the parties on draft revisions to the Commissions Rule 25-22.033, Florida Administrative Code, relating to communications between Commission employees and parties to proceedings before the Commission. BellSouth Telecommunications Inc. d/b/a AT&T Florida provides these comments to address its concerns with the proposed draft rule.

AT&T Florida fully supports any efforts to maintain and protect the integrity of the process in proceedings before the Commission. AT&T Florida's paramount concern, as expressed during the workshop, is that rules that govern the interactions between Commission employees and parties to proceedings at the Commission must be clear, concise and leave as little ambiguity as possible. Parties and Staff should not be left to guess whether a communication is allowable or not, because the more ambiguity there is the more likely someone will guess wrong.

AT&T Florida reiterates its specific concerns reflected in the transcript of the proceeding. Within the context of the proposed rule, AT&T Florida has proposed certain changes reflected in the attached draft rule language that addresses certain specific concerns noted at the workshop. In addition, while not reflected in the attached draft modifications to the Staff's proposed rule, there appears to be a structural bias incorporated into the rule the presumes that all communications with the staff are wrong but that if the rule is violated for otherwise good

reasons, there is a cure for the violation. AT&T Florida submits that this is not the best approach to drafting a rule that is expected to lead to the efficient appropriate exchange of information between the Staff and the parties or others that are involved in Commission proceedings. This will certainly create the chilling effect discussed in the workshop.

Respectfully submitted, this 18th day of November, 2010.

BellSouth Telecommunications, Inc. d/b/a AT&T Florida

E. EARL EDENFIELD JR.
TRACY W. HATCH
MANUEL A. GURDIAN
c/o Gregory R. Follensbee
150 South Monroe Street, Ste. 400
Tallahassee, FL 32301
(305) 347-5558

25-22.033 Commission Employee Communications with ~~Communications Between Commission Employees and Parties and~~ Interested Persons.

(1) The Commission recognizes that Commission employees must exchange information with parties and other persons who have an interest in Commission proceedings. However, the Commission also recognizes that all parties and interested persons to certain ~~adjudicatory~~ proceedings need to be notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties and interested persons to certain ~~adjudicatory~~ proceedings notification of and the opportunity to participate in certain communications. The provisions of the rule shall not apply to internal agency communications; the Office of the Commission Clerk; communications that do not address the merits of a proceeding; Commission employee communications in docketed or undocketed proceedings with state or federal governmental officials, representiatives, bodies or agencies that are not identified as a party or interested person in the proceeding. Nothing in this rule is intended to modify or supersede the procedural requirments for formal discovery under Rules 1.280 through 1.390, Florida Rules of Civil Procedure.

(2~~1~~) For purposes of this rule, the following definitions shall apply:

(a) "Party" or "Parties" are those individuals or entities designated in the docket file of the proceeding or by order of the Commission as an Official Party of Record and includes employees, witnesses, consultants and persons acting in a representative capactity for individuals and entities designated as parties in the docket file. For purposes of providing any notice pursuant to this rule, notice need be provided only to those individual listed in the docket file as a party or interested person.

(b) "Interested persons" are those individuals or entities listed in the docket file of the proceeding but not designated as an Official Party of Record to the proceeding.

(c) " Impermissable Communication" means:

1. Any written communication between a Commission employee and a party which is not served on all parties at the time the written communication was provided to the Commission employee; or

2. Any oral communication between a Commission employee and a party or interested person which is made without notice to parties and is not summarized in writing by the person intitiating the communication and served on all parties within 3 business days after the oral communications is made.

(3) Subsections (4) through (8) of this ~~This~~ rule shall govern ~~communications between~~ Commission employees comminciations with ~~and~~ parties and interested persons to docketed proceedings before the Commission. Subsections (4) through (8) of this ~~This~~ rule shall not apply to ~~in~~ emergency operation center activities, proceedings under Sections 120.54, 120.565, 367.0814, F.S., docketed matters in which there has not been a notice of an interested person or a request to intervene filed in the docket or a request for a hearing filed in the docket, ~~Florida Statutes, proposed agency action proceedings before the Commission has voted to issue a proposed agency action order, non rate case tariffs,~~ workshops or internal affairs meetings, ~~. Also exempted are docketed and undocketed~~ audits, field ~~telephone~~ service evaluations, informal consumer complaints, ~~and~~ electric and gas safety inspections, and cases pending in a tribunal other than the Commission. ~~Nothing in this rule is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable~~

~~provisions of the Florida Rules of Civil Procedure, or affect communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.~~

(4) Commission employees shall not engage in impermissable communications.

~~(2) Written Communications – Notice of any written communication between Commission employees and parties shall be transmitted to all other parties at the same time as the written communication, whether by U.S. Mail or other means.~~

(~~5~~3) ~~Scheduled~~ Meetings and Telephone ~~Conference~~ Calls – All parties, interested persons and the Office of Public Counsel ~~to the proceeding~~ shall be given reasonable notice of the time and place of any ~~scheduled~~ meeting or telephone~~conference~~ call between Commission employees and parties or interested persons. The notice of the meeting or telephone call shall be posted on the Commission's Web site, www.floridadpsc.com, within a reasonable time prior to the meeting or telephone call.~~For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.~~

(6) All written communications between Commission employees and parties, except discovery requests and discovery responses, shall be placed in the docket file to which the communication pertains by the person making the communication within 3 business days after the date of the communications . If the written communication ocurs less than 3 business days before a hearing or decision making point in the proceeding, the written communication shall be placed in the docket file and provided to all parties as promptly as is reasonable under the circumstances. A party or Commission employee sending the original written communication shall provide a copy of the written communication to all parties at the same time and, if possbile, in the same manner. If a Commission employee

orally communicates with a party outside of a noticed meeting or telephone call, the Commission employee shall summarize in writing the oral communication and file the summary in the docket file within 3 business days after the date of the commmunication.

(7) No Commission employee shall contact a party or interested person, and no party or interested person, shall contact a Commission employee regarding any matter at issue in a proceeding conducted pursuant to Section 120.569 or 1120.57, F.S., during the period of time between the conclusion of the hearing when the record is closed and the issuance of the final order in the proceeding unless the contact is in writing and pertains to a settlement agreement or the identification of a mathematical error in a recommendation and all parties to the proceeding are in included in the communication and the written communication is immediately placed in the docket file. The prohibitions in this subsection shall not apply to those communicaiton between Commission employees and parties to investigate and assist in the resolution of informal consumer complaints.

(8) ~~(4)~~ Response to Communications – Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party or interested person. ~~Notice of any such~~ Written responses shall be ~~transmitted to all~~ provided to all parties at the same time and , if possible, in the same manner.

(9) All notices of meetings and conference calls pertaining to changes in rates which occur outside of a docketed proceeding or during a proposed agency action proceeding exempt under subsection (3) of this rule shall be provided to the Office of Public Counsel and posted on the Comission's Web site within a reasonable time prior to the meeting or conference call. For pusposes of this subsection , a conference call is defined as a

telepohone call involving three or more persons. The provisions of this subsection do not apply to rate adjusments subject to s.364.051, F.S.

(10) ~~(5)~~ Prohibited Communications – [NO FURTHER CHANGES AFTER THIS POINT