BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

RULE 25-22.033: COMMUNICATIONS BETWEEN COMMISSION EMPLOYEES AND PARTIES.

DOCKET NO.: UNDOCKETED

PROCEEDINGS: STAFF WORKSHOP

DATE: Thursday, October 14, 2010

TIME: Commenced at 9:30 a.m.
Concluded at 10:25 a.m.

PLACE: Betty Easley Conference Center
Hearing Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
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FLORIDA PUBLIC SERVICE COMMISSION
PROCEEDINGS

MS. CIBULA: Pursuant to notice, this time and place has been set for a rule development workshop on Rule 25-22.033, Florida Administrative Code, entitled Communications Between Commission Employees and Parties.

First off, let's take appearances.

I'm Samantha Cibula of the Commission's legal staff.

MS. MILLER: I'm Cindy Miller with the Commission's legal staff.

MS. SALAK: I'm Beth Salak, technical staff with the Division of Regulatory Analysis.

MR. WILLIS: Marshall Willis, Director of the Division of Economic Regulation.


MR. BEASLEY: Jim Beasley and Jeff Wahlen for Tampa Electric Company.

MR. STONE: Jeff Stone of Beggs and Lane on behalf of Gulf Power Company.

MR. HATCH: Tracy Hatch on behalf of AT&T Florida.

MS. CIBULA: There's a sign-in sheet on the table to my right, so please make sure that you sign in so that we have a record of who's in attendance today.
The first item on the agenda for the workshop is opening remarks of workshop participants, so does anyone have any opening remarks?

MR. REHWINKEL: Thank you, Samantha. Charles Rehwinkel with Public Counsel's Office.

At this point, the Public Counsel's Office would like to state that although we have raised issues throughout this rulemaking process, we deeply appreciate the Commission undertaking the rulemaking process. We also appreciate the spirit of cooperation and dialogue that we have had with the other interested parties in the workshop and rulemaking process.

We hope that you go forward with the rule that you have proposed as it is today. Although we have asked for the Commission to take into consideration and adopt certain measures that we think would be improvements to the process, we realize that our perspective is one of a party that participates in the process, albeit frequently. It is not the end all and be all of what public policy ought to be with respect to these kind of rules.

There are other offsetting considerations that the other parties, I think, have also brought to your attention. We think that the proposal that is in the document today is a good compromise, and it is an
improvement on the existing process that was undertaken almost 17 years ago today, and so we think that time is right to do what you are doing today.

The only caution that we would ask that the staff and the Commission take into consideration is that the Proposed Agency Action process is used more today, we believe, than it was 17 years ago and further back when some of the statutes and Commission rules were adopted. The Proposed Agency Action process was designed not to create presumptions within the Proposed Agency Action order, but intended to make the administrative process more efficient, and it has done that, but it should never be a shortcut to due process.

And we would also like to state in these comments that we commend the staff for the processes and internal policies that they have developed in dealing with parties in Proposed Agency Action and other proceedings. We hope that you will adhere to those, whether they are in the rule or not. One of the cautions that we would offer is that because we have advanced proposals and that they may not be adopted, even if those proposals are things that you do today, we hope that you do not recede from doing those, but are continually mindful of what's important to protect not only the rights of the parties, but the perception and
the integrity of the process.

   We think this whole workshop process has sharpened the focus on that. We think the rule proposal that you have today purports with the spirit of that. And so, in concluding, we would say that we will accept -- or we will not contest the proposals as they are here today. We certainly would like to listen to what other parties have to say and respond to them, and we'll always be willing to work to make the process better and this rulemaking better. But we would commend you and the other parties for what you have come up with to this point today.

   MRS. CIBULA: Thank you.

   Any additional opening comments?

   MR. BEASLEY: I would just share in Charles' appreciation for the work that the staff has put in, and we appreciate the opportunity to appear.

   MR. STONE: On behalf of Gulf Power Company, we also have been willing participants in this process; we think it has been helpful, and we do think that there has been a heightened awareness of the concerns of all parties to ensure that there is due process. We, too, believe that it is important to protect the integrity of the process.

   By the same token, we think it's important
that the regulator be in a position to be able to gain necessary information in order to make informed decisions so that we don't unnecessarily increase the cost of regulation by either delay or by making mistakes in judgment of policy or decisions on the merits that have to be retreated from at some future date. And so we think it's important that there still be an efficient flow of communications, not necessarily that we -- well, let me rephrase that.

