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DIVISION OF APPEALS
DAVID SMITH
DIRECTOR
(850) 413-6245

Public Service Commission

July 30, 1998

Ms. Liz Cloud
Department of State
Bureau of Administrative Code
401 South Monroe Street
Tallahassee, FL 32399-0250

Re: Technical Changes to Public Service Commission Procedural Rules
(PSC Docket No. 980500-PU)

Dear Ms. Cloud:

In order to comply with the uniform rule requirements in section 120.54(5), Florida Statutes, the Commission plans to initiate rulemaking to repeal many of its procedural rules contained in Chapters 25-21 and 25-22, F.A.C. There are some procedural rules, however, that the Commission will keep or amend because they are either outside the scope of the uniform rules or the agency has received an exception in order to maintain the rule. It is my understanding that the rules the Commission plans to keep must be moved to different rule chapters that are "organized in the same manner as the uniform rules." Section 120.54(5)(a)3., Florida Statutes. In addition, the statutory authority for the procedural rules the Commission plans to keep must be updated.

In order to facilitate the rulemaking process, the Commission seeks technical changes to the attached procedural rules. Specifically, the Commission seeks to transfer the rules set out in Attachment I to the new rule chapters previously reserved. In addition, the Commission seeks to change the rule numbers and update the statutory authority for the rules set out in Attachment II.

- ACF _____
- AEA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

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DOCUMENT NUMBER - DATE
98045 JUL 30 98
PSC SERVICES REPORTING

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Please let me know if there is anything else we must do in order to make these changes. Thank you for your assistance.

Sincerely,



Christiana T. Moore
Associate General Counsel

CTM

cc: Blanca Bayó, Division of Records and Reporting
Sandy Simmons, Division of Records and Reporting
John Rosner, Joint Administrative Procedures Committee
Wanda Terrell, Division of Appeals

25-21.050 Acceptance of Gifts.

~~(1) This rule is adopted to implement section 112.326, Florida Statutes, authorizing agencies to impose more stringent standards of conduct upon their employees than those specified in Chapter 112, Part III, Florida Statutes. The provisions of (2) apply in addition to that part.~~

~~(2) A Commission employee shall not knowingly accept anything of value for which equal or greater consideration is not given from any entity listed below, its officers or employees. This prohibition shall further apply to any business entity that either directly or indirectly owns, controls, is an affiliate of or is a subsidiary of the listed entities. These include:~~

~~(a) An entity regulated by the Commission;~~

~~(b) An entity that is currently a party or has been a party in a Commission proceeding during the preceding 12 months; or~~

~~(c) A person or entity acting on behalf of a regulated entity or party.~~

~~(3) The provisions of (2) shall not apply:~~

~~(a) When it is obvious from the circumstances that it is a relationship with a relative, as defined in section 112.312(21), Florida Statutes, or a personal relationship that pre-existed the regulatory relationship and which involves reciprocity, rather than the regulatory relationship, that is the motivating factor for offering a thing of value;~~

~~(b) To incidental items with a value of \$3.00 or less, determined as provided in section 112.3148(7), Florida Statutes;~~

~~(c) To items that are offered to the public at large or to public or private groups, such as professional, community, religious, social, or sports organizations, of which the employee is a member and where the group is not limited to employees of the Commission. However, a Commission employee shall not accept without payment food or beverages provided at a reception or similar event that is held in conjunction with a conference or meeting when the reception or similar event is sponsored by a regulated entity, association of regulated entities, or a party.~~

~~(d) To retirement or other post-employment benefits received as a result of prior employment with a regulated entity or party to a proceeding, which benefits the employee would receive regardless of employment by the Commission;~~

~~(e) To the acceptance of assistance in circumstances endangering the employee's or another person's life or property;~~

~~(f) To employees in secretarial, clerical, maintenance, or similar positions, unless the employee serves in a secretarial position under the direct supervision of a Commissioner;~~

~~(g) To the acceptance of transportation in a regulated entity's vehicle by an employee on a field visit to a site that is remote or difficult to access in a Commission vehicle;~~

~~(4) Violation of this rule shall constitute grounds for~~

~~disciplinary action for conduct unbecoming a public employee.~~

~~(5) An employee who is uncertain about accepting anything of value may request a written advisory opinion from the General Counsel and Executive Director.~~

Specific Authority 112.326 FS.

