BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. UNDOCKETED

JANUARY 1992 GRAND JURY
REPORT AND RULE 25-22.033,
FLORIDA ADMINISTRATIVE CODE,
COMMUNICATIONS BETWEEN
COMMISSION EMPLOYEES AND
PARTIES.

PROCEEDINGS: RULE DEVELOPMENT WORKSHOP

DATE: Tuesday, November 24, 2009

TIME: Commenced at 9:30 a.m.
Concluded at 12:22 p.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
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FLORIDA PUBLIC SERVICE COMMISSION
PROCEEDINGS

MS. CIBULA: Pursuant to notice, this time and place has been set for a two-part staff workshop on the 1992 Grand Jury report and Rule 25-22.033, Florida Administrative Code.

Welcome everyone. I'm Samantha Cibula. I'm a supervisor in the Commission's General Counsel's Office. Here with me today are Beth Salak, Director of the Commission's Regulatory Analysis Division, and Tim Devlin, Director of the Commission's Economic Regulation Division, and Cindy Miller, a Senior Attorney in the Commission's General Counsel's Office.

As most of you are aware, the transparency and integrity of the Commission's regulatory process has come under scrutiny. At its September 15th Internal Affairs meeting, the Commission discussed ideas on how to regain the public's confidence in the Commission's process. At its October 5th Internal Affairs meeting, the Commission approved an action plan. As part of that action plan, staff was directed to hold a workshop to discuss the 1992 Grand Jury report which addressed enhancing the integrity of the Commission's regulatory process, and Commission Rule 25-22.033 pertaining to staff
communications with parties. Copies of the Grand Jury report and the Commission communication rule are included in the agenda as Attachments A and B.

Our goal today is to gather input on how to ensure the most transparent, fair, and workable regulatory process possible. Extra copies of the agenda for the workshop are on the table to my left. For those who may be listening in to this workshop, the agenda is available on the Commission's website. There is a sign-in sheet on my left. We would like everyone to fill out the sign-in sheet so that we will have a record of your attendance today.

Also, all speakers should use microphones so that the court reporter and all those who may be listening can hear you. Everyone is welcome to submit written comments, just something to keep in mind.

As stated in the notice, this is a two-part workshop. Unless there are any preliminary questions, let's move to Part I of the workshop.

Seeing no preliminary questions, let's move to Part I of the workshop in which we will be discussing the 1992 Internal Report of the Statewide Grand Jury. The 1992 report identified five issues pertaining to the manner in which utilities
communicate with the Commission. Those issues are identified as A through E in Part I of the agenda.

The interim report also included recommended changes to the Legislature. We attempted to include these recommendations in the discussion points under each section of the agenda. We are planning to proceed section-by-section through the agenda, but also feel free to raise any additional discussion points or comments in any sections that you might have.

Are there any questions before we start?

Okay. Let's begin with Discussion Point A in Part I of the agenda, which is the current prohibition against ex parte communications in Section 350.0424 of the statutes applies only to Commissioners. That was an issue raised in the Grand Jury report. The discussion points are does Subsection 5 of the rule -- of Rule 25-22.033, Florida Administrative Code, which prohibits Commission employees from directly or indirectly relaying to Commissioners any ex parte communications sufficiently address this issue. And also, if not, what amendments to Rule 25-22.033, Florida Administrative Code, should the Commission consider implementing to address this issue. And that might overlap into Part II of our
workshop agenda.

And I guess I will start to my right here. Mr. Kelly, do you have any comments?

MR. KELLY: If I could. If I could have your indulgence. What I would like to do is just make some general overall comments.

MS. CIBULA: Okay.

MR. KELLY: About how I view today and the workshop, if that would be okay, rather than sort of going line-by-line.

MS. CIBULA: That's fine.

MR. KELLY: I would be more than happy to do that at the appropriate time. And I can do it now, I can do it later, whatever your pleasure is.

MS. CIBULA: Let's start now.

MR. KELLY: Okay. Thank you. I appreciate that.

And first off, I want to thank the PSC for holding the workshop. I think this is a great opportunity for us to offer comments and participate in the process, and I truly believe that the only way we are going to accomplish our goals is for everybody to participate and offer comments. And to that extent, I can tell you that I have challenged my staff to come here today and offer comments, and
some of them may be consistent with mine, some of them may not, but that's okay. I think that is why we are here today, and that is to brainstorm and look for new ways, new ideas, all in an effort to improve the process, make it more open and transparent. And I think not just to us that deal with this every day, but certainly more open and transparent to the public, and do our best to remove any appearances of illegal or unethical conduct in communications.

I want to emphasize that this is a brainstorming opportunity. And I challenge my staff to think outside the box, and I'm going to throw out some ideas in a little while. Some of you may want to throw something at me, that's okay. Again, I think that's why we are here. I want to emphasize that that doesn't mean anything that I may comment on doesn't mean you, or we, or anybody that's in the process is doing something wrong. I'm a firm believer that there is more than one right way to accomplish our tasks, and I think we all agree that what we want -- and to repeat a little bit of what you said, is we want a fair, open, and impartial process with respect to the regulation of utility issues that fall under the
PSC's jurisdiction.

Again, I think this is a great opportunity for us to talk about ways to look to changes to meet the challenges of the future. More importantly, I think we really, really have got to restore the public trust and the public confidence in the Public Service Commission and the activities that you undertake.

I want to emphasize that I don't think we should limit or restrict any suggestions or ideas today. This is a workshop, and I certainly want to challenge everybody, my fellow intervenors, the utilities, everybody to please share with ideas no matter how off the wall or crazy they may sound.

Specifically, I want to mention the 1992 Grand Jury report, and I know that is where we started today, and I think it is a great place to start. I think each of the items that were recommended in the report should be strongly considered for implementation. I'm not going to go through them all right now, but certainly a couple of ideas that we support is having ex parte prohibitions apply not only to the Commissioners, but their direct staff.

The idea that communications between
utility representatives and any PSC staff concerning a regulatory function should be open and advance notification given with consideration given to the exceptions that are mentioned in the Grand Jury report, such as the emergencies and so forth. And I think hopefully at the end of the day, not today, but at the end of this process that we can come up with some definitive rules to the extent not currently promulgated where we can develop -- that can be developed regarding notice of advanced meetings and conference calls that's not overly burdensome, but is very open, again, and transparent to the public.

I would also submit that the recommendations that were submitted by former Commissioner Katrina McMurrian should also be reviewed and considered, which some I will mention here in my following remarks, but I think that Commissioner McMurrian did a very, very good job of outlining some challenges that both staff and Commissioners face and some ways to meet those challenges.

My first recommendation would be that the PSC Commissioners should be treated and act more like the judiciary. I stated this recently in a
House committee meeting. I am not recommending and will not recommend that all the Commissioners be attorneys. That is not what I'm saying. But I think that they should operate more like the judiciary, and I would recommend that the PSC take a look at the rules that govern how the administrative law judges that work at DOAH, those particular rules.

For the 20-something years that I have been a lawyer and have done quite a number of DOAH cases, I don't recall any problems, scandals, appearances of impropriety that have arisen at DOAH. I'm sure they are there, I just can't remember any. So I think that would be a great place to start to see what kind of rules that they have in place for the DOAH Administrative Law Judges.

Repeating, I think, again, the same rules regarding communications should apply not only to the Commissioners, but also their direct staff. There should be no ex parte communications between Commissioners and their direct staff at any time concerning any issues that falls within the jurisdiction of the PSC. I think that all Commissioners -- excuse me, all communications to Commissioners and their direct staff should be in
writing and copies immediately provided to all
parties in docketed matters.

And with respect to undocketed matters,
the communications should be immediately posted and
maintained on the PSC's website in a very easily
identifiable location. And I'm going to talk a
little bit about using the website here as I get
near the end of my remarks.

Secondly, I would strongly suggest that
the exemptions to prohibited ex parte communications
for rulemaking and declaratory statements be
repealed. I think that is something that the
recommendation should be made to the Legislature.
And I am openminded if somebody can tell me, but I
don't see why ex parte communications should be
allowed for rulemaking and declaratory statements
any more than they are for cases that are pending or
a docketed matter.

Although I'm not going to offer any
specific changes today, I do believe that the rules
regarding ex parte communications should be
revisited. In those situations where Commissioners
and/or their direct staff attend conferences,
educational meetings, seminars, whether they are a
panelist or an attendee, I think it should be very
well laid out and clarified so that they understand exactly what the rules are, and then us that are parties know what the rules are so we know how to conduct ourselves in those situations.

Okay. I want to turn now to what I have said a couple of times now as thinking outside the box. And this is thinking outside the box from my standpoint. I have been Public Counsel now for a couple of years, and something that I would like to recommend be considered is changing the way hearings are conducted and amending the, quote, staff recommendation process. I think it should be done away with. And here's some suggestions that I would offer.

Let me first say these suggestions are not offered in any way, any way whatsoever concerning the quality of the work that you guys do, or any of the PSC staff. That is not what I'm getting at. These are offered to improve both the perception and the integrity, I think, of the PSC process in the eyes of the public to restore the public trust and public confidence.

So, please, none of these are meant toward the quality of work you guys do. I can tell you the two years that I have served as Public Counsel, I
think the quality of the staff is superb and is superior. But I would recommend that we eliminate staff making recommendations. And here's two options that we can consider. The first option, and I'll use, say, a rate case as an example, but this would apply equally to any type of docketed matter.

You handle it just like you normally would with your discovery, your depositions, et cetera, et cetera, up until you conduct -- I think you call it the technical hearing, or the administrative hearing, the trial. And I would recommend that the PSC continue to have what I will call their litigation or trial staff participating, but participating in a little bit different manner. I think the trial staff should participate just like any other party. They should be required to submit a position on the issues as any other party. They would be allowed to cross-examine, bring in witnesses, act just like any other party, meaning our office, FIPUG, AARP, the utilities, whatever. They would be allowed, and all parties would submit post-hearing briefs similar to what happens today, but the staff's brief would be given no more or no less weight than any other party.

At this point, I think there should be a
separate advisory staff of the PSC, separate
advisory staff to prepare legal and evidentiary
analysis for the Commissioners. The analysis -- and
I'll repeat this -- would not contain
recommendations or decisions on each of the issues.
Depending on what process evolved, they could --
certainly they need to do a legal analysis, and what
I'm calling an evidentiary analysis of the
information, the evidence that's presented in the
record.

I certainly have no problems with allowing
the advisory staff to lay out options with two
caveats. I don't think one option should be favored
over another. And, secondly, each option should
include the impact that would result if that option
was selected. But I want to emphasize, again, no
recommendation, no decision on a particular issue
would be made by the advisory staff.

Now, when I say this, I believe that
certainly the Commissioners are the ones that are
vested with the power, more importantly the
responsibility to make the final decisions.
Therefore, I think it would be a better process
whereby the staff do not make a decision, a
recommendation, but that the Commissioners get the
information, review the record as they do now, the legal and the evidentiary analysis of the advisory staff, and then when you get to the agenda, if there are questions, issues to be discussed, it's done in this open forum for everyone to see. And more importantly, for the public to see and to hear the questions that come out.

I know that a lot of times -- and I'm just as guilty of this as anybody, you get involved in a process and we use initials instead of spelling something out. We use terms of art that make it very difficult, I think, for the public to perceive and understand what we are talking about. And when we go to an agenda or some other decision-making hearing, and you speed through it, we may understand, we, the people in this room, may understand somewhat what's going on, but I don't think the public does. And I think that is a very, very important aspect that we have got to get back to. Because I think the overlying concept that I'm suggesting is that the more we open and make the process transparent to the public, then the more they will understand, the less confusion there will be, and I think the more the public will appreciate the job that the Public Service Commission and the
Commissioners have, and have to do.

To carry on a little bit with my thoughts, the trial staff in my scenario would have the same ex parte prohibitions on them as do all the other parties. They would not be allowed to discuss the case with the Commissioners, their direct staff, or the advisory staff. It would be the advisory staff that would engage in any communications with the Commissioners outside of any kind of an agenda hearing.

And I also question exactly what is the need, and I'm asking this question because I don't know, and not that you have to answer me right now, but I don't know exactly what is the need for staff when they are preparing the legal or evidentiary analysis, and today they are preparing also recommendations, although I am obviously suggesting we do away with that, what is the necessity of meeting with Commissioners one-on-one until the process is open in this room and all five Commissioners are sitting up there. And, again, I'm suggesting this because I think it will go a long way to making the process more open and more transparent, again, not only to us, but to the public.
The second option I don't favor as much, but I throw it out there just thinking about it, would be to conduct the -- have whatever case, again, for example, a rate case. You have a technical hearing with the trial staff participating just like I suggested in Option 1, but in this situation you have the staff -- excuse me, the parties including trial staff would issue proposed recommended orders, much like the DOAH process where they would do a legal analysis much like their briefs to do today along with findings of fact which must have citations to the record place where that particular finding of fact is supposedly justified. And then the proposed recommended orders would go to the advisory staff and then to the Commissioners.