I think it's important to recognize the distinction between the ultimate decision-makers, that is, the Commissioners, and the professional staff that is working at gathering information in order to inform those decision-makers so that they can make informed policy decisions and decisions on the merits. We believe that the current rule strikes that balance. We believe that the current statutory framework properly strikes that balance.

And while through this whole process we have gained a further insight into some areas that can be problematic, perhaps, we do agree with the statement of the Public Counsel that it's important that the PAA process not do anything to impede due process rights, but that it be protected as an efficient means of regulation in terms of trying to deal with matters that
do not necessarily become contested matters.

We have other thoughts on the rules, quite frankly. We believe that the current draft still has some serious problems that operate as a chilling effect on the efficient communication of what is necessary and appropriate for the staff to understand about the regulated entities. We think it's important that the regulatory body be able to have contact with the regulated entity. I cannot think of any regulatory body in this country where the regulated entity is put in a posture where there cannot be communication between the staff and the entity.

And with that, we certainly welcome the participation we have had up to now and we look forward to continued participation in this process, so that whatever is ultimately adopted, if anything, still allows for good effective regulation in this state.

**MS. CIBULA:** Thank you.

Any additional comments?

**MR. HATCH:** Yes. Tracy Hatch on behalf of AT&T Florida.

We fully support any efforts to protect the integrity of the process. I think, as we have stated before, that whatever the rules are, we will all strive to abide by them whatever they are. But the real point
is that whatever those rules are, they have to be clear and concise so that there can't be much ambiguity. The worst place you can possibly be is guessing whether something you do is right or wrong under the rules. Particularly when you don't have time to go ask for a dec statement to say what does it mean, what does it not mean. And I think that there are some technical issues with how the rule is structured and the way some of the terms are used that just need to be fleshed out and fixed, because what you have here is rife with a certain amount of ambiguity that I think is very dangerous for anybody and everybody.

MS. CIBULA: Thank you. Any additional opening statements?

Okay. We'll move section-by-section through the rule. Any comments on Subsection 1 of the draft rule?

MS. MILLER: And when you do speak, I know some of you remembered and some didn't, just please remember to state your name and who you're with.

Thanks.

MR. HATCH: Just generically? Are you going in any particular order?

MS. CIBULA: Whoever wants to speak up.

MR. HATCH: I moved down here so I wouldn't
have to be first, but everybody else moved further to the left.

I have a couple of questions. First, generically, and perhaps you can help flesh some of this stuff out. When I'm talking about ambiguity, this is where it starts, basically.

In the first section you've got things that the rule doesn't apply to, and then we below you have got another -- things that are excepted out of the rule. I'm not sure things that that's an efficient way to structure the rule, but having said all that, there's -- for example, one of the things that it doesn't apply to is questions regarding procedure.

I think we all have a walking around understanding of what that is, but there's a huge continuum of what may be or may not be procedure. And scheduling of witness and depositions isn't an adequate description of what procedure is. So I'm going to get hung out to dry if I'm talking about procedure accidentally, and it isn't procedure, I need to know what that is.

Again, when you get down to Line 15, you are talking about persons with a legal interest. I'm not sure what that term means. If you're talking about somebody who has standing, we can all pretty much agree
or at least understand what the test is for that. If you are talking about somebody whose substantial interests are affected, we can all talk about that. I am not sure what a legal interest is.

I think that's all the questions I have for that one.

**MS. CIBULA:** Okay. Well, I think we set it up so that the first section would be the general exceptions, but that can be something that we would look at. Maybe there should be a subsection that just at the very beginning says what it applies to and what it doesn't apply to all in one section so it's clear.

**MR. HATCH:** It kind of really lends itself to a you can do -- there's two ways to approach this: You can do anything you want except you can't do the following, or you can't do anything, except you can do the following. Either one of those would work, but each of them has different advantages and disadvantages.

**MS. CIBULA:** And that's something that we'll consider and try to maybe clarify that a little bit. Or, like I said, maybe we can put it all in one section so that everyone is clear about what the rule applies to and what it doesn't apply to.

