

State of Florida



Public Service Commission

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

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

DATE: September 8, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Stern)

RE: Docket No. 050564-OT – Petition to initiate rulemaking concerning regulated utility entertainment and ex parte communications, by Common Cause Florida.

AGENDA: 09/20/05 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All

PREHEARING OFFICER: Administrative

CRITICAL DATES: 09/22/05 (Action on Petition for Rulemaking Required Within 30 Days of Filing)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050564.RCM.DOC

Case Background

On August 23, 2005, Common Cause Florida (“Common Cause” or “Petitioner”) filed a petition to initiate rulemaking (“Petition”) pursuant to Rule 28-103.006, Florida Administrative Code, and Section 120.54(7), Florida Statutes.

The Petition asks the Commission to adopt rules on two topics:

- Meals and entertainment activities involving regulated utilities (or other parties to Commission proceedings) and Commissioners or Commission staff
- Communications between a regulated utility and any representative of the Commission concerning any regulatory function

Under Section 120.54(7), any person regulated by an agency “or having a substantial interest in an agency rule” may petition an agency to adopt a rule. Within 30 days following the filing of such a petition, the Commission must either:

- Initiate rulemaking proceedings;
- Otherwise comply with the requested action; or
- Deny the petition with a written statement of its reasons for denial.

Discussion of Issues

Issue 1: What action should the Commission take on the Petition?

Recommendation: The Petition should be dismissed for Petitioner's failure to allege standing as required by Rule 28-103.006, Florida Administrative Code. The dismissal should be without prejudice to Petitioner's filing, within 30 days, an amended petition that complies with the rule. The Petitioner should be encouraged, upon any refile, to identify the source of the Commission's rulemaking authority to adopt the requested rules and to identify the specific law that the requested rules are designed to implement. (Stern)

Staff Analysis: Section 120.54(7), Florida Statutes, provides that a petition to initiate rulemaking may be filed by "any person regulated by an agency or having a substantial interest in any agency rule." This statutory standing requirement is implemented by Rule 28-103.006(1), Florida Administrative Code, which provides that "[a]ll petitions to initiate rulemaking must contain...the facts showing that the petitioner is regulated by the agency or has a substantial interest in the rule or action requested."

The Petition contains no facts to show that Common Cause is either regulated by the Commission or that it has a substantial interest in the requested rules. The Petition should therefore be dismissed for failure to comply with Rule 28-103.006. Staff recommends that the dismissal should be without prejudice for Common Cause to refile, within 30 days, a petition that complies with Rule 28-103.006 and demonstrates the standing required by Section 120.54(7).

The Petition also contains no citation to the source of the Commission's rulemaking authority to adopt the requested rules, nor does it identify the specific law to be implemented. Rule 28-103.006 does not require a Petition to address these items; however, their absence makes analysis of the Petition more difficult. Staff therefore recommends that the Commission strongly encourage Petitioner, upon any refile, to identify both the source of the Commission's authority to adopt the requested rules and the specific law that the rules are intended to implement.

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Issue 2: Should this docket be closed?

Recommendation: This docket should remain open for 30 days to allow Petitioner to file an amended petition that complies with Rule 25-103.006, Florida Administrative Code. If no such petition is filed, the docket should then be closed. (Stern)

Staff Analysis: Staff has recommended that dismissal of the Petition should be without prejudice to refiling an amended petition within 30 days. The docket should therefore remain open to allow Petitioner to make such a filing. If an amended petition is not received within 30 days, then this docket should be closed.