But I would emphasize that the same ex parte prohibitions as I suggested under Option 1 would still apply to the trial staff and to the advisory staff. In the thing that I'm suggesting, this due process, specific rules would need to be developed to structure the lines of demarcation between the trial staff and advisory staff. I would suggest to you that no staff member can serve in both capacities. You would either have to be part of trial staff or part of advisory, and I think the
reasons are very apparent.

As I mentioned, I'm not sure why you would have any pre-agenda, I will call them pre-agenda hearings between advisory staff and Commissioners. I think any questions that a Commissioner may have could be submitted to the General Counsel's office as a, quote, heads-up to be answered during the final agenda hearing.

And I think that would be wise from two aspects. One, everybody would get the benefit of the question and the response. All five Commissioners at the same time as well as the audience. And remember, the audience is not just us sitting in the room, but it's everybody that is watching the television or listening on the Internet.

I think rules would need to be adopted to specify exactly what the purpose of the trial staff should be during the process, both prehearing and at the hearing. And as I have suggested, my idea I'm throwing out is for them to operate just like any other party. But it needs to be clear that the General Counsel would need to set up separate offices between trial attorneys and the advisory attorneys. And I think you have got to come up with
a division of the attorneys who are the legal
advisors to the Commissioners, who I'm calling
advisory staff, and the attorneys who participate as
part of the trial staff. And I would not have them
be advisors to the Commissioners, because I think
that would put them in a very awkward position, and
certainly there could be an appearance of undue
influence.

Two or three more real brief questions,
and then I'll finally shut up here. I think that
there should be some consideration in submitting
some proposed legislation to the -- to be adopted
regarding the statutory guidelines that you are
under to issue a decision. I think that we ought to
look closely at the eight-month clock. I haven't
been around that long, but I'm not sure why we need
the eight-month clock. The 12-month clock I have no
problems with. That's more than sufficient, but the
8-month clock, we certainly see that this past fall
with the size of both the Progress Energy and the
Florida Power and Light rate cases, with everything
else going on it really presented, I think, an
insurmountable challenge for you guys, for staff,
and the Commissioners. And so I would suggest that
you take a look at maybe doing away with the
eight-month clock and just leaving it a strict 12-month deadline.

I think we need to clarify -- and if it is already a clarified in a rule, then I apologize -- clarify that the clock starts to run when the completed Minimum Filing Requirements, or MFRs, are actually filed. And I would also suggest that we may look at what I understand the five-month clock for PAA, Proposed Agency Action decisions. I think that it sometimes puts an undue burden on you guys, you know, strictly speaking, the PSC staff trying to turn something out in a five-month period.

I think the overall goal, and I think you would agree with me, is to come up with a well-informed reasoned decision that is supported by the evidence. And I think sometimes we get carried away with clocks. And I don't say this -- I know that the utilities need these in place, and I certainly respect that and agree with that, but I think we might want to look and see about moving some of these deadlines a little bit longer because I think sometimes what we end up doing is putting the clock, if you will, the deadline as a priority instead of what I think our priorities should be, and that is coming up with a good solid supported
decision.

One thing that I'm doing right now, and I would suggest that it might be a good idea for PSC to do, I am currently surveying my fellow members of the National Association of State Utility Consumer Advocates, NASUCA, about how their states do this process. Some of the things that I have suggested earlier are very consistent with Pennsylvania, New York, and Indiana. Not perfectly, but somewhat. And today I am still getting responses back, but I would suggest that you might want to survey how other states conduct proceedings. And let's maybe plagiarize some of the good, and certainly let's don't plagiarize the bad, or that we perceive as bad.

And the last thing that I'll mention is I think that as Commissioner McMurrian mentioned in her remarks, I think we have got a great opportunity here to use the Internet in a little better fashion. Those of us that deal with the PSC website daily, we know how to navigate it. But we get a lot of calls in our office, and I think that the average consumer finds it extremely hard to navigate and get around. And what I would suggest, along with some of the ideas that I have mentioned, along with some of the
things I think will come up today is we put some
very easy to understand and see links on the home
page. For example, notice of meetings. Put a link
on the front page.

I think the calendar is a little bit too
hard to navigate for some folks. It has a lot of
initials there, PH, and if you don't know that means
prehearing, you don't have any idea what it means.
So I would suggest maybe a link on the front page
that simple says notice of meetings, and you click
on it and it chronologically gives you everything
that are meetings that are set at the PSC. Maybe
one that says notices of hearings if you want to
separate the two.

Correspondence. I know there are some
suggestions in both the Grand Jury part and
Commissioner McMurrian's suggestions about
documenting certain meetings and so forth. So if
you have correspondence that doesn't apply to a
particular docket, or even if it does apply to a
docket, it's very easily -- if you maybe set up a
separate link that maybe is called correspondence or
something like that. Again, I think your website is
very good, and it's comprehensive, but I think it
sometimes can be difficult for the average consumer
that doesn't work out here like we do day in and day out to navigate.

So I really appreciate your indulgence. I hope that what I have done today has -- I've said some things that are thought provoking. And nothing I have said is written in stone, and it's not meant to be. It is meant to throw this out and hopefully get a dialogue going that we can try to make the system more open and more transparent. And, again, give the consumers out there, the ratepayers confidence in the job that you do and in the decisions that come out of here. So, thank you.

**MS. SALAK:** Mr. Kelly, I'd like to just ask you a few questions to see if I have your concept correct.

**MR. KELLY:** Sure.

**MS. SALAK:** The way I understood it your suggestions only dealt with items that were going to hearing. I mean, staff would not be split for a PAA, staff would not be split for rulemaking, staff wouldn't be split for a dec statement, per se, only for --

**MR. KELLY:** Great question. I hadn't thought that much down the road. Now, certainly for staff-assisted rate cases, that just popped in my
mind, certainly that would require a tinkering, if you will, because in the staff-assisted I know that -- certainly thinking of water cases, the staff have to work more one-on-one, if you will, with the utility and their officials.

But the PAA process, I don't know that there -- I don't know that that should be treated any differently. And, again, I'm saying this thinking off the top of my head. I don't know that that should be treated any differently than any other proceeding unless folks can give me a reason why. I mean, that's just my initial comment on that.

But, again, my biggest thing, I think, is doing away with the recommendations and coming up more with an analysis process, maybe with options, and then let the Commissioners make the decisions in an open proceeding up there more than adopting a recommendation. Did I answer everything?

**MS. SALAK:** Well, just another follow-up question. You mentioned that your second option was to have proposed orders given to the Commission and then you said that the advisory staff would put them together. That is what I understood you to say.

So what would they do with them? They
would just say here are four proposed orders, or
would they compare and contrast with what is in
them, or --

     **MR. KELLY:** Again, I threw it out there.
We had a staff meeting Friday and we threw a lot of
these ideas around, and we weren't exactly sure of
that, either. I mean, if that's something that the
Commission would want to pursue, in other words,
make it more aligned like what I will call the DOAH
process, I think there's a lot of options.

     You could, one -- again, I'm thinking of
these off the top of my head. One, it could be just
a matter of taking all of the proposed recommended
orders and assembling them and giving them to the
Commission. You could have it where the advisory
staff go through them and do a legal analysis as
well as some kind of evidentiary analysis of the
proposed recommended orders. Admittedly, I'm not
sure exactly how that would work.

     You know, I got the idea a little bit from
Pennsylvania, and not that I like Pennsylvania's
process altogether, but one of the things they do is
they have their initial hearing, their technical
hearing in front of an ALJ. The Administrative Law
Judge then prepares a proposed recommended order.
That goes to the Commissioners and their advisory staff, but it is only one, okay. And I think they call it a recommended decision.

I don't know that I'm recommending that we have a two-step process with an ALJ, but at least I wanted to throw out the idea to see what people may think about, you know, maybe changing the briefs up differently. Instead of the briefing we do now, maybe you do it in the form of a proposed recommended order like you do at -- like you are required to do at DOAH, which has -- and I apologize, for those who are not familiar, you have your legal analysis or legal brief, then you have specific findings of fact that the parties to a DOAH proceeding are required to lay out. And they are required to also cite a particular page or something in the record that supports that finding of fact. It is a little bit more detailed, and I don't know how the other parties would feel about it, but, again, it is just throwing out an idea to consider.

**MS. SALAK:** Just one more question.

**MR. KELLY:** Sure, fire away. That's why I'm here.

**MS. SALAK:** You were talking about splitting staff between trial staff and advisory...
staff. Would it be a permanent split or would it be
on a case-by-case where depending on the case it
would depend on -- today I could be trial staff,
tomorrow I could be advisory staff.

**MR. KELLY:** I think that that -- I don't
have an answer. I think that that is something that
I would love to hear you all's input. If this was
an idea that you -- and honestly, I'm not looking
for an answer from you today. I don't think you
should give me an answer today. I think these are
things that we all need to go back and chew the fat,
so to speak, and see how it digests. But that's a
great question. I don't know. I just know that
once they are identified for a particular case, then
the lines of demarcation have got to be clear.

**MS. CIBULA:** Thank you very much, Mr.
Kelly. We appreciate any new ideas that anyone can
give us, and we would also encourage anyone who
wants to comment on Mr. Kelly's proposal to submit
comments on that, as well.

I guess right now maybe we could flesh out
your issues a little bit more as we go
section-by-section through the agenda. Then unless
someone else has some comments they want to make
right now on Mr. Kelly's initial proposal.
Mr. Moyle.

MR. MOYLE: Well, I have some comments I'd like to make, and they share some similarities with Mr. Kelly, and I think they are of a general nature. So at the appropriate time I'd like to make those.

I will comment briefly on the notion -- I mean, I think it is an intriguing idea that he has proposed not having recommendations, and I think it warrants further consideration and exploration. And I will tell you in my comments today -- Jon Moyle with Keefe Anchors Gordon and Moyle law firm -- you know, are the result of a lot of thought on this. And I have been fortunate to be practicing over here for a number of years, and am familiar with the process. It is a unique process, and I'll get into that in my general comments.

But with respect to the recommendations, I have often thought if you were a Commissioner and you had a different view of what's in the recommendation that, you know, it's probably not an easy task because the recommendation is prepared way in advance and it has back up and authority, and here are the facts. And if you have a disagreement with that, it is probably not an easy thing to do sitting up there to, you know, kind of undue it or
move it in a different direction.

I know it gets done, but it doesn't get
done that often. And the notion of a
recommendation, I bet if you did a statistical
analysis that -- and I haven't done one, but I bet
that the staff recommendations are probably adopted
in excess of 85 percent of the time. But, if I
could, I mean, your pleasure, you are chairing the
meeting, as to whether you like my general comments.

MS. CIBULA: Sure, go ahead with your
comments.

MR. MOYLE: I was admitted to the Florida
Bar in 1987, and have practiced in many
jurisdictions over many years, and that includes
federal court, circuit court, the Division of
Administrative Hearings. And, you know, essentially
while they all have different jurisdictions, they
are charged with determining cases, deciding;
disputes. And in thinking about points to make, I
mean, I see the rule that the PCS plays as not
markedly dissimilar from those tribunals in that
findings of fact have to be made and then you have
to apply law to those findings of fact.

It's very similar to what a federal court
judge would do in a bench trial. If it's a jury
In the trial, the jury would make the findings of fact and the judge would apply the law. Similar with a circuit court judge and similar with a DOAH judge.

And in thinking about this, and I was not conversant or that familiar with the 1992 Grand Jury report, and in reviewing it in preparation for these comments, I was kind of struck that, you know, approximately 18 years ago the Grand Jury got cranked up and did an investigation and came to some recommendations and some conclusions that here today we're having essentially the same conversation, and it relates to ex parte communication.

I mean, if you read, you know, the conclusion of the Grand Jury, the first paragraph talks about closing gaps in the ex parte communication section of 350. I think that one of the best things that this Commission can do, or the legislature has to be done is addressing the ex parte communication issue. And in thinking back, you know, lawyers are officers of the court, and members of the bar, and have ethical guidelines, but you would never more call up a federal judge's aide, or a circuit judge's aide, or a Division of Administrative Hearing Officer's aide, and say, hi, I'd like it set up a meeting to come talk to you.
about an issue in the case, a substantive issue in
the case. I mean, it's not done. The contacts are,
you know, we need to have a hearing, we need an hour
to argue this motion, and they are process and
procedural. And to me a huge disconnect in this
process is the role that, you know, staff plays in
receiving communications from parties that have
matters pending before the Commission.