The other phrase about the legal interest, we actually used that same terminology that was in the
Section 350.042. We were trying to come up with some way of defining that, but that might be something, too, that if people have suggestions of how we could hone that phrase so that it's clearer, we'd appreciate, you know, comments and how we could maybe go about doing that.

MR. REHWINKEL: Just from Public Counsel's standpoint, we would prefer -- I kind of -- I think the only thing that being a criminal justice major helped me with being a lawyer was a discussion we had in class one time about raising the speed limit from 55 to 70. And the regulators, the Department of Transportation people were concerned, you know, when you set it at 55, you know there is a certain number of people who are going to go 60 or 65, and when you set it at 70, you know -- they statistically know what that is.

We think this rule needs to be very cognizant of the fact that whatever boundaries you set, there are always going to be instances where people want to test them, not because they are evil, but because they are advocates.

So we would just urge that you don't create exceptions that swallow up the rule. That would be our suggestion here. And so having a tighter rule with more definition about what's accepted is better than having a
broad statement. I understand that there is a balance between knowing what behavior is acceptable and not, but we would prefer that you err on the side of caution with respect to what's permissible.

I think the way you started here is a good one, and I think it's up to others to come up with something that is workable but doesn't create that swallowing exception.

**MS. CIBULA:** I'll say this right now at the beginning, we are going to allow post-workshop comments, and we'd appreciate it that if you have comments that if you could provide specific rule language of what you would suggest as an alternative, we would really appreciate that so that we can look at what language we should consider.

**MR. STONE:** The comments that cause me to have a question about what is meant by "or otherwise have a legal interest in the proceeding," because earlier in that same sentence it talks about identified as a party or interested person in the proceeding. And I didn't know whether or not the phrase identified was meant to attach to the "otherwise have a legal interest in the proceeding," or if that was left to the parties to have to guess as to whether someone has a legal interest.

**MS. CIBULA:** I think what we were trying to
encompass is that a lot of times we have federal agencies or other state agencies that -- or municipalities that are actually parties in front of the Commission, and that we're not trying to exempt them from the rule. But, like I said, that's something that we will look at a little closer, and maybe we can figure out a way to tighten up that rule language so it's a little bit clearer about what we mean by that phrase.

Any other comments on Section 1 of the rule?

Well, then let's move to Section 2. And we have moved this section. It was in a different section of the draft rule before, and we moved that more to the front of the rule, but I think the definitions are pretty much the same as what the previous drafts of the rule have been.

MR. STONE: I guess Subsection C is the area that causes the most confusion, because taken by itself it would leave you with the impression that saying hello in the hallway would be an impermissible communication. It also, by the way, seems to be missing at least a word. I believe there should be a word "that," I'll leave it to the grammarians whether or not that or which, but on Line 4 after interested person, it seems to me something is missing from that phrase.

But setting that aside, it's of concern to us
that the term used is impermissible communication as a
definition, and it is so broad as literally to encompass
everything unless it's excepted. And if you are going
to have it that broad and have to have an exception to
be able to have any communications at all, including as
simple as saying hello, then that's clearly going to
operate as a chilling effect. You're going to have
people that are passing each other in the grocery store,
and they have to not be civil to each other for fear
that someone would contend that they are having an
impermissible communication.

   MS. CIBULA: Well, I don't think that was the
intention of the rule, and that is something that we can
look at, too. Maybe we can put in the phrase
"Communications in regards to official business," that
might -- that's from the, I guess, more like from the
public records law, but maybe that's something that we
could put in there to clarify. But, like I said, if
someone else has any suggestions on how we could clarify
that to make sure we're not talking about, you know, if
you say hi to someone in the hallway that you have to
file something in the docket, and you're not talking
about Commission business at all.

   MR. HATCH: My comments would echo Mr.
Stone's, essentially that it's drafted way too broadly,
and more to the point that the tag line impermissible communications sets a tone that I'm not sure that you intend to create, in the sense that if my mom calls me, if I'm a party to a Commission proceeding, technically, by definition, it's an impermissible communication. You didn't mean to gather that up by definition, but that's the way it's drafted.