Law Implemented 112.326 FS.

History--New 5-23-95, Transferred to 25-41.005.

25-22.001 Notice of Meeting or Workshop.

~~(1) Except in the case of emergency meetings the Commission shall give at least seven (7) days' public notice of any meeting or workshop by publication in the Florida Administrative Weekly.~~

~~(2) The Commission shall use the following form in providing notice of the meeting or workshop.~~

~~NOTICE OF PUBLIC MEETING OR WORKSHOP~~

~~The Florida Public Service Commission announces a public meeting or workshop to which all persons are invited.~~

~~DATE AND TIME: _____~~

~~PLACE: _____~~

~~PURPOSE: _____~~

~~A copy of the agenda for any public meeting may be obtained by writing to the Division of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.~~

~~(3) A meeting, for the purposes of notice herein, is limited to a gathering of Commissioners for the purpose of conducting public business. The term meeting includes Agenda Conference.~~

~~(4) A workshop is a gathering where Commissioners may be present or Commission staff or person(s) designated by the commission are meeting with interested persons for a specific purpose as designated in the notice. The term workshop includes gatherings for the specific purpose of rule drafting at which time no official votes are taken or policy adopted.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 12-21-81, Formerly 25-22.01, Transferred to 25-42.001.

25-22.002 Agenda of Meetings.

~~(1) The agenda for meetings shall be prepared by the Commission in time to insure that a copy may be received at least seven (7) days before the meeting by any person in the State who has requested a copy and pays \$1.00 per copy.~~

~~(2) The agenda shall list and specify the items to be considered at the meeting.~~

~~(3) For good cause stated on the record, the person designated to preside may make specific changes in the agenda after it has been made available for distribution. A majority vote of a quorum of the Commission is required to modify the~~

~~presiding officer's decision.~~

~~(4) Copies of staff recommendations for items on the agenda may be obtained from the Division of Records and Reporting upon request and the payment of the applicable copying fee. Parties to a proceeding are entitled to one copy of the staff recommendation filed in the proceeding at no cost.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 12-21-81, Formerly 25-22.02, Amended 4-18-94.

Transferred to 25-42.002.

25-22.0021 Agenda Conference Participation.

~~(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.~~

~~(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.~~

~~(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 3-23-93, Transferred to 25-42.004.

25-22.006 Confidential Information.

~~(1) Definitions.~~

~~(a) "Confidential Information" means material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.183, 366.093, or 367.156, F.S.~~

~~(b) "Formal proceeding" means a proceeding docketed in the Commission's Division of Records and Reporting.~~

~~(c) "Inquiry" means an investigation pursuant to section 350.121, F.S. An inquiry is set in motion by the Commission Chairman, the Executive Director, or the General Counsel to evaluate a complaint, allegation, or develop information as a basis to initiate action on or dispose of any matter within the Commission's jurisdiction.~~

~~(d) "Material" means all documents, papers, letters, maps,~~

books, tapes, photographs, films, sound recordings, or other recorded information regardless of physical form or characteristics.

~~(c) "Obtaining material" means receiving material pursuant to filing or taking physical control of material by removing the original material or a copy of it from the utility's or other person's premises. Obtaining material also means the extraction of data from material for inclusion in working papers or memoranda.~~

~~(2) Material obtained during an inquiry.~~

~~(a) All material obtained incident to an inquiry by the Commission, its staff, or any consultant employed by the Commission is exempt from the public access requirements of Section 119.07(1), F.S., and will be accorded stringent procedural safeguards against public disclosure during the pendency of the inquiry. When the Commission or its staff is requesting information incident to an inquiry, the source shall be informed in writing that the request is made incident to an inquiry.~~