And, you know, I appreciate sort of the
open nature of this. It is an informal process, and
I will just recount a little bit of a story. I
mean, we have been over here a lot of times, but at
one point in time -- well, I guess without going
into the specifics, you know, I think the rules --
the rules need to be clear so everybody understands
them.

I mean, you have lawyers in other parts of
the state that are trying to come up here and
represent somebody and they need to understand what
happens when the recommendation comes out. Is it
okay to go set up meetings with the aides of the
Commissioners and go talk to them and say, well,
here is all these problems with this, and here are
all these concerns.

Now, they advise the Commission on it, and
whether they are relating it by saying, well, Mr. So-and-so from Company X came in and has these concerns, or it's part of a recommendation that they are making, the Grand Jury report talks about directly and indirectly. I personally don't think that should happen. I think that should be an ex parte communication that should be prohibited as Mr. Kelly recognizes and represents.

But, if that is not the case, and it is going to be permitted, then I would argue you need to tell people that so that they know. Because, you know, I do some work over at the Legislature, and I know how that process works, but I don't think, you know, you should be lobbying recommendations at the PSC. I think that when you look at this that the ex parte should be extended and you need to send a clear message that this tribunal should be viewed by those who practice before it like a court, or Division of Administrative Prehearing proceedings, and you shouldn't have this murky gray area about ex parte. Well, does it apply to Commissioners? No. Does it apply to aides? No.

And I have some specific recommendations that I think are in need of some review, and some of them are statutory, because the 350, you know, 42,
and I don't know -- you know, I could ask the
question, but, you know, I'll point out, you know,
the ex parte with respect to Commissioners has some
room in it arguably that could be used by an
aggressive advocate to meet with Commissioners and
talk about the substance of their case, but before
it's filed.

And specifically, 350.042, ex parte
communications says no individual -- and I quote, 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. You know, I think that could be read to say,
well, if it is on day 93, day 95, is it a violation?
You know, I think a judge might say, well, it says
within 90 days. If you do it outside of the 90
days, you know, you are not violating the ex parte
communication rule. I don't think that's right.

I don't think that's proper to go in and
sit down with a Commissioner and close the door and
have a communication where you are previewing a case
that is going to be filed in 95 days or 110 days.
So I think that that is one area that needs to be
clarified legislatively to say that no ex parte
communication shall occur on a reasonably
foreseeable matter and make it clear.

Another thing over the years that I have heard is there appears to be an exception that says it doesn't apply in conferences or other meetings of an association of regulatory agencies. You know, I understand that may have been viewed as if there is a meeting of NARUC or an organization like that, and it's somewhere that there is a statutory reference, well, it's a conference of an association of regulatory agencies, it says this section doesn't apply to oral communications.

You know, again, I think that, you know, we can spend time working on the language and the words, but I think that the clear message that should be sent for this Public Service Commission to be a place where people have confidence that their case will be decided fairly based on the facts, and the evidence, and the arguments is to send a clear message that ex parte is not something that should take place at the Public Service Commission.

I don't think it should take place with the Commissioners, I don't think it should take place with the aides to the Commissioners, their chief aides. I think Mr. Kelly called them direct staff. You know, I recognize that it gets a little
more complicated as you get into daily issues that
may come up. A power plant goes down, or there is
something there needs to be some communication, but
I would suggest that may not necessarily be the
subject matter of a proceeding and those
communications probably can be permitted.

But I think it is somewhat incumbent on
practitioners to self police. I mean, like I said,
you would not call up a circuit court judge's
assistant and suggest that you set up a meeting with
the assistant so you could come brief them on a case
or talk about a substantive issue, and I think that
same standard should be, you know, adhered to here.

I think it is an opportunity. I commend
you all for taking the time to look into this, and
the Commission. You know, I was a little surprised
candidly to take a look at that '92 Grand Jury
report because, you know, the issues appear to me to
be the same. And I thought -- and if I could
just -- if you would indulge me just to read a quote
that I thought summed up a position very well and on
some of my thinking well were in the conclusion that
they said, "Individuals charged with responsibility
similar to those of a judge must conduct themselves
in a manner that exhibits fairness. A judge cannot
meet with one party alone to discuss an issue of importance if the judge is the final arbiter of that issue. Judges are required to avoid even the appearance of impropriety. Ex parte communication concerning a regulatory function with a representative of a regulated utility not only appears to be improper, it is improper. Moreover, using a third party to receive the prohibited communication does not remove the taint."

And this was in the conclusion of that Grand Jury report. You know, I think we can spend a lot of time about how to get there, and I think we should, but I wanted to kind of lay out some overarching points that I think should be seriously considered to try to make -- to improve the Commission. I mean, you have dedicated staff that work hard, you are professionals, there are a lot of things that somebody practicing law in the state of Florida, if you dropped them in here and said try a case, they would kind of scratch their heads and say I'm not sure I understand what's going on here.

I mean, you know, the points about staff and the role staff plays. Mr. Kelly, I think, has brought up an intriguing point about staff being separate from advocacy staff, and the first I heard
of it was now, and I want to reflect on it a little
bit more, but I think it is something that as we
have this conversation that we should give some
thought to.

And I also would indicate that, you know,
our firm represents a variety of clients in front of
you in different fact situations and in different
matters. I see this as an opportunity for
practitioners before you. You know, if clients can
understand and say, look, this is something that
collectively we are trying to make some solid
recommendations that make some sense, you know, that
we have wide participation from all of those
involved to try to constructively come up with some
good, sound, solid ideas based on sound thinking and
logic and looking at best practices. And, you know,
I have some specific suggestions. Maybe as we go
through we can have the dialogue, but I wanted to
kind of share those overarching thoughts. Thank
you.

MS. CIBULA: Thank you very much. And,
again, I would you like to remind people that
post-workshop comments will be welcome. So whatever
ideas you might hear here and you want to think
about a little bit more and submit your comments or
responses to those ideas, we would really appreciate that.

I think we have probably, you know, at least touched on discussion Point A. Unless someone else has something else they want to add to that, we can probably move to B, or if anyone else has any general comments they'd like to make.

**MS. SPENCER:** Good morning. My name is Leslie Spencer. I am with AARP. And I do not sit here this morning and profess to have the technical knowledge nor the expertise that many of the folks or staff here possess. I am here to speak on behalf of consumers, and I had planned to offer some general comments. I have comments that pertain to Part I, and then I can hold off on comments for Part II later on, if that is okay with you.

**MS. CIBULA:** That's great. Thanks.

**MS. SPENCER:** Okay. In light of the current economic recession that Florida and the nation has been facing, we have heard from many of our members, we have about three million members here in Florida. Many of those individuals are on fixed incomes and they are concerned with rapidly rising costs in all areas of their lives, housing, health care, prescription drugs, et cetera, and
utility rates. And they are very concerned about
their ability to afford future rate increases.

And because most of those members do not
have the wherewithal to formally intervene in a
contested case in front of this body, it is the
process itself that they count on to ensure that
they are indeed getting a fair shake.

PSC meetings are open to the public. They
are held with adequate prior notice and consumers
and others who represent the communities affected by
your decisions are given the opportunity to
participate in the Commission's proceedings. But
consumers are outmatched by regulated utilities when
it comes to representing their interests at
regulatory proceedings at this Commission.

The failure of this Commission to
sufficiently address ex parte communications places
the average ratepayer at a significant disadvantage
when it comes to influencing the process of utility
regulation. If residential customers lack an equal
footing or a real seat at the table in these cases,
then the hopes of a fair and equitable decision
rests at the very least with a process that is open
and subject to public scrutiny and accountability.
And that is why AARP is here in support of
strengthening the transparency and integrity of the regulatory process here at the PSC.

Recent events have placed a dark cloud over the Public Service Commission, eroding public confidence about ethics and accountability in government and the process. Steps taken today and in the future may help restore that confidence. So I would just like to make a couple of general comments about the 1992 Grand Jury report.

I do agree with a lot of the comments made by Mr. Kelly and Mr. Moyle regarding some of those recommendations that were made almost 18 years ago. The inclusion of staff in statutory prohibitions regarding ex parte communication, we support that. Although the subject is addressed in rule, there should be consistency between all prohibitions. I don't think you can ever be too clear or too concise about exactly what can and cannot take place between intervenors in a case, staff, and Commissioners.

Inclusion of staff in the statutory prohibitions would subject those individuals to the same guidelines and consequences regarding ex parte communication as Commissioners. Penalties for ex parte communication should also include when Commissioners or staff initiate or knowingly and
willingly receive ex parte communication. Current
statute also fails to address penalties for
utilities initiating ex parte communications. It
seems that currently those are addressed after the
fact, only after the fact.

And the inclusion -- we support the
inclusion of ex parte restrictions on the rulemaking
proceedings. As stated in the 1992 Grand Jury
report, rules promulgated by the Commission can have
a direct impact on ratemaking and, therefore, should
be included in ex parte prohibitions.

And finally, increased communication with
the Office of Public Counsel. As a representative
of Florida's citizens, the Public Counsel should be
provided with all information regarding
communications between the PSC and regulated
utilities. And I will hold further comments until a
later time.

MS. CIBULA: Thank you very much. We
really appreciate your comments and you being here
today.

MS. SPENCER: Thank you.

MS. CIBULA: Anyone else have any general
comments?

Mr. McGlothlin.
MR. McGLOTHLIN: Joe McGlothlin with OPC.

Yes, I have some comments that don't fall squarely within any one of the subsections in your outline here. And they do relate to the general subject of ex parte communications, but in a way that differs from anything you have heard so far.

As we think about the subject of ex parte communications on the merits, I believe there are two responses. The first of which is obviously they ought to be prohibited because on the face it's unfair to other parties. But there is another aspect, too, and the other response should be it is also unnecessary because the Commission provides a full and fair opportunity for a party to say everything the party wants to say in pleadings and in a public hearing.

And, so for that reason, I hope that this workshop and this process does not divorce from the consideration of ex parte communications and rules on this subject the related subject of how the Commission does business in public hearings, and are there ways in which the Commission can improve the hearing process and modify it to the extent that it does reflect a full and fair opportunity for a party to say anything and everything on the subject in the
context of pleadings and a public hearing.

And if there's room to fit some general comments on that into this workshop, I had just three or four observations to make on that subject, if you think it's appropriate.

**MS. CIBULA:** Yes, go ahead. Thanks.

**MR. McGLOTHLIN:** All right. There are three or four, and by way of quick background, these comments are critical of the existing staff and existing Commissioners, because the Commission has grown into a way of doing things over probably a couple of decades, and it's just the way things are done. But in recent cases, the staff and Commissioners have reflected on suggestions for improvements and have followed through on them.

And I have in mind OPC's comments on the way depositions are used or should not be used in hearings, and also improvements in the way the staff provides advanced notice prior to making large documents part of the record. So those are two recent improvements, and I think there are three or four others that should be entertained.

Proposition one, the parties opportunity to present evidence does not end with prefilled testimony, and there should be some opportunity to
address the Commissioners and the staff from the stand. Currently, and for as long as I can remember, there has been a one-size-fits-all approach to that. And let's take two very extreme examples. One witness has done a depreciation study, has 150 pages of testimony, and as many pages of exhibits, and is preparing to do that from the stand. He is provided five minutes.

Let's say another witness says in the last rate case order the Commission required us to do a study on this particular outage and report, and he has ten pages. He has five minutes. And I think one way the process could be improved at the level of the prehearing conference perhaps would be to have each party identify the scope and nature of a witness' testimony and propose a time allotment for that. That could be considered and ruled on by the prehearing officer. And so perhaps five minutes is appropriate for one witness and maybe 20 is appropriate for another. And obviously that's going to increase some time requirements on the direct testimony aspect.

But my second observation would have some hope of getting some savings in time on the other side of the coin, which is the cross-examination.
stage. For a long time the practice has been to say
to parties and the witness answer yes and no and
then explain. But if you think about it, if a
question is framed such that the answer is truly yes
or no, there should be no occasion for lengthy
explanations beyond that point.

I can't prove it, but I have a theory on
how that might have been started. And my theory is
this: At some point in a case a decade or two
decades ago, there was a witness on the stand and a
lawyer posed a question that perhaps didn't lend
itself to yes or no, but he pushed for that. And
the unfairness of that situation was obvious to
everybody, and the Chairman might have said, wait a
minute, let him explain. And so at that point in
time that was a lucid response. But I think over
time it has been turned into something else, and
that is the opportunity for witnesses to go back to
their prefilled testimony and launch into lengthy and
repetitive comments that go beyond any legitimate
need to explain and are, in effect, anticipatory
redirect.