I guess the second thing is that in terms of limiting it, I think your suggestion limiting it to a docketed matter or a Commission matter of some sort is fine. And I think what you really intend here as an impermissible communication is one between a party and a Commission staff member. Because if I'm in a docket with somebody else, and I want to call, for example, counsel for the other side, by definition that's an impermissible communication that doesn't involve the Commission. If I'm discussing a settlement, for example, this rule tells me it's an impermissible communication, but it otherwise would be a permitted impermissible communication. And you run into that sort of strangeness when you go through this rule and how this thing is structured and drafted.

MR. REHWINKEL: Samantha, I think at the last proceeding we might have suggested this language to address Mr. Stone's concern, which we think is a valid
one. After the word proceeding, the phrase -- something along the lines of relative to a matter that is subject to decision-making, and then we listed several statutes, pursuant to 120.54, 565, 569, 57. I think that's kind of where you are going. We really don't think it is appropriate to tie it to an officially docketed matter, because, again, if it's a matter that everyone knows is going to be litigated, then it should be -- the language should be that it's relative to a matter that is subject to decision-making, something like that. And I don't know if that addresses Mr. Stone's concerns on that front, but I think that would narrow the scope of that definition.

MR. HATCH: I did have one other question. There is a distinction in the definition itself that says if it's written and not served on all parties, and the other is if oral, then all parties and interested persons. If it's an oral communication, is it then to be provided to all interested persons, which begs the question if it's written should it be served on all interested persons, as well? I just don't know. I'm not sure what you're trying to get at.

MS. CIBULA: I think what we're getting at is if it is written and you haven't served it on all the parties. And, if oral, if you made it outside of a
noticed meeting where everyone was --

MR. HATCH: I understand what it says. Is that what you intended to have happen, and what's the distinction designed to get at? You don't have to answer that. It just creates the question. And I'm not trying to engage in a debate, I'm just --

MS. CIBULA: We'll look at that, and if you could suggest some alternate rule language that might, you know, clarify it, we will consider that.

MR. BEASLEY: We have the same concerns, and we'll propose some language in our post-workshop comments.

MS. CIBULA: Any additional comments on Section 2 of the rule? Let's move to Section 3 of the rule. And in this section, one change that we did make from the previous draft of the rule is I guess at one point we were considering removing the exception for rulemaking, but we put the exception back in under this draft so that it would be in align with 350.042, the statute. So that's one change that we made to this section.

MR. HATCH: I've got a couple of questions about this section. For those of us that have done this a fair amount, a PAA process, we all pretty much understand what that is. But if you are just going to
read the rule and say what is a PAA proceeding, any
docket is subject to being a PAA proceeding. You don't
know going into the docket whether it will be or whether
it won't be. You could get halfway through a docket and
everybody says, well, that might be the resolution, so
the Commission issues the PAA and we all live with it.
There is no way up front of knowing if it's going to be
a PAA process until the staff files a PAA
recommendation. And I'm not quite sure, because there's
no identified proceeding that when you docket it, it's
called a PAA proceeding, and that is exactly how it is
and what it's going to be. We all know what it is and
how it works, but I don't know when it's a PAA
proceeding and when it's not in advance.

MS. CIBULA: And that's a good question, and
maybe that's something that we need to think about as
well to maybe give some sort of advanced notice of
when --

MR. HATCH: You've got the qualifier in there,
which is what I think you intend, which is it's a
docketed matter that has one party; no intervenors, no
interested persons. In those instances, clearly it's
susceptible to a PAA, because that's really just between
the parties and staff at that point, the one party and
staff. If that's what you mean a PAA proceeding to be,
then everybody needs to know what that is, but that's not how this is drafted.

MR. WILLIS: Maybe it should be anything other than a formal hearing proceeding.

MR. HATCH: I mean, but that doesn't get you there, either. Like I say, I just want to know what the rules are, because I'll be hanging in the wind on this stuff.

MR. WILLIS: And I understand your --

MR. HATCH: It could be going to a hearing, you could have a week-long hearing scheduled, and all of a sudden it's an apparent result that satisfies everybody, nobody is willing to or can't sign a stipulation to that effect, you do a PAA and you walk off.

MR. WILLIS: I understand. The dockets you may be involved with in telephone are probably a lot different than the ones that I'm involved with in my division, so it may be a problem for Beth, but I don't see a problem with the PAA stuff in what we actually do in my division, because a lot of what we do is Proposed Agency Action if it's not going straight to hearing. So it may be something that Beth may have to work out with you all.