~~(b) An inquiry will terminate 40 days after the transmittal of a notice of termination by the Division of Records and Reporting. This notice will be sent to all sources from whom material was obtained during the inquiry and will include a list of all materials obtained from the source during the inquiry and any portions of staff work papers, analyses, and reports containing materials obtained from the source during the inquiry. The notice will indicate whether the Commission intends to retain, destroy, or return the materials listed. A source may, within 30 days after issuance of the notice, file with the Division of Records and Reporting a written request that the material the Commission intends to retain be classified as confidential and exempt from Section 119.07(1), F.S. Requests filed in response to the notice of termination shall meet the same criteria and be processed in the same manner as other requests for confidential classification under subsection (4) of this rule. If no timely request for confidential classification is filed, confidentiality is waived and the material becomes subject to inspection and examination pursuant to Section 119.01(7), F.S.~~

~~(3) Material obtained outside of an inquiry. Material obtained by the Commission or its staff outside of an inquiry shall be subject to inspection and examination pursuant to Section 119.07(1), F.S., unless the utility or other person requests that it be classified as confidential information.~~

~~(a) 1. If the utility or other person believes information requested by staff is confidential, the utility or other person may require that the staff request be in writing. Prior to the staff obtaining any material, a utility or other person may receive temporary exemption from Section 119.07(1), F.S., by filing a notice of intent to request confidential classification. The notice of intent to request confidential~~

~~classification shall be filed with the Division of Records and Reporting and shall have appended thereto a copy of any written request for the material to which it relates. A copy of the notice shall be provided to the division requesting the material. To maintain continued confidential handling of the material the utility or other person must, within 21 days after the staff has obtained the material, file a request for confidential classification with the Division of Records and Reporting. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.~~

~~2. In the case of material obtained by the Commission's auditors, the utility shall indicate on the document request Form PGC/AFA 6 (2/95) whether the information is believed by the utility to be confidential. To maintain continued confidential handling of the material, the utility must, within 21 days after the audit exit conference or, if waived, the date the audit exit conference would have taken place, file a request for confidential classification with the Division of Records and Reporting. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.~~

~~(b) When the material is obtained incident to a formal proceeding, the utility or other person requesting confidential classification shall also serve a copy or summary of its request on all parties of record and on Public Counsel. The summary shall describe the material in sufficient detail so as to reasonably inform the reader of the nature of the material. Any party to a formal proceeding may file an objection to the request for confidential classification within 14 days after service of the copy or summary.~~

~~(c) Requests for confidential classification, including motions for protective orders under Paragraph 6(a), and any objections filed in response thereto shall be ruled on expeditiously by the prehearing officer assigned to the docket. The Commission panel assigned to the case will hear any motion for reconsideration filed regarding the prehearing officer's ruling. If a request is received outside a docketed proceeding, the request itself will be docketed.~~

~~(d) All material that has been classified as confidential, for which a ruling on confidentiality is pending, is subject to a notice of intent to request confidential classification, or is subject to a claim of confidentiality as provided for in Section 364.183(1), F.G., shall be exempt from Section 119.07(1), F.G., and will be accorded stringent internal procedural safeguards against public disclosure. Any staff or consultant reports or work products containing confidential information extracted from material having been classified as confidential, or which has been claimed to be confidential or for which a ruling on confidentiality is pending, shall be handled in the same manner as the material so classified. The Commission shall have discretion to retain any confidential material in its possession.~~

~~Upon the consent of the Department of State, the Commission may return or, after consulting with the source, destroy any material that is no longer needed.~~

~~(4) Requests for confidential classification.~~

~~(a) A request for confidential classification of material shall be filed in writing with the Division of Records and Reporting. All such requests, including motions for protective orders based on confidentiality, shall be styled to clearly indicate on their face that confidentiality is being requested. The utility or other person shall file with the request one copy of the material for which confidential treatment is requested. On this copy, the specific information asserted to be confidential shall be highlighted. Along with the highlighted copy, the utility or other person shall file two or more edited copies as required by the type of proceeding, which will be made available for public inspection. In the edited copies, the specific information asserted to be confidential shall be blocked out by the use of an opaque marker or other masking device. The utility or other person shall identify the page and line at which the confidential material is found and shall correlate the page and line identified with the specific justification proffered in support of the classification of such material.~~

~~(b) In the case of electronically stored material, one unedited version shall be submitted along with a written identification of the specific data fields for which confidential classification is requested along with a field by field justification for the confidential classification.~~