And so that does two things, it really
gets in the way of the statutory right to
cross-examine and it also adds a considerable amount
of time to the hearing process. So if upon
examination we could come back and we could modify
the hearing process such that there is a more
realistic opportunity to present the prefiled
summaries and then a more careful limitation on the
ability of witnesses to interfere with the
cross-examination, then perhaps we might have the
same time requirement, but allocated more
appropriately.

The third observation is in the way issues
are teed up and incorporated in the prehearing
order. Obviously there has to be the exercise of
judgment and winnowing through parties' proposed
issues. I think over time the pendulum has swung
too far in the direction of what everyone calls
subsuming issues. The Commission is not in the
business of prohibiting issues from being addressed.
There is, of course, a need to avoid duplication of
issues. There is a need to identify issues that
simply are inappropriate to be brought in a
particular proceeding, and where there is a dispute
there is a need to rule on contesting formulations
of the issues.

But, too often, in my opinion, the
direction has been too far in the idea of let's pare
down and see how few issues we can have. And there
comes a point at which that has some due process
implications, and I think as a perhaps overall
directive, the Commissioners and staff could review
that and have a different objective in mind. Those
are my thoughts. Thank you.

MS. CIBULA: Thank you very much. Anyone
else have any?

MR. DEVLIN: It is more of a comment to
Joe. I appreciate your acknowledgment that we do
try to work with the parties on the deposition issue
and the -- I forget, what did we call that, the
composite exhibit issue. And then your three other
points, I think they are well taken. I just have
one comment on the yes/no answers, because from time
to time I have been a witness and sometimes it is
just not easy to have a yes or no answer. Sometimes
you have a qualification along with your yes or no
answer, but I understand where you are coming from.
Sometimes we do permit witnesses to elaborate to the
point where they are reinforcing points already made
or bringing in new points, so I appreciate the
points.

MR. McGLOTHLIN: Thanks.

MS. CIBULA: Any other general comments
anyone would like to make? Well, I think we have
covered probably Point A unless somebody else has
anything additional they want to add. We will move
to --

MR. MOYLE: I have, I think, something on
A.

MS. CIBULA: Okay.

MR. MOYLE: And you are going off your
agenda on Point A?

MS. CIBULA: Yes.

MR. MOYLE: I guess -- and this is
somewhat into the weeds a little bit, but I wanted
to understand it. That first question you say does
Subsection 5 of Rule 25-22.033, which prohibits
employees from directly or indirectly relaying to a
Commissioner any ex parte communication. Does it
address the issue, right?

MS. CIBULA: Correct.

MR. MOYLE: And I guess part of what I
think has been problematic is that some of these
interpretations are done by -- well, you know, a
representative of Company X interprets this to say,
well, look, it doesn't apply because of this reason.
Like the NARUC conference example, and there is not
a real firm yes, it does; no, it doesn't. And so if
there is communications with a Commissioner or a
staff member and they go, okay, I see what your
point is and how you are interpreting that. Let's
have the conversation. You know, people aren't
aware that that conversation has taken place if that
is the interpretation.

I think that the way that the rule is
crafted, you know, and I don't know whether this is
being done or not, but I think you could argue that,
you know, the rule references that no Commission
employee shall have a communication which would
otherwise be a prohibited ex parte communication
under 350.042, okay. But if you read 350.042, it
says the provisions of this subsection do not apply
to Commission staff. So, in my reading of it, I
think it is arguably circular in that you are
referencing a statute, so you can't have a
communication, but -- and maybe it's a strained
reading. I mean, I think the intent is don't have
the ex parte communication. But when you reference
the statute, you know, the statute clearly by its
terms say that the provisions do not apply to
Commission staff. So I wanted to bring that point
up.

MS. CIBULA: Okay. Thank you. That is
something we will look at.

MR. MOYLE: And then I guess the other point on that Number 5 that I wanted to bring up --

MS. CIBULA: Uh-huh.

MR. MOYLE: -- the current rule says nothing in this subsection shall preclude nontestifying advisory staff members from discussing the merits of the pending case with a Commissioner provided the communication is not otherwise prohibited by law. I think this goes to the point that Mr. Kelly raised, Public Counsel, that it is probably not good. I mean, he is talking about the demarcation between advisory staff and other staff.

To the extent that you are looking at revising this rule, I think you could head in the right direction by also suggesting that staff who has had substantive conversations with a party to a docket should not engage in any communication with a Commissioner. So if you had staff that had substantive conversations with a party in a nonpublicly noticed meeting, that that would knock the staff out from having communications with a Commissioner.

Because, again, the notion is if you don't want ex parte, you know, you shouldn't want it
directly or indirectly. And this is a way to kind
of get at it indirectly so that if a party had a
substantive conversation with staff, then that staff
would be knocked out of subsequently having
substantive conversations with a Commissioner.
And it would also send up a big red flag
if somebody started heading down that road, staff
would say, look, you know, I can't have a
substantive conversation with you, because it would
preclude me from having a follow-up substantive
conversation with a Commissioner.

**MS. CIBULA:** Any other additional
comments?

Commissioner Skop.

**COMMISSIONER SKOP:** Thank you. I just
wanted to briefly touch a point -- upon some of the
few points that have been made this morning. I
think that the Commission has been under a lot of
scrutiny as of late, and rightfully so. Again, as
Mr. Moyle and others have pointed out, that some of
the same situations are systemic and continue to
occur every five or ten years. You know, part of
that, as the Executive Director, I think, recently
alluded to, some would argue that that is due to any
major case pending before the Commission.
I do not subscribe to that. Again, I do not agree with the Executive Director's position on that. I think that these problems recur, as some of the intervenors or participants in this morning's panel have alluded to, and I think that in light of that, the 1992 Grand Jury report and the findings in that report, as I have often said, are written as they were written for this very situation that we find ourselves in today.

I think that the '92 Grand Jury report findings that were prepared by Ms. Hines as amended to address recent changes in technology provides the framework to prevent recurrence of these same type of problems from happening again. And I think that those findings, although they were not codified previously, or adopted by the Legislature, again, provide for limiting ex parte communications to Commissioners and their direct reporting staff, as well as providing penalties for those that initiate ex parte communications or choose to initiate ex parte communications.

Also, I think briefly in brief response to Mr. Moyle's comment about the ex parte rules themselves and how, you know, it's very easy to gloss over those rules to attain a desired result.
that, you know, does not fall within the ex parte prohibition. You know, recently the Commission has dealt with a situation like that, and, you know, no matter how one would want to gloss over a 350 analysis on that matter, such communications are prejudicial to the party irrespective of what the communications may be because other parties are not privy to them. It is a straight ex parte definition out of Black's Law Dictionary.

So, again, strengthening the ex parte rules to prevent some of the things that I have observed happen, that others have observed happen, again, ensures that the parties to the proceeding are not prejudiced and that the integrity of the quasi-judicial role that the Commission plays is upheld. Again, those are two very important aspects. So I agree with Mr. Moyle in terms of the existing wiggle room under the way that ex parte is defined as it pertains to the Commission. One can merely just say they weren't having a discussion on the merits and that suffices to avoid any appearance of impropriety, but notwithstanding, you know, the fact that the discussion was held. And, again, discussions of that nature clearly are prejudicial to the parties that are not privy to those
discussions as well as undermining the integrity of the process that the Commission plays.

So I think briefly taking a critical look at the ex parte rules themselves are in order, as well as those '92 Grand Jury findings. And to Mr. Kelly's point about having trial staff and advocacy staff, I guess that is something I have not really considered. I know it has been used in the past, and I am just trying to gain a better perspective and it would be interesting to read the comments as to how that would avoid, if at all, some of the ex parte concerns that may exist. Again, advocacy staff would be able to have those contacts whereas the trial staff, apparently from what I heard, would not.

So, again, it would be interesting to read any comments in relation to that to see how that might be readily implemented. But I just think it is a -- as a general framework, though, I tend to agree with Mr. Moyle's concern that the '92 Grand Jury findings provide that framework for moving forward either at the Commission level or at the legislative level. But I think implementing those findings, which are, I think, very well put together would go a long way towards addressing the
recurrence of some of the systemic problems that continue to appear at the Commission over the last decades or so. So, thank you.

MS. CIBULA: Thank you, Commissioner Skop.

Chairman Carter.

CHAIRMAN CARTER: I was upstairs watching this, and you guys look smaller on TV. I think that Commissioner McMurriran had some very valid points when she was saying in the context of discussion, any discussion should be in writing and be available to all the parties. I think that's a fundamental perspective, and probably a way that everyone will feel that there is no -- I mean, obviously if you were in a legal perspective, if you have a client and you go before the judge, whatever you present before the judge he's going to say did you serve the other party first. And I think that will take care of a lot of the process of people perceive an ex parte communication where one way not exist. So you take that issue away.

Secondly, the context of the '92 Grand Jury, I think that it's important for the Legislature, if they feel strongly about it, to do something about it. Implement some of those. Because a lot of what we are talking about in terms
of our rules and our procedures, we have gone to a
level that I think that we're probably at the outer
dges of our legislative authority on that. But I
do believe that if the Legislature wants to go
urther, then they need to step up and say we
pecifically want you to do A, B, C, and D, and then
everyone will be on the same wavelength. The
parties can say, well, we know now, based upon what
the Legislature said, that we are going to get a
fair hearing based upon these perspectives here.

Secondly, the Legislature will be able to
say, well, we didn't -- sometimes there are cases
that are of such magnitude here where one legislator
may have an interest in it as opposed to the
Legislature itself. And one legislator may have a
perspective on an issue that was not the
prevailing -- let me see how to say that
diplomatically -- it didn't find itself in law.

So a lot of times we in the Commission --
and I am just kind of going to tell it the way it
really is, because sometimes we dance around issues,
but we don't want to fess up to them. Sometimes we,
as Commissioners, are in a process of where we don't
want to be disrespectful of a specific legislator,
but we do have rules and processes and we have the
law that we have to follow.

So I think that the Legislature has the results of the '92 Grand Jury. They have the process that has gone on, even before this current iteration of Commissioners, and even when the next iteration of Commissioners come on. And I do think fundamentally is that when the perception of ex parte communication can be eviscerated in a moment if we just can follow what Commissioner McMurrian said. Hey, everybody, any contact you have with the company, put it in writing and put it in the file.

And most of you know me. Anytime I've got a communication, even from a legislator or a constituent about any matter whatsoever, I put it in the file so everyone can be abreast of it and they can respond to it.

I think that we don't want to throw the baby out with the bathwater. We want to do what's right. We want to do what we should be doing. We want to stay within the four corners of the law, but by the same token is that in the process of yelling and screaming we need to step back and say, okay, what do we really need to do here? What is the problem? Do we burn the house down to get the kid to clean up his room, or do we just discipline the
child and say you need to clean your room?

So I think that there are some good things
in that Grand Jury and there are some things that
will require legislative action. And I think that
in the fact that 2010 is an election year, we may
get more than we bargained for. But I do think that
as a fundamental step, and we can do that ourselves,
is that everything that we do, put it in writing.
If I talk to Mr. Kelly about an issue pertaining to
us, put it in writing. If I talk to Mr. Moyle about
an issue pertaining to a case before us, put it in
riding. Then everyone will have that.

And I think that there are times, even
though we have ex parte rules, there are times when
parties do have a legitimate concern. For an
example, in our last iteration of cases, one of the
parties said, well, we have got a witness that's
traveling from another state. Do you mind if we
take our witness out of order? I don't think that
is ex parte. I think that is being accommodating to
the parties, because you have a witness sometimes
that is coming from Connecticut. You may have one
coming in from New York. And, of course,
Tallahassee is the place that you just can't get
there from here, so we have those kind of concerns.
And I think that those are legitimate kinds of things that happen in the course of a hearing and a process like that.

And I think that we should continue to do that. And sometimes -- I know that in one case we had that one of the witnesses became ill, and you don't want to start saying, well, he has got this, or he has got that. In that process you want to at least be able to say, well, we can move him out of order, or if we don't think he's going to recover, we can use someone else.

I know I had a trial once down in -- I want to say in Kissimmee with Judge Frank Haney (phonetic), and one of my witnesses had a -- I was trying an eminent domain case, and my witness was the economist. As you know we were talking about business damages and all like that. The guy had -- it was either measles or chickenpox or something like that. And I'm saying adults don't get those diseases, but he got it, and it was a four-day trial, and I didn't have a witness to put on for my business damages. In essence, to refute the business damages that were asked for by the other party.