MS. SALAK: Well, I think we could certainly
define certain hearings that always go straight to hearing. I mean, there are those. We can delineate those. But is it possible -- I mean, obviously, we don't know what is going to be a PAA. And, I mean, I agree with you. But as soon as we know, if a PAA is protested, or if --

MR. HATCH: As soon as there is a protest everybody knows what the rules are at that point.

MS. SALAK: Right. And certainly once all the parties agree that we are not going to resolve it, it gets to go straight to hearing, we have those. Otherwise, I think that there is a possibility that we will go PAA, and it would be under the PAA process.

MS. CIBULA: But it might be something that maybe we can have to designate a lot earlier, like a CASR or something, saying that this docket is PAA, and that's something that we might need to think about doing so everyone is on notice.

MR. REHWINKEL: I think Mr. Hatch has hit on the issue that caused us to develop what was a cumbersome notification process, but it does hit at the issue. There are matters that, you know, interested persons come before the Commission staff, and they know that they are going to ask for PAA treatment, you know, up front. Other people may not know it, but they have
that in their mind. There are others that they file a petition or a request and may not have a preference that it be handled that way, but the staff decides at some point that that is how they are going to handle it, and that is a decision that is made internally and it is very passive to everyone else until it manifests itself in the record. And there are some that are just straight up asked for the PAA process. So we understand that, and that's why we had proposed the process we had addressing this issue and refining it and coming up with those definitions we think is an acceptable solution.

We would request that because it's a difficult issue that, you know, you don't just take it out and say, well, we will just go back to the way it was. Because, again, the PAA process is used more and more, and our number one concern is not to have a presumption attached to whatever is developed in the PAA process.

We have been many times before the Commission at agenda and have been scolded for not participating in the development of the PAA process up until the point of the agenda, when it has always been understood that you can ask for a hearing and then it's supposed to be a clean slate and everybody goes at it and advocates with all of their evidence.

So there's this tension between participating
early, and if you are supposed to participate early, you should have the ability to participate from the very start. And to do that, you have to have notice. And then all the other procedural rules have to attach.

Otherwise, if it's going to be a completely open process, if there's a protest opportunity, then it shouldn't matter. But it doesn't always work that way. So we would ask you to adhere to what you have in here. If there need to be refinements about demarcation points of when you know and when you don't know, that's fine, and that's a very practical concern that has been raised by Mr. Hatch and the others, and we recognize that.

**MS. CIBULA:** Any additional comments on Section 3?

**MR. HATCH:** Yeah. You get down in where you have dockets or workshops as an exception, that has historically been true. But the question arises, because it doesn't designate whether it's in a docket or it's not in a docket. Typically you have workshops that are undocketed, like this one, or in a rulemaking proceeding like this one, but docketed. Sometimes on a rare occasion in a proceeding that is going to hearing there are workshops. And, of course, we all whine and complain about is it part of the record or is it not and we all work on accommodation. But, historically, there
have been those instances, and the question is do you
mean docketed or undocketed or at least make a
distinction as to what you're talking about. Because if
you have a docketed proceeding, for example, I think in
the 271 proceedings we had a bunch of workshops that
were part of the proceeding. And I think the
transcripts and all of that stuff ended up being part of
the record, but in this instance it would be an
exception to your communication rules, so you could go
in and drive a steam train through a hole like this in
your rules. Like I say, it works for me, I just want to
know what the rules are.

MS. CIBULA: That's something we'll look at,
as well. Any additional comments?

MR. STONE: I just want to respond briefly to
something Mr. Rehwinkel said. I believe we made this
clear in our past comments, and if we haven't, I want to
certainly make it clear here. It is our view that the
Office of Public Counsel enjoys a special status, and
that is that they are entitled to more notice and
more -- I don't want to say more due process, but they
are entitled to be informed on matters, which is
something that we feel we can accommodate.

It's the issue of dealing with an amorphous
interested person, if you will. So I would not want any
of our comments to be interpreted to mean that we are
trying to impede the ability of the Public Counsel to do
its job. We certainly think that their role is very
important to the integrity of the process. And the fact
that they may choose not to get involved in a proceeding
eyearly on should not be an impediment to their deciding
that it has elevated to the point of where they're
interested and they need to be involved. And we
recognize that.