And what we did was we ended up getting
his assistant from the office that had worked with
him on the case, and then we had to go through the
process of qualifying him and all like that. But
the judge allowed us that, and the parties had an
opportunity to cross-examine the witness and examine
him based upon his experiences and things of that
nature.

So I think that in the context of saying
we want to do all of these great wonderful sounding
things, we do need to keep focused on the fact that
we have to have a process that's fair to all the
parties; fair to the consumers, fair to the
companies, and fair to the intervenors, and also
something that has a foundation in law. And I think
as long as we do that then we will would be fine if
we do that. Thank you.

**MS. CIBULA:** Thank you, Chairman Carter.

Any other general comments, or any more
comments on Part A?

**MR. MOYLE:** Can I just make one
overarching comment. I mean, I agree. I mean, if
we are talking about Thanksgiving, or a witness -- I
mean, I think lawyers understand the distinction
between that type of a discussion and one about
depreciation or a substantive issue in the case.

**FLORIDA PUBLIC SERVICE COMMISSION**
But the whole notion, if you look at matters that
are decided in other tribunals, I mean, a lot of
times issues are raised through pleadings. And I
really don't think that there should be much
occasion to have communications with a judge or a
trier of fact about a substantive matter, whether
it's in writing or not. It ought to be done at a
prehearing conference, or at a -- you know, in open
court, or in an open hearing. And I think --

CHAIRMAN CARTER: I agree 1,000 percent
with you, Mr. Moyle, because it bears on the outcome
of the case. My point -- and that's why I used
those examples. My point is that the only reason
that I would talk to a person would be something as
you do in a court case. The witness can't show up,
someone got sick, or I remember one time we had the
court reporter had to drop her daughter off to
school and then her car wouldn't start, so we had to
scramble to get another court reporter. So those
types of things are legitimate.

I don't think that anybody -- because you
cheapen and demean the process if you talk to any
party about anything that's pertinent, even
collaterally related to a pertinent issue in the
case. So that's why my examples were based upon
those kinds of things. I think those are fine, but it has any bearing whatsoever on the case, or anything about the case, I would say no, we shouldn't talk about that at all.

**MS. CIBULA:** Mr. Beck.

**MR. BECK:** Yes, thank you.

Mr. Chairman, I agree with all the communications necessary in the circumstances you raised. I would like to throw out, again, in the sense of brainstorming a notion that perhaps they should do away with the procedural exception to the ex parte statute.

In all the instances you cited, I don't think anybody has a problem with the communication, but the issue isn't the communication, it's whether it has to be ex parte or not. And I think in the instances you gave notice could be given to the opposing party just as easily.

It seems to me that the question of whether an issue is on the merits or procedural can get murky at times, and the easiest way to deal with that is do away with the distinction and let those communications go forward in the instances you had, but notice be given to the other parties, as well.

**CHAIRMAN CARTER:** Excuse me. I don't
mind -- I was watching from upstairs, and I was saying maybe I should go down and just kind of chat with you all just ever so briefly. But I think that sometimes -- and, Mr. Beck, you are probably being diplomatic, but sometimes parties will use the procedural to say something that is really not procedural. They will say, well, I just have a procedural question that really isn't a procedural question.

And I think you are right, when people do that you have got to say, look, no, that is going to the case there. That is not procedural. For an example, let's say that we have the case set for the 16th, and a person asked under the guise of a procedural can we change the date of the case. That is not procedural, you know, because you've got your witnesses already lined up to be here at a certain day, a certain time. You have already got your staff lined up to be here at a certain day, certain time. Notice has gone out. All the parties and everyone under the auspices know that this is there, but for whatever reason one party may want to try to second guess or subvert the process. That is not procedural. Even though you would think something like a date would be procedural, but I don't think
it is, because it goes to the merits. And I agree with you on that. And I know that you are being diplomatic, but some people do use the guise of a procedural question to get into the merits of a case.

COMMISSIONER SKOP: And, Mr. Beck, to your point, too, I also believe that the inherent wiggle room in terms of how ex parte is not really defined and it speaks to the merits causes some problems in that regard. I think that if you simply were to strike some words within 350 as it pertains to the limitations of ex parte and just refer to it as ex parte communication, I think that gives a more straightforward meaning to it. It's having a conversation with one party without the others present.

And, again, I think that's, you know, problematic to do that to the extent that, again, it is prejudicial to the parties, or perhaps prejudicial to the parties in having that type of discussion with one party undermines the integrity of the quasi-judicial role that the Commission is called upon to perform. So I am in full support of tightening that language to get rid of the ambiguities and better define what responsibilities
that the Commissioners and/or their aides, if it's applied to that, are to be held to.

**MS. CIBULA:** Thank you. We will move to Point B. And I think Ms. Spencer already raised this, and the issue is the penalties for violation of Section 350.042(6), Florida Statutes, which requires Commissioners to report receiving ex parte communications are insufficient or nonexistent because the section does not address Commissioners initiating or knowingly and willingly receiving ex parte communication, nor utilities initiating ex parte communications.

The discussion points are since the interim report, Section 350.042(7)(b), Florida Statutes, was amended to address Commissioner violations of ex parte restrictions, does the current statute sufficiently address the issue raised by the Grand Jury.

Section 350.042(7)(d), Florida Statutes, was amended to address other persons who violate ex parte restrictions. Does the current statute sufficiently address the issue raised by the Grand Jury.

And, finally, on Page 4 of the interim report the Grand Jury sets forth recommended
penalties for a utility's violation of ex parte prohibitions. Does the Commission have the statutory authority to implement rules to impose fines on a utility for ex parte violations.

Any comments in regard to those discussion points?

**CHAIRMAN CARTER:** I think we had some discussion at one of our Internal Affairs. It may have been just someone probably passed it off as a throw-away line or something like that, but I do distinctly remember that at one of our Internal Affairs as we were talking about this issue generically is that the question was raised that while there are penalties involved for Commissioners, but what kind of penalties are there for companies that would violate it, and what would be the process of doing that. And I think we talked about it just ever so briefly, but we didn't go any further on that.

And I would be interested to hear what the intervenors and the parties would have to say about that, because I think that everyone should feel like they are getting a fair shake, the companies, the intervenors. And some the intervenors that we have are not necessarily represented by counsel. Some of
them are pro se. And I think that from the standpoint of fairness, if they feel and they know that there has been a violation by one of the parties, or some of the parties, or a party, what kind of redress would they have. And stepping back for a moment from the context of a pro se person or consumer, if they don't have the financial wherewithal to implement this process, what kind of -- I'm saying what kind of provisions are there for them?

And we kind of talked about it only from the standpoint to where there was violations and penalties for Commissioners, but none for companies and all. So I was taking it a step further, because I know that on a number of the cases that we have had before us we have had not only people represented by attorneys, but we had individuals, mom and dads representing themselves. I would be interested to hear what you guys have to say about that.

MR. MOYLE: I will take a shot at it in kind of an informal conversation. I guess the first point that was raised is is there authority to sanction a utility if there was a violation. And having not dug into it, but my understanding is that
the Commission has some broad-based authority over companies that they regulate and that the companies should comply with all the rules of the Commission. And if they don't, then there is some power within the Commission to take some action against them.

So I would think whether it is a rule related to a type of service or some other thing, you know, you expect your rules to be followed. I think that a similar analysis could be applied with respect to ex parte. If it were violated, you probably would have some ability to sanction a company that violated it.

You know, in thinking about it, you know, what if an intervenor made the violation? Well, typically, they are not regulated. You know, I don't know that it would be symmetrical in the ability to take some action. You know, typically from a lawyer's standpoint, if you were accused of an ex parte violation, you know, reputations are very important and you would not want to have such an accusation made. And, I think, typically in a judicial proceeding that that would be a serious thing if the conversation even came up if you were accused of that.

The point you raised about parties that
are not represented, it's sort of a pro se point, and, you know, I think -- again, I think clarity is really what is needed in that they may charge for it and blunder into something, but if you are on the receiving end, you know, I think then it's incumbent upon the receiver to say, listen, we have some pretty clear rules on this. And I understand you are not familiar with the process; I can't talk with you substantively about the matter, but what you can do is talk to Public Counsel, or maybe you can send them in the right direction. That is maybe one way to deal with it.

Obviously judgment has to be applied, and if it was an ex parte communication with somebody who had never been in front of the Commission and didn't understand it, was trying to just get a handle on it, it probably wouldn't be appropriate to take further action than getting them in the right direction.

**MS. CIBULA:** Thank you. Commissioner Skop.

**COMMISSIONER SKOP:** Thank you.

And to that point, Chairman Carter, again, I think that in Section III of the '92 Grand Jury report for the legislative recommendations,
Section C provided for some penalties as they pertain to the utilities that would engage in such communication. I think that, you know, adopting those as part of the '92 Grand Jury findings, again, would have a deterrent effect towards utilities wanting to engage in that, or violating those prohibitions to the extent that it would have some real financial impact should it ultimately be determined that ex parte communication had, indeed, occurred. The utilities would be financially liable as it was recommended to the Legislature within the Grand Jury findings.

So, again, at least from my perspective, again, there has been a lot of discussion on that, but at least those findings as a whole seem to provide, again, a good framework or a starting point for looking at what was previously done which is readily applicable to the situation we find ourselves in today. Just amending those, again, to include the changes or advances in technology, and I think that you have a good starting point for the Commission to take a look at either changing its internal rules and policies or having the Legislature just codify the proposed findings into law.
And I think that once it is enacted into law, it serves a clear reference for what the conduct of the respective parties should be. So, again, I think that it was amazing to read that for the first time. Like Mr. Moyle said, 19 years later you are looking at a document that looks like it was written last night. And it was very well done and very well put together. And, again, I think Ms. Hines and her team did an excellent job on that. And, again, I think it should not go without recognition of the quality of that product and how it could be, again, just enacted today if that was the will and the intent of the Legislature to do so. Thank you.

**CHAIRMAN CARTER:** I think that Mr. Moyle also raises a good point in terms of symmetrical, because what is good for the goose is good for the gander. If you have got penalties for companies that violate the ex parte rule then you should have penalties for the parties. It should be -- and that way you have a level playing field. That's why I like the perspective -- you remember when we went down this road, Commissioner, you said that we should probably function more like judges and all. And I think that the judicial process does give us a
good framework for that, because regardless if you are representing a plaintiff or the defendant the rules apply to both sides.

And I think that in the context of this as we are going forward, and I don't have any great insight in terms of what the Legislature will do or won't do, but I do think that it should be a symmetrical process to where it's fair and balanced. And so I would think that in the context of doing that, particularly in -- and I know it may seem like I'm making much adieu about nothing, but we do have -- on most of these cases we have, we generally have someone that has never been before the Commission before, and they say, hey, I want to represent myself because I don't have lawyer. I just -- and people are entitled. I mean, that's a good thing about our country is that we do allow for individuals to have a right to be heard.

And in that context, if a person who has not practiced before the Commission before, but has an issue with one of the items out there and they are doing that, I think it's incumbent upon us as parties, just as in a court case, if one of -- if I have some information pertaining to the case that -- it may be damaging to my client, but the judicial
process requires me to disclose that.

So I think that as we go down this road in whatever recommendations we make we should make them fair and balanced for both sides. And, also, with the understanding that there may be some opportunities to where we don't put the same standards on a pro se person as we do on the lawyers, but do provide some kind of leeway for them in that context.

**COMMISSIONER SKOP:** And, Mr. Chair, I think you raise an excellent point. Again, it should be a level playing field. And, again, there needs to be a distinction made between those that may be more sophisticated and pro se litigants. But, again, the remedy needs to be equally applied across the board so that one party is not more adversely affected or has more of a deterrent than another party who can get away scot-free with it. So, again, I think that is an important consideration, and thank you for raising that.

**MS. CIBULA:** Thank you. Any additional comments? Before we move to Point B, I'm going to take a quick five-minute break for the court reporter. So I guess we'll be back here about 11:15.
(Recess.)

MS. CIBULA: Okay, everyone, let's get started again.

And just as a housekeeping matter, we'll probably take a break around noon-ish for lunch, and then take about an hour and 15 minutes and then re-adjourn.

And I guess we can move now to Point C, which is "There needs to be ex parte restrictions on rulemaking proceedings." And the discussion points are "Should there be ex parte communications restrictions in rulemaking proceedings," and this overlaps into Part II of our workshop agenda, and also "Would restricting ex parte communications in rulemaking proceedings require a statutory change?"

Mr. Moyle.

MR. MOYLE: I'll suggest that I think that, that the answer to the second question is do you need a statutory change is probably yes, given that 350.042 has language that says that ex parte, I interpret it to say, doesn't apply to proceedings under 120.54, which is the rulemaking statute. So I think, you know, currently the basis for ex parte not applying to rulemaking in the declaratory statements is statutory. So if you were going to
change that, I think you would need a statutory change. I mean, you could probably adopt a rule, but obviously the statute would trump over the rule.

The policy question as to should, should it be prohibited, you know, I think that's fairly debatable. But I would -- I think you probably should come down on the side suggested by Public Counsel, Mr. Kelly, which is to, to not allow it for the point I think that was raised by Chairman Carter and others about a slippery slope. Because if you start having, you know, a whole bunch of, well, you can have an ex parte communication A, B and C but not D, E and F, you know, then where do you draw the lines on some of those things? And so a rulemaking, you know, may slip over into something that, that is also the subject of a pending docket.

And I think, I think the objective ought to be to establish clear rules and a clear line. And if that becomes sort of the guiding principle, you know, even though I would think there's probably some arguments as to why it could be permitted to have ex parte, you know, I think given the Grand Jury '92 report and the fact that we're having this discussion today would suggest you need a more distinct, firm, clear line and you probably ought
not to, not to allow an exception.

**MS. CIBULA:** Any other comments?

I guess we can move to Point D. "There is insufficient communication with the Office of Public Counsel." And the discussion points under that are "Section 120.525, Florida Statutes, requires all notices of public hearings, meetings and workshops to be published in the Florida Administrative Weekly and on the agency's website not less than seven days before the event. Does this section provide sufficient notice of meetings, hearings and workshops to the Office of Public Counsel and the public?"

Also, "On Page 3 of the Interim Report, the Grand Jury recommends statutory changes to notify the Office of Public Counsel of meetings, written correspondence, et cetera. Does Rule 25-22.033, Florida Administrative Code, address these recommendations? If not, what additional procedures should the Commission consider implementing?" And that also could go into Part II of the workshop.

There is currently -- and that's the two discussion points under that section. Any comments on those two?
MR. KELLY: I'll just repeat what I had said earlier. I think that, that to the extent we can use the website and make it maybe a little more user-friendly and maybe put some links on the home page that might be more easily understood by the, by a ratepayer that doesn't live in Tallahassee and doesn't, is not involved in this process every day I think would help address those issues.

MS. CIBULA: Any additional comments?

MS. SALAK: Mr. Kelly, in your experience has there ever been something that you weren't aware of, since you're the Office of Public Counsel, is there something that we've failed to notice or failed that, or something we should be noticing that you don't think we are?

MR. KELLY: Not that I'm aware of, but I wouldn't know if there was something I didn't know about. Sorry.

(Laughter.)

MS. SALAK: Very funny.

MR. KELLY: No. I, I -- to my knowledge none of my staff have come to me with that situation I can remember.

MS. SALAK: Okay.

MS. CIBULA: Point E, it really doesn't
have to do with ex parte communications, but it was in the Grand Jury report, and it was "There is currently no statutory provision requiring Commissioners to rule on confidentiality issues in a timely manner."

And the discussion points are "Is the Commission's current rule on Confidential Information, Rule 25-22.006, Florida Administrative Code, sufficient to address requests for confidential classification of documents?" And also, "If not, should the Commission initiate rulemaking to explore whether changes need to be made to this rule?"

**MR. KELLY:** I'll just add that I think it might be wise to put a specific time in there. And I don't have a suggestion today, but I think it might be a good idea and then, then everyone knows. Again, it's -- you're not debating what's reasonable and what is not, so.

**MR. MOYLE:** I would, I would echo that point and just relate -- these are kind of similar to the comments that Mr. McGlothlin made earlier about ways in which the practice can be improved. When you're at hearing it's often awkward and cumbersome to deal with confidential exhibits. I
mean, it can be done, you know, please refer to Line 32 and you can't reveal the confidential information.

I think to the extent that decisions on confidentiality can be made sooner rather than later so that you're, you're, you know, you have a clear understanding at hearing what's confidential and what's not confidential, that that would improve the process.

I know in some of the recent hearings that we've had we've had documents that have kind of come in late and a claim for confidentiality, you know, is made, but then the rule provides that, that you have, I don't remember how many days, but 21 days or some period of time to file I think the substantive reasons why you claim confidentiality. And in, in practice, you know, the hearing is over by the time, you know, the follow-up documents are filed. And that happened in some recent cases, so you end up treating the document as confidential the whole time without a clear indication.

It would be a lot easier if that determination could be made in advance of the hearing so you clearly know, hey, it is confidential or it's not confidential. And there's give and take
on that. I understand things will come up and you
want to give people a fair opportunity to claim
confidentiality, but I think the process would be
better if we could figure out a way to get those
determinations made sooner rather than later.

MS. CIBULA: Any additional comments?

I guess we can move to Part II of the
workshop, unless there's anyone that wants to make
any last general comments on Part I of the workshop.

MR. MOYLE: One, one comment, if I could.

And I just want to make clear, you know, our firm
represents a variety of interests in here. My
comments today are, are given by me as a lawyer
practicing before the Commission and are not, not
those of a, of a client. I just wanted to make that
point clear.

MS. CIBULA: Okay. In Part II of this
workshop we are seeking comment on Commission Rule
25-22.033. This rule applies to communications
between Commission employees and parties. This rule
is made up of five subsections. Subsection (1) of
the rule sets forth the Commission matters that are
exempt from the rule. The exemptions are set forth
in discussion Point D of Part II of the agenda.

Subsection (2) of the rule requires that
notice of any written communications must be transmitted to all parties at the same time.

Subsection (3) of the rule requires that all parties to proceedings be given reasonable notice of any scheduled meetings and conference calls involving three or more persons.

Subsection (4) of the rule allows any party to a proceeding to prepare a written response to communications between Commission employees and another party. This rule also requires that the response be transmitted to all parties.

Subsection (5) of the rule prohibits Commission employees from directly or indirectly relaying ex parte communications to a Commissioner. The rule states that it does not prohibit non-testifying staff from discussing the merits of a pending case with a Commissioner.

In Part II of the agenda we have set forth seven discussion points in regard to the rule. Like in Part I, we are planning to go through the agenda section by section. Are there any questions before we start?

Seeing no questions, we'll start on discussion Point A, which is "Can and should the rule be amended to apply to Commissioners? If so,
how should the rule be amended to apply to Commissioners?"

MS. SPENCER: Speaking on behalf of AARP, I think I would, we would support the inclusion that it apply to Commissioners and probably for the same reasons that I mentioned earlier, so that there is some consistency between what is in statute and what is in rule. Because in looking at this, from someone who is not as well versed in the process, there seems to be a lack of consistency and clarification between what applies to Commissioners, what applies to staff, and then that consistency between statute and rule. So that would be our recommendation.

MR. MOYLE: I think again, a point of clarity, I mean the statute addresses ex parte communications with a Commissioner. I think even if you state it, state it twice, it would probably be helpful to have it clearly stated that Commissioners shall not engage in ex parte communications with parties on docketed matters, you know, in terms of the merits of the, of the matter.

MS. CIBULA: Any additional comments?

I guess we'll move to Point B, "Should the rule be amended to specifically address Commissioner
aides, advisors? If so, should the rule
differentiate between Commissioner advisors and
Commission staff?"

MR. MOYLE: I would suggest that the rule
should apply to the Commission advisors. I mean,
that was the point in the general comments about
just tell us what the rules are. I mean, if, if a
recommendation comes out and it's fair game for
everybody to go talk to the advisors, then I think
you need to say that. If it's not fair game and you
don't want to do it, then I think you need to
clearly say that. I think the better practice is
not to do it, but, but it needs to be clear so that
everybody is playing by the same set of rules.

The question about Commission staff I
think is a bit of a harder one because there is
interaction that has to take place. But, you know,
for the notion of setting clear boundaries and clear
lines, I would think you might want to lean in the
direction of, you know, of not.

And I guess a thought I had, and this is
kind of an informal discussion, but in reading the,
you know, the rule where the preface says,
recognizes that Commission employees must exchange
information with parties who have an interest in
Commission proceedings, you know, back to Mr. Kelly's point about, about maybe having trial staff and other staff -- you know, once a matter is, is in litigation and there's a, it's a litigated matter, you know, I'm not sure there's that great of a need for Commission staff to have communications with one party without other parties. I mean, they can do e-mails where all parties are copied, which is not a problem. You know, so the, you know, the notion of staff having communications with one party causes a little, little discomfort, particularly about substantive matters. I mean, to the extent that it was, you know, procedural, less so.

You know, if you had a clear demarcation with trial staff, you know, it would be like, you know, a lawyer having a conversation with another lawyer, and I think that probably would, would be more comforting.

**MS. MILLER:** Mr. Moyle, you raised the issue about that sometimes it may be necessary for staff to talk with the parties in a proceeding.

Do you think a separate rule would be more advisable for Commissioners and their communication prohibitions versus the staff and their communication prohibitions?
MR. MOYLE: Probably. I mean, because I think, you know, clearly the Commissioners, I mean they're viewed as the, as the judicial entity, the judges, the quasi-judicial entity that makes the decision, hears the evidence and makes the call. So I think there needs to be a clear, clear distinction that communications with them shouldn't be taking place. I mean, it's the ex parte notion.

To the extent that there are communications with staff that are working up the case, you're going to have that as part of getting ready for the proceeding. And I think, you know, it seems to me that in my practice with you most of the time it happens, happens that there's a conference call or e-mails are sent out and I guess sometimes there are communications with individual parties. But the more transparency, probably the better.

And, again, I think, you know, the more I think about Mr. Kelly's idea, if you had, you know, trial staff that wasn't going to be issuing any kind of recommendation, that would be less problematic for those conversations to take place, just like a lawyer for the Retail Federation could call a lawyer for one of the utilities and have a conversation.
that not everybody would need to be part to. I think it starts getting a little more murky and complicated when you have staff who is going to be putting together a recommendation, you know, that may be relied on by the Commission on a complicated issue having communications with a party.

**MS. CIBULA:** Any additional comments on Point B?

**MS. CHRISTENSEN:** I would just like to add, Patty Christensen with the Office of Public Counsel, just on that point where you don't have necessarily a matter that's scheduled for hearing, if you have a PAA where you have another party that's intervened, I would, I believe that you would, you would want, strongly want to follow those similar type of communication restrictions and not treat that necessarily any differently than you would any other proceeding where you have litigation and parties that are privy to it, even though it's not going through that formal hearing process. And I think that would be helpful as well because sometimes I know our office will intervene or even sometimes monitor cases, particularly where we've intervened in a PAA. To be privy to all the communications that are going on between staff would
help facilitate the monitoring process where we
don't have to chase after the communications, so to
speak. But as -- being kept apprised I think will
help facilitate the process.

**MR. DEVLIN:** Just a point of clarification
because I was trying to struggle in my own mind
when, when it would be appropriate and when we
should do it and when we shouldn't notify parties.
Would it be when the OPC intervenes? Because we
have a lot of small cases, staff-assisted rate cases
where we don't have any intervention. There are
some cases that we have that we just, we know OPC
has an interest. And even though they haven't
intervened, we'll invite them to a meeting if we
have a meeting, let's say, on an accounting issue.

I'm just trying to figure out what, if we
try to put this in stone, do you think it would be
in those cases that not necessarily go to hearing,
it could be PAA type cases, but where there's
intervention, that's where, that would trigger
this --

**MS. CHRISTENSEN:** Well, I think at minimum
where you have intervention that that would be
triggered. It's a little bit murkier on the cases
that we're monitoring, and I'm not sure that I've
given much thought as to how notification of
meetings and such would be in those cases where you
would monitor them. But I think, as Mr. Kelly
suggested, if notice, notices of meetings and such
are available on the website with a link, even for
those cases that are being monitored, if even the
notices of meetings that are going to occur or
substantive conversations are going to occur, that
it's easily accessible where we could, if we're
monitoring a case, can easily access that
information, then that may resolve that portion of
the problem where we're not formally intervened.

I think once, once you're intervened and
become a party, then I think a more formal process
of actual e-mails or direct communication like you
would do in a normal litigated proceeding is
probably warranted.

MR. DEVLIN: Thank you.

MS. SALAK: Can we just back up for even a
further step from that? What if we don't have a
case pending at the Commission and companies want to
come in and just offer you information to talk about
some new operation they may be doing or some change
in operations and were just giving us company
information?

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MS. CHRISTENSEN: I think that's probably -- and, Mr. Kelly -- I would think that if it's something that's new, novel, something that, you know, may impact the way the Commission is going to change business or is pertinent, that it would probably behoove everyone to, to err on the side of providing notice through the website as well as maybe even an informal e-mail to OPC to let them know that this is occurring.