So I don't want anything that we have said in
the past or what we might say in our subsequent comments
to be interpreted as an impediment to the status that
Public Counsel plays in ensuring the integrity of the
process. Our concern is that the language currently is
written so broad that parties or potential parties other
than the Public Counsel that we don't know are out
there, that the protection that seems to be trying to be
put in place for those individuals who haven't declared
themselves is going to unnecessarily impede efficient
communication between the regulated and the regulator.

MS. CIBULA: Any additional comments?

MR. REHWINKEL: Yes. We fully appreciate what
Mr. Stone has enunciated, and we agree that their
comments and their initiatives have not done that. I
think the problem that all the people that are here are
dealing with with respect to these unknown interested persons, we all have it in common, and I don't think this really goes to that. Those are the people that you are worried about having communications with the staff when they don't reveal their true interests in the proceeding, and that's different than this with respect to giving notice and providing notice.

I don't think that any other party should be burdened with any kind of stigma or penalty in a proceeding because they don't notify these people who have kept their interests secret. And that's shame on those people and not shame on the responsible participants like, you know, Gulf Power, and Tampa Electric, and AT&T who are here today, and many others. That's not the issue that we are concerned with. We fully agree with Mr. Stone that the rules should be as sharp as possible, but, you know, we all share that same concern about the people that don't reveal their interests. And anything we can do to help that in the rule, we support.

MR. HATCH: One final quick comment, Samantha. Line 19, where you have taken out the old historic language of matters not concerned with the merits of the case, that was the language that allowed you to say hello or good morning in the hallway, or if you bump
into your neighbor in the grocery store, and they just happen to work for the Commission, that you don't have to turn away and shun them.

**MS. CIBULA:** And that might be something that we could move to more at the front of the rule, the general, and then we'll think about maybe putting all of these exceptions together, too, so it will be in one place. But that is something we will consider maybe putting back into the rule.

Any addition comments on Subsection 3?

Let's move to Section 4.

**MR. STONE:** It's extremely short.

**MR. HATCH:** And it kind of lends itself to the punchline of you can't have impermissible communication except when it is permitted.

**MS. CIBULA:** Okay. Then we will move to Subsection 5. Hearing none for that section, we will move to Section 6.

**MR. STONE:** This is another one of those areas where it's difficult to interpret and know -- and it's the interaction of Section 6 with Section 4 and the definition of impermissible communication. Section 6 seems to define a cure for what would otherwise be an impermissible communication, but it's an after-the-fact cure which makes it difficult for, I think, the staff to
understand whether or not a communication at the moment it is taking place is permitted or not permitted. And it's that type of instantaneous decision-making that we are concerned about that creates the chilling effect that will impede the efficient flow of necessary, appropriate, and legitimate communications, and therefore drive up the cost of regulation.

MS. CIBULA: I think this subsection does do that, and I think -- I guess maybe why we had it in two sections, and maybe this is something that we will look at, is that we wanted to, you know, have an affirmative statement that, staff, you're not supposed to do this. But if it does happen, there is a cure, and maybe we can put that in that subsection. But we did want the, you know, staff to be on notice that they weren't supposed to do certain things, even though there is, you know, a way that you could fix it if it did happen.

MR. REHWINKEL: Yes. I think Mr. Stone raises a good point; but, nevertheless, I think the way you phrased it is correct is that Section 4 states the rule, and Section 6 kind of deals with the pragmatic fallout of what happens if something happens. And a lot of times these communications that are governed by 6 are, again, not evil, they happen in the context of hearings where information needs to be shared and the party that
shares it does so in an effort to do the right thing, and doing the right thing sometimes means that you make sure that everyone else knows in a timely fashion so that their rights are not impacted.

And I think lately in the hearing process, et cetera, we have seen this kind of process work out very well. And I think you should have something like this in the rule. We had some language in a prior set of comments that said that nevertheless, this should not cure an impermissible communication. And our purpose in doing that was to keep this type of codification of the way that people practice today from becoming a loophole.

These communications should be the rare exception and not the rule, and people should not shape their conduct to fall within Subsection 6. It should be something as kind of a safety valve or relief when communications need to occur, and we think that's a good thing. The bottom line is this rule cannot impose penalties on parties, but it should be a guide for how conduct occurs in the development of the process that leads up to the Commission's decisions.