I think if it's, if it warrants the utility coming in and giving a special talk to staff about something new and novel and something that they're going to try, that it probably is worth notifying the Office of Public Counsel to let us know whether or not it's something that we'd like to attend. That would be my thoughts, and I don't know if Mr. Kelly has any additional comments.

MR. KELLY: I think this goes hand in hand with what I was suggesting about notice of meetings on the, on the website. I think if you, if you put them there, it might not be an issue, it may not involve an issue that we're involved with, but it could be something that maybe folks locally, if ABC Utility is located in a small town, I can't think of one right off the top of my head, Zephyrhills, and,
and, you know, may not be something that we're aware of, but if, you know, ABC Utility is located there, wants to come in and talk to you and you put the notice on the website where folks can check it -- and, I mean, we've talked amongst ourselves that we'd probably check it daily and just to see what's coming up for the week or the next two weeks or whatever. I think that would hopefully relieve y'all of a burden of maybe, as you were saying, Mr. Devlin, having, should we send an e-mail out, should we do this, you know, making a special call. If you get into the process of putting it on the website, all of them, it's there. It's transparent to anybody that wants to go get it.

**MR. MOYLE:** I tend to agree that, you know, it's not that hard to notice a meeting on the internet these days. But I guess hearing the conversation, it has an assumption built into it, which I don't know if it's valid or not, but it seems like the assumption is, is that meetings between a regulated entity and staff are open, open to the public. Is that, is that generally right?

**MS. SALAK:** Generally that's not an issue. The only time it might be an issue is if it's a competitor coming in and there's going to be
confidential information being discussed. That's, that's a difficulty. I don't, I don't -- and you see that mostly in the telephone industry, not in electric, per se.

MR. MOYLE: Thanks.

MS. MILLER: Are you thinking about like a 48-hour notice or a seven-day notice or -- I just wondered what we're talking about here.

MR. KELLY: I think -- I haven't given it a lot of thought. I think that certainly if -- I think if a meeting gets set today for two weeks from today, then the notice should go when it's set. I do recognize that there are going to be times when a meeting is set 24 hours or 48 hours. But I think the point is when it gets set, you put the notice out.

MR. MOYLE: And the public meeting notice and the statute that requires governmental entities to notice their meetings, I don't think it has a time frame on it. I think it says that they're to provide reasonable notice given the facts and circumstances. So, you know, I think there's probably some case law on that, and a reasonable notice designed to give interested parties notice. You know, it may vary if there's something that

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somebody says I want to come in and brief you about a new, you know, advancement, you know, a week, ten days, two weeks. If all of the sudden -- you know, a few years ago lightning struck and nailed the natural gas transport and there was an emergency situation, you know, notice of that, you know, posted three hours later you're having a meeting kind of think. I think it has to have some variability. And you may want to look at that state statute that talks about reasonable notice designed to, to provide interested persons notice without having a time frame on it.

**MS. CIBULA:** Chairman Carter.

**CHAIRMAN CARTER:** Thank you. I was going to say that in the context of reasonable notice, that's what I really wanted to get to because if there's -- when we have to do notice, we have to go through this formal process, FAW and so much time and things of that nature.

But in the context of reasonable notice, particularly in the matter of a discussion with staff or something like that I don't think it should be as structured. But I do think, as Mr. Kelly said, 72 hours, put it on the website, we're going to be meeting in three days, because sometimes you
don't have two weeks. Sometimes you only have a
couple of days or something like that. And that way
at least, at least Public Counsel will be aware of
it. And then sometimes you can -- although we, we
make a big deal about public service announcements,
but we rarely get them published. I'm getting -- I
know y'all know that I'm partial to Lifeline. So a
lot of times when we ask for things like that to get
published it doesn't get published.

But I do think that in the context of this
area that we're operating in, if we were to put
it -- if we had that opportunity to put it on the
web in 72 hours, that would give Public Counsel and
any other Intervenors that normally follow our
processes over here to say, hey, we want to share,
we want to be at the meeting or we don't want to be
at the meeting, or is there a call-in number, can we
do a conference?

So I think in the context, Mr. Moyle, of
reasonableness, we need to look at that perspective
of it because it's not a formal hearing or a formal
proceeding. So then you look at the context of
what's reasonable? Well, what's reasonable is based
upon the circumstances at the time. And I think
that if possible, 72 hours would be appropriate.
MS. CHRISTENSEN: I'd also like to briefly address it because I was going to address it under, under E. But I think probably since we're discussing reasonable notice on informal meetings between staff and parties, I think it had been past Commission practice to attempt to give seven days' notice on informal meetings between staff and parties wherever practical. And, and it seems to me that that time frame has been getting shorter and shorter to where we've gotten to two or three days' notice.

And the problem when you get to two or three days' notice and not longer is you may have conflicts with other cases and other obligations. And the longer the time frame that you have notice of the meeting, the longer you have to, if there is a conflict, to try and resolve it and to otherwise make yourself available for that meeting.

So I think that probably a longer period of time or erring on a longer period of time where it's practical and not an emergency situation would be reasonable. And I think when you get -- and I think one of the other problems that I've seen is where you have parties to a matter and a meeting has been set in two or three days and there's been no
prescreening of whether or not there are
availability of all the parties, that becomes a
problem. So what you may treat differently for a
docketed matter where there's parties available
versus an informal meeting between staff and a
utility and letting people know that this meeting is
taking place, and you may want to consider that
maybe you should have two different sets of
standards to apply to those two different, very
different situations.

I think when you already have other people
or other parties involved, I think that there should
be some thought or consideration given to trying to
get some consensus on setting up meeting times with
the other parties and setting the dates. And I know
that's not always possible because sometimes they're
very large dockets with large multiple parties
involved and not everybody will be able to attend,
but some thought and consideration should be given
then to setting the meetings with sufficient time
that other things can be rearranged and rescheduled.

And I think, you know, the two- or
three-day time slot would be to my way of thinking
more of where you're having an emergency situation
coming up where you need to talk about something and
resolve it quickly. I think for most occasions in
my experience you set weeks, meetings a week to two
weeks out for, for most type situations. And so I
wanted to throw that out there because it becomes
difficult when you have a meeting set within a very
short period of time in a docketed matter where
you're a party without giving, without getting
really reasonable notice.

So I think while you may not want to set
out a date, absolute date in a rule, maybe there,
maybe there's a way of addressing guidelines for
certain, certain types of situations so that
everybody knows what they can reasonably expect.

CHAIRMAN CARTER: I, I was not speaking to
docketed matters because I think that process is far
more formal and staff would endeavor to follow the
procedure in FAW as well as noticing requirements.

I mean, I was talking about informal
meetings that may come up on short notice or
something like that. Some people -- and staff would
not have ample time if they only had three days and
they would give, try to give the maximum amount of
time to that. I was not speaking to docketed
matters, nor matters that parties have already been
informed of.
I'm talking about an informal meeting with staff and a party. It doesn't have to be a company. It could be, it could be someone from the financial community could say, look, we're looking at a new type of -- God forbid they bring derivatives on us again -- but we're looking at a new type of financial mechanism and we're wondering if the Florida Commission would have a perspective on how we finance large capital projects and all, and say we're going to, we're doing a nationwide tour and we're in Atlanta today, but next Thursday, which would be a week from now, we're going to be in your state. So at that point in time staff's got to scramble to say, okay, let's, first of all, do we want to talk to these guys? Secondly, if we do, let's find out who in the Commission we want to talk to. Then I think at that point in time, once they make the decision to talk to them, then they should notice on the, on the site or something like that.

But in a more formalized process I don't think we've ever had a problem with notice because it's more structured and more formalized. And I was just -- the one thing I was talking about was an exception. I think we need to notice no matter what we do. Even in the emergency situation if we've
only got two days, we still need to notice that
because the, because of the open government law.

**MS. CIBULA:** Any additional questions on
Point C?

Point D is "Should some or all of the
exemptions in subsection (2) of the rule be
eliminated?" And they are rulemakings, declaratory
statements, staff-assisted rate cases, proposed
agency actions, non-rate case tariffs, workshops,
internal affairs, audits, telephone service
evaluations and electric and gas safety inspections.

**Mr. Moyle.**

**MR. MOYLE:** I'd like to comment on that.
And, I'm sorry, I did not make a comment I wanted to
make on C, which you asked the question should the
rule be amended to require notice of one-on-one
discussions as well?

And I think, I think if the notion is from
a broad standpoint again we need to have clear lines
and a clear understanding, you know, I talked about
the statutory conferences and the 90-day piece, you
know, this one-on-one is another exception or
exemption to that. And I don't -- you know, if
you're trying to prohibit the inappropriate
communication to have an exemption that says, well,
you can do it if you only have one person in the
room on a conference call dealing with staff, but if
you have two people in the room on a conference
call, you can't. I don't think that's enough of a
distinction that, that warrants an exception given,
you know, given the concerns that have been raised.
So I think you ought to look seriously at that, you
know, because it can be abused.

And I guess the other point I was going to
make, you know, we've gone along for a long time
without having, you know, I guess the '92 Grand Jury
report, not many of these things were put in place.
You know, if you do go further than you should, you
know, that may be a better course where you want to
be and then come back a little bit if you, if you
overshoot it as compared to, to not. So with that
sort of mind-set, you know, I think that one-on-one
communication issue warrants some serious
consideration and review.

With respect to these individual
proceedings, again, I made the point on rulemaking,
you know, if you want to have a clear, bright line,
you probably ought to look seriously at restricting
communications on some of these others. There may
be some that were brought up about, about
staff-assisted rate cases or somebody not familiar
that would warrant an exception. But the PAA issue,
you know, that's, that's a matter that the
Commission considers and debates and discusses. The
parties have an opportunity to come and make
argument in front of the Commissioners in an open
setting. I don't know that you need to have the
ability to go in and sit down with a Commissioner on
that prior to coming in front of the Commission on
a, you know, on an agenda conference or making your
arguments. So I don't, I don't understand, you
know, really good reasons why that, that should
remain exempt from ex parte if you're trying to set
a clear, send a clear message and set a bright line.

MR. McGLOTHLIN: Joe McGlothlin with OPC.
I would like to go back to topic C for a second
also. With respect to the definition of a
conference call with three or more people and the
distinction between scheduled and unscheduled
visits, as you're very much aware, one aspect of
this, the purpose of this workshop is to consider
appearances and to avoid any appearance that the
process is unfair. And I suggest that even if it
were never to happen, from the appearances
standpoint these definitions look like loopholes.
And with respect to how to perhaps modify that to avoid that appearance, it appears to me that the number of people on a call and whether a meeting is scheduled or unscheduled is not the, are not the appropriate criteria, and more emphasis should be given to the nature and purpose of the communication that's anticipated and less attention to the number of people involved, and that may be one way to go about improving, improving that aspect of the rule.

With respect to D, my answer is that most of those should not be eliminated. I remember when I was in private practice I represented a client who had an interest in a gas rate case that was going to be the subject of a PAA, and from that experience I saw that the process almost necessarily required a lot of input, one-sided input by the petitioning utility during which timeframe the staff formulated its recommendation. One-sided in that the utility was working with the staff to, to explain and obviously to persuade the staff as to its point of view, and all that happened prior to the time the PAA came out. And by that time, you know, there's at least the possibility that some positions are, are entrenched. And so even on PAA, PAA items like that I think there should be more openness and a
more obvious point of entry for those who are going
to be affected by, by the outcome.

**MS. SPENCER:** With regards to Points C and
D again, I think some of my earlier comments would
also hold true for these sections as well. I think
the Commission at this point would, should be erring
on the side of caution with any type of
communication which could be conceived as ex parte.
And I think when you start making exemptions, you
get the camel's tent under -- no, camel's nose under
the tent. Sorry. Backwards.

And I think, you know, given today's
technology and the ability to send mass e-mails in
the blink of an eye there really shouldn't be any
reason that you could not adequately, adequately
provide sufficient notice to parties just to get rid
of any perception of impropriety that may exist.
Thank you.

**MS. SALAK:** Let me ask you specifically
though about under D in the exemptions about audits
and other field work that's done by staff. I mean,
those aren't meetings per se. That's, you know,
it's we have audit authority and, quite frankly,
obody else -- you don't have audit authority. So
I'm wondering about audits. They're -- it's a --
specifically it's contained, it's -- what are your feelings about the audits?