And I think any court that looked at how things were done would look at how people abided by these processes in evaluating whether procedural due process was accorded or not. So we wouldn't -- we would
urge you to kind of hold the line on this, and any kind of fine-tuning we would be supportive of, but I think this is definitely needed.

MR. HATCH: Just an observation. At a very practical level, I agree with Mr. Rehwinkel. But it simply begs the question to the logic the way the rule is structured. You have created an absolute, but with an absolute awareness that the absolute will never be absolute, and, as Mr. Rehwinkel characterizes, for very good reasons. You kind of have to structure your rule differently to accommodate what you know is going to happen for very good reasons, but then say it's impermissible, but it's okay because it was for a good reason. That kind of logic ends up leading you to places you don't want to be.

MS. CIBULA: I think what we were trying to accomplish is that we are trying to say it's impermissible, understanding that sometimes through no fault of your own, you know, maybe an oral communication will take place and that we didn't want to put anyone in a bad situation through no fault of their own. Say they picked up the telephone, and suddenly someone on the other line is saying something, and there's no way that you can know that before you picked up the telephone.

MR. HATCH: And I don't disagree with any of
that. I mean, I really do agree with Charles; I do.

**MR. REHWINKEL:** I think the key is here is that it does require notice. And you didn't adopt our language, and that's fine, about it doesn't cure, et cetera. But I think that you need to keep the notice thing in here, and, you know, I think the time frames are appropriate. There's a certain amount of subjectivity here, but I think it's the best we can probably do without trying to define every possible scenario.

**MS. CIBULA:** Any additional comments on Subsection 6?

**MR. HATCH:** Just a quick question. When you say in Line 11 "or decision-making point," is there a particular reference that you had in mind for that?

**MS. CIBULA:** I think we used the comments that we had in a prior proceeding, but we will look at that and maybe we need to clarify that.

**MR. HATCH:** I'm not sure what that means.

**MR. REHWINKEL:** Well, I think that may have been language that we suggested. I'm not sure. But, you know, you might have a rate case that culminates in a hearing, but you'll have several what I will call decision-making points between then that might be, you know, interim, or you might have a hearing on a matter
that's really before the ultimate hearing. Or you may
have a prehearing conference or a decision by the
prehearing officer on a procedural matter. I guess
those are all hearings, but we did not want the language
of hearing to be just the penultimate hearing on the
matter itself, because there are other -- there are
other points where the Commission makes decisions in a
docket. There are motions that are decided by the
prehearing officer, maybe even just based on the
pleadings without a hearing itself.

MS. CIBULA: Well, we'll look into maybe
figuring out a way to clarify that. Any additional
comments on Subsection 6? Let's move to Section 7.

MR. REHWINKEL: On Line 20, Samantha, that
phrase you have, "Any matter at issue in a proceeding,"
et cetera, that may be something that just occurred to
me that could be utilized in the interested person
definitional language back on Page 4. Just a
suggestion. I think there is some parallel benefit to
that.

MS. CIBULA: Okay. We'll look at that.

MR. BEASLEY: Charles, you're suggesting make
it apply to interested persons, as well?

MR. REHWINKEL: Yes.

MR. BEASLEY: Sure.
MR. REHWINKEL: I think that goes to Jeff's concern about the open-ended nature of that definition, so that's some language that you already have in your proposal that may work there. It kind of gets to where our language was going.

MS. CIBULA: Any additional comments on Section 7? Let's move to Section 8.

Hearing no comments for Section 8, let's move to Section 9.

MR. HATCH: I'm not quite sure how this interacts with some of the things that are done in the sense that, for example, our price basket filings that we make every year under the price controls under 364, they are typically not docketed, I believe, so technically the rule wouldn't apply, but it would be a staff communication. But I'm just not sure, because even where it's undocketed Public Counsel gets notice, but all the information in our price basket filings basically is confidential cost information that we use to justify it, so it would be confidential and all that kind of stuff. I don't know how this all interacts with that, tariff filings, all that sort of stuff.

MS. CIBULA: This section was supposed to capture the undocketed matters that there were meetings with staff occurring on issues that interested persons
might be wanting to come and participate at that meeting. And right now we have it pertaining to changes in rates, because we heard at the previous workshops that this was one area that people were concerned that if interested persons are meeting with staff about, like, these types of matters, and there is no docket, they would want to know about it. And we are doing that right now, and it is almost codifying what we are doing currently about putting the meeting notices on our website and giving copies of the meeting notices to OPC, and that's what we are trying to capture here.

MR. HATCH: This is one area where I generally really don't condone trying to carve out industries, particularly in your procedural rules, because everybody ought to have the same operating rules. But particularly in my price basket filing process, I mean, if you want to provide notice, that's fine, but I have a statutory right to raise my prices so much. And the only consideration -- it would be a change in rates effectively, but the only consideration is whether it falls within the limits in 364. Providing notice to everybody, they couldn't be there because, really, the price basket meetings, if there are any, are dealing with cost information that is confidential anyway. So I don't know if you want to try and consider some specific
carve-out for that kind of stuff or not.

And I understand your concern about, you know, negotiating rates in the absence, but in our industry that's a whole different question these days.

MS. SALAK: It was my understanding -- and I will have to ask OPC -- it was my understanding from previous meetings that the concern on this actually had to do with energy and maybe water and wastewater, but did not deal with telephone.

MR. REHWINKEL: I was just talking to Mr. Kelly about that. I think that's a large part of where our concern lay. I don't know that it would be appropriate to have a blanket carve-out for telecom, but certainly I think Mr. Hatch raises some practical considerations that we probably would not object to working out, you working out with the staff. It's definitely energy and water and wastewater where our issues are.

MS. SALAK: So I think that leads to, Mr. Hatch, if you have some language that you could give us.

MR. HATCH: I knew that was coming.

MS. CIBULA: Any additional comments on Section 9? We'll move to Section 10.

Hearing no comments on Section 10, we'll move to Section 11.
MR. HATCH: I have a question on 10, I'm sorry.

MS. CIBULA: Okay.

MR. HATCH: Line 21, it's the prosecutorial role in a license presentation. This may be quibbling, but technically the Commission doesn't issue licenses, but just a thought.

MS. CIBULA: We'll look at that.

MR. HATCH: 120 is geared toward licenses, and it talks about licenses. Certificates by definition under 120 are licenses, but we don't issue licenses around here. What you really want to do is somebody that doesn't work here that reads these rules has a clue about what's going on.

MS. CIBULA: We'll look at that.

MR. REHWINKEL: This is probably language that was from the Cherry case, right?

MS. CIBULA: Correct.

MR. REHWINKEL: They probably characterized it that way.

MR. HATCH: It could very well be.

MR. REHWINKEL: Yes.

MR. HATCH: Yes, the prosecutorial stuff came out of Cherry.

MS. CIBULA: Any comments on Section 11?
Hearing none, does anyone have any overall comments they would like to make?

Well, I guess the next thing is then the next steps. Like I said earlier, we would like post-workshop comments, and even if you are not here today participating, we would still welcome post-workshop comments from anyone who would like to submit them. We would highly appreciate it, if you do have comments, to give us alternate rule language that we could actually look at to review.

And the court reporter said it's going to take two weeks to get the transcript, so I thought maybe two weeks after that date -- well, that's going to wind up being Veteran's Day. How about having comments due November 12th? Does that work for everybody? Okay. The date will be November 12th.

**MR. STONE:** Well, let me just say, the only concern I have is that we are entering -- for our industry, we are entering into the cost-recovery hearing phase, and there is an awful lot of attention being devoted to that for the next several weeks. We recognize that two weeks from now getting the transcript we will be in the midst of the hearing and hearing process for the cost-recovery hearings, and so if we could, perhaps, have at least an additional week, that
would be appreciated.

**MS. CIBULA:** Okay. Well, how about

November 18th, then? The comments will be due

November 18th. And you can submit those comments
directly to me. You can send it by e-mail to

scibula@psc.state.fl.us, or you can submit them to the

Commission and they'll go into the undocketed file. And

we'll try to post all of the post-workshop comments on

the website once we receive them, as well. So comments

will be due November 18th.

Any additional comments before we adjourn?

We're adjourned. Thank you.

(The workshop concluded at 10:25 a.m.)
STATE OF FLORIDA )
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 28th day of October, 2010.

JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

FLORIDA PUBLIC SERVICE COMMISSION