**MS. CHRISTENSEN:** I think there are certain, at least with audits, telephone evaluations and electric and gas inspections, those types of activities that are done by the Commission tend to be the type where you have an employee going out to a site and needing to have one-on-one conversations to get information and to gather information. And so by the nature of what the activity is that you're doing, it may not lend itself to minute-by-minute notice of the one-on-one communication, but it may lend itself to some sort of a notification that an audit is taking place or that a gas inspection is taking place at this time and place. And maybe by noticing the fact that the, that the activity is occurring, that if somebody were sufficiently interested to want to talk to staff about it or has questions about it, they could, they could communicate with the technical staff.

I understand that there are certain activities that may not lend themselves to the immediate notification of every single communication. Those particular ones would seem to me to be the exceptions in maybe a staff-assisted
rate case. The other ones that have been listed as exceptions seem to be things that necessarily, aren't necessarily on that same level, that by the very functions of them don't require that one-on-one conversation to just gather information and to be able to get information from the utilities. The other categories seems that it would avail themselves to a more formal process or an e-mail or something that could communicate to more of the parties.

So while I can see where there would be still some that may require a looser one-on-one communication standard, you could still notice the fact that the activity was going to take place and maybe that -- and I haven't given it much more thought than maybe that that would be sufficient to cover the communications taking place during the activity.

Now if there was something that was beyond the scope of what was necessary to get the job done that was discussed, maybe that would need to be set aside in a written motion or some sort of formal written communication. You know, I understand in the audit you have to get information and there's give and take and papers and gathering information.
But if they brought up a subject that wasn't related to the audit that you were conducting and they were trying to discuss an issue that wasn't part of the confines of the audit request, then that would be outside of the notice that was provided that there was going to be an audit taking place.

How you would go about crafting some sort of rule or language that would give some guidance to audit staff or telephone staff or the inspectors as to, you know, if you're getting lobbied on something that's other than what you were there to do, you need to write it, put it in writing, that I haven't given much thought to.

**CHAIRMAN CARTER:** I think, I think these, particular to the audits, telephone service evaluation, electric and gas and safety inspections, I don't think they lend themselves to that because really it's purely a -- what's the word I'm looking for -- I don't want to say housekeeping function, but it's a fairly basic function.

The other thing too is noticing for that may require for the, for the remaining personnel that we actually have available for that, may be more than what we really want. I mean, I think that what you want notice for and what you want to be
abreast of are things that are actually within the context of like rulemaking, declaratory statements. Those I can see. But in terms of the audit, the telephone service evaluation, electric and gas and safety inspections, those are fairly rudimentary things and fundamental things. And then, and after those things are done, they're still available to any of the parties that want to see them.

So in the context of that I just, I don't, I don't see the -- I mean, I'm not feeling you on that one.

**MR. KELLY:** Well, just to throw out an idea, and I understand because there, there -- it might be, again, I'm just throwing this out, it may be on the notice of meeting link that I've brought up a time or two, maybe something on an audit goes out to say that, just a notice that staff will be auditing Kelly Utility during the month of December.

And I agree with you, if this is where you were going, Chairman, I agree with you that you can't sit there and have a meeting that says, okay, we're going to be meeting December 2nd, then December 5th, then December 10th. I agree with you there. But maybe a general notice might be something to consider that, for those limited areas
that you could put on and just say that -- or maybe
you have another link that, for audits and
inspections. Maybe that's a way to address it.

MS. SALAK: We do have, we do have a
letter that goes out now and it goes in the audit
file, in the docket file, whatever. The only ones
that we -- well, even undocketed we used to send you
a letter. I'm not sure we do anymore or not. But
we used to always cc Public Counsel on that. And,
you know --

MR. KELLY: And I'm not, again, I'm not
saying that we're not finding out about it. But,
again, I want to turn it around to the public. You
know, the more we can, you put out there for the
public to know, again, I think it's just less -- I
think Mr. Moyle hit on it, touched on it earlier,
it's just less of an appearance of, of any
impropriety or anything like that.

I beg your indulgence. I've got to leave.
My wife is having surgery as we speak and I've got
to go. I just want to say from my standpoint thank
you so much, Chairman, and you guys for doing this
workshop. Anybody that wants to contact me or talk
to me about any of the out of the box ideas I've
thrown out today, I am more than willing to do it.
And I will not be in tomorrow, but after the holidays I am available. But, again, I think that this will get us all on the right track, and I do appreciate your indulgence in letting me think outside the box earlier. Thank you.

**MS. CIBULA:** Thank you so much for being here, Mr. Kelly. We really appreciate your input.

**MR. MOYLE:** Can I, can I just make an, attempt to make a bit of a finer point on the audits? I mean, I don't know, I'm not that conversant on the audits candidly, but, you know, clearly the other ones I am. And I think that, you know, the message again to make the point should be a clear message.

The rule makes a distinction on audits between docketed and undocketed, and I presume that that has different aspects of it. So to the extent that, you know, docketed matters are done so because there's more significance to them or it's more likely they'll be contested or they're more significant, you might want to think about, about having the exemption apply to undocketed audits.

And also in a recent case, I think during the middle of a case an occasion came up where an audit was being conducted in the case, you know, and
I was under the -- I didn't -- I was under the impression in that situation it should be subject to notice and the parties being advised when it's a live issue in a case and there's an audit that's being conducted. So I think, I think if you're going to revise this rule, you might want to try to, try to refine it to audits that are regular and routine, that are not the subject of a contested proceeding. Or, you know, if my assumption about docketed and undocketed is right, you know, have it, have it apply only to undocketed matters.

MS. CIBULA: Any additional comments? I know I said we'd probably break around noon-ish for lunch, but we've been going through the agenda pretty quickly. And we can probably, if everyone is agreeable, probably soldier through the last couple of questions and finish probably around 1:00ish, if everyone is agreeable to that.

CHAIRMAN CARTER: Yeah. Let's roll.

MR. MOYLE: Let's do it.

MS. CIBULA: Okay. Question E, I think we've covered it somewhat already, it is "Should the rule be amended to require notices of informal meetings between Commission staff and outside entities be posted on the Commission's website?"
Does the Commission's practice of posting on its
calendar informal meetings between Commission staff
and outside entities provide sufficient notice?"

**MS. SPENCER:** I just want to reiterate
some of the comments and agree with what Mr. Kelly
said earlier, that the, the current practice of just
putting it on the calendar can be confusing for the
consumer. There are numbers there, there are
letters, it's not readily understood what the
meeting is about. But if somewhere on the main page
of the website there could be a link that provides a
calendar, a more defined calendar and also includes
just a sentence or two about what the, what the
nature of the meeting will be about so that if there
is a consumer or an interested party who wants to
attend or, or take part in that meeting, that they
have the ability to do so.

But when Mr. Kelly mentioned the fact that
he gets phone calls from people not understanding
and being able to understand where things are on the
website, I'm one of those because I will go onto the
website and not be able to find the sufficient
information. So having a clear, accessible link I
think would do wonders to helping make that more
transparent for consumers.
MR. BECK: And, Samantha, Commissioner McMurrian had some specific suggestions about calendars and we would support her comments.

MS. CIBULA: Any additional comments?

Point F is "What, if any, additional communication should be committed to writing?"

CHAIRMAN CARTER: I just wanted to say that I think that the list that Commissioner McMurrian gave was comprehensive but not exhaustive. I think there are still some areas -- and we're -- one of the reasons why we wanted to do this is to get as much feedback as possible from parties that are involved in this process.

One of the things that I think that we could do, getting back to, just stepping back to the website for a moment, we do have inside baseball where you go and you see a case number and it's got that and then they talk about the parties. But maybe we could add a sentence like this is a case with companies seeking a rate increase or this is a case where the company is seeking to build a spaceship or something that the average person -- a lot of times we get in here and we start talking about stuff and we talk about MMBtus and we talk about kilowatts and gigawatts and megawatts, and the
average person at home is saying, you know, what a bunch of yahoos. What are they talking about?

So I think that maybe we could do some -- put maybe a user-friendly sentence and say this case is about X, and I think that will go a long way toward having the average person informed about what we're doing here.

MS. CHRISTENSEN: I have another suggestion. I don't know if it was brought up in Commissioner McMurrian's comments, but if you have the calendar and if you could build into the calendar links on the date you have a notice to the notice, that might also help. So that if you have a question about what's this meeting about and you have a link that would pull up the meeting notice so that, you know, if you have a meeting scheduled on a particular day, on Monday you have several different meetings and you have the links to whatever the informal notice, the actual notice that y'all type up and put in the docket file, it might help that, that facilitation or use of the website because they could go on a particular day and be able to easily access and be able to find out what the meeting is about.

MS. CIBULA: Any additional comments on
Point F?

Point G is "Workshop participants' suggestions on other potential amendments to the rule." I guess we covered everything.

Unless there are any other, any other general questions or comments on this section --

Chairman Carter.

CHAIRMAN CARTER: I just wanted to say that I was watching upstairs and I wanted to come down personally to thank all the participants. I know Mr. Kelly had to go and take care of a very important matter, but I do appreciate the openness and the sincerity and the fact that you guys, you didn't sugarcoat it, you just laid it out on what we, what we need to do to do a better job, and I appreciate that and it's going to make us a better organization. And I thank you for coming to us with those kinds of things.

And like some of the things, like Mr. McGlothlin was talking about in terms of modifying the prehearing process, those kind of things may sound like inside baseball, but it's something that you've been doing it the same way so much so it's just kind of like common, common to you. But a lot of times change is better, and I
think that -- I appreciate the candid and sincerity of each one of the people here that have presented, as well as our staff who are doing a good job. Commissioner Skop, I appreciate your hard work as well in terms of, you know, making sure that we came down and got involved in this process because going forward we want to do better. So thank you.

**COMMISSIONER SKOP:** And absolutely, Chairman Carter. I concur with your comments. I appreciate your kind words. And I would also like to thank the parties that attended this morning's workshop for providing input. It's been well thought out, and collectively I think through hearing the comments of each individual party as well as those collectively we'll get to a better process and implement the required change. Thank you.

**MS. CIBULA:** Mr. Moyle.

**MR. MOYLE:** At the right time I have a process question. I guess we're getting close, huh, since you asked it?

**MS. CIBULA:** Okay.

**MR. MOYLE:** In your -- you know, you talk about the next steps, and I guess there will be a Commission workshop that's envisioned.
MS. CIBULA: Uh-huh.

MR. MOYLE: And are you envisioning having proposed amendments to the rule in advance of that Commission workshop?

MS. CIBULA: Yes.

MR. MOYLE: Okay. And I think another, another notion or, I mean, it's an informal kind of workshop process, but a lot of what we've talked about in your rule obviously has to flow from the statute. But some of the things we've talked about and you've referenced in the Grand Jury report references statutes and the ex parte statute, and, and I wanted to know whether there might be consideration given to recommendations for statutory change as well to changes to the rule. Because if you come back and say, you know what, like I've made, made a point about the 90-day provision, if you agree with that or the Commission agrees with that, you know, March is when the Legislature starts, but you probably have time to also roll in some statutory recommendations that, that may be forthcoming. I wanted to know if thought has been given to that.

MS. CIBULA: Yeah. We were envisioning that we'd collect all the comments, then try to
figure out which ones would be rule changes and which ones would be legislative changes. And then we'd go forward with maybe potential rule changes for the next workshop, and then the legislative changes would go on a probably different track since we have to present those to the Legislature. So that's what we were envisioning.

MR. MOYLE: Okay. Thanks for that clarification.

MS. CIBULA: And I guess the next order of business is written comments. We welcome written comments from everyone. And right now we have the date as December 9th, but I know there were some new ideas that were brought up at this workshop and that people might want to see the transcript before they submit their comments. So we were -- and I was told by the court reporter that the transcript would be available on December 7th. So we were thinking that written comments should be due on December 15th, and that would give you enough time to look at the transcript before submitting your comments. And submit the comments to me since this is an undocketed matter at the address listed on the agenda or the e-mail address listed on the agenda. You don't have to send it to both places, I mean
both addresses, but at least one of those.

And we're going to attempt to have everything posted on the website by December 24th. We'll try to have -- we'll have the transcript posted as soon as we get it on December 7th as fast as we can get it on the website.

And like I said, the next step will be to review all the comments and draft amendments to Rule 25-22.033 and any other rules that we think need to be changed based on the comments, and then have a Commissioner workshop next to discuss the potential rule amendments, and that will probably take place sometime at the beginning of next year. And we'll issue notice of that workshop in advance.

Unless there's any other additional questions or comments, we're adjourned. Thank you all.

(Workshop adjourned at 12:22 p.m.)
STATE OF FLORIDA  

: CERTIFICATE OF REPORTERS

COUNTY OF LEON  

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 7th day of December, 2009.

JANE FAUROT, RPR  
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FLORIDA PUBLIC SERVICE COMMISSION