~~(c) In the line by line or field by field justification for confidential classification, the utility or other person must demonstrate how the information asserted to be confidential qualifies as one of the statutory examples listed in section 364.183(3), 366.093(3), or 367.156(3), F.S. If no statutory example is applicable, then the utility or other person shall include a statement explaining how the ratepayers or the person's or utility's business operations will be harmed by disclosure.~~

~~(d) The request shall include an affirmative statement that the material for which confidential classification is sought is intended to be and is treated by the utility or other person as private and has not been disclosed.~~

~~(e) The burden of proof shall be on the utility or other person to show that the material in question contains bona fide proprietary confidential business information. A request for confidential classification that fails to identify the material for which confidential classification is sought in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied as insufficient on its face.~~

~~(f) The Division of Records and Reporting shall make available for public inspection a listing of daily filings with the Commission requesting confidentiality.~~

~~(g) The Commission shall have the discretion to modify the~~

~~requirements of this subsection in order to alleviate the financial burden of entities qualifying as small businesses under section 288.702, F.S.~~

~~(h) A utility may petition the Commission for a waiver of the justification for particular sections of certain routinized filings. The Commission may require conditions to be met by the utility that may include, but not be limited to:~~

~~1. Filings which are routine, filed periodically, and which have been filed for a minimum of six months;~~

~~2. Information which has regularly been classified as confidential in the past; and~~

~~3. While the utility must identify material to be classified by line by line reference, the utility may cite to a previous order for justification.~~

~~if the waiver is approved, the Commission will issue an order referencing the appropriate previous order stating the relevant justification. No party will be denied the opportunity to object to a request for confidentiality made pursuant to this subparagraph.~~

~~(5) Claim of confidential treatment pursuant to section 364.183(1), F.S.~~

~~(a) Telecommunications companies or other persons claiming confidential treatment for materials pursuant to section 364.183(1), F.S., shall file with the Division of Records and Reporting one copy of all such materials and include a cover letter stating that confidentiality is being claimed. The telecommunications company or other person also shall file one copy of the material on which the specific information claimed as confidential shall be highlighted. Along with the highlighted copy, the telecommunications company or other person shall file two edited copies which will be made available for public inspection. In the edited copies, the specific information claimed to be confidential shall be blocked out by the use of an opaque marker or other masking device.~~

~~(b) In the case of electronically stored material, one unedited version shall be submitted along with a written identification of the specific data fields for which confidentiality is claimed, along with a field by field justification for the confidential classification.~~

~~(c) 1. The materials claimed to be confidential shall be kept confidential until returned to the provider pursuant to subsection (6) (d) of this rule, unless the materials will be used in a Commission proceeding or are the subject of a request pursuant to Section 119.07(1), F.S.~~

~~2. Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to 364.183(1), F.S. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or~~

~~issue a ruling on the pleadings.~~

~~(6) Discovery.~~

~~(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.200, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.~~

~~(b) The Commission's protective orders shall exempt proprietary confidential business information from section 119.07(1), F.S. While a request for a protective order is pending, the information asserted to be confidential shall also be exempt from section 119.07(1), F.S. Such exemption shall apply whether the information is in the possession of an entity, individual, or state agency, including the Office of Public Counsel.~~

~~(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.~~

~~(d) Confidential information which has not been entered into the official record of the proceeding shall be returned to the utility or person who provided the information no later than 60 days after the final order, unless the final order is appealed. If the final order is appealed, the confidential information which has not been made a part of the record shall be returned no later than 30 days after the decision on appeal.~~

~~(7) (a) Any person may file a petition to inspect and examine any material which the Commission has ruled exempt from s. 119.07(1), F.S., or which is exempted under paragraph 3(d) pending the Commission's ruling or as the result of the filing of a notice of intent to request confidentiality. A copy of the petition must be served on the affected utility or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings. Material obtained by the Commission in connection with an inquiry shall~~

~~not be subject to requests for inspection and examination until after the inquiry is terminated.~~

~~(b) A finding of confidentiality notwithstanding, a source may consent to inspection or examination by any person. Such consent shall not constitute a waiver of confidentiality and only the person specified in the consent may inspect or examine the material. The Commission may be requested to issue a protective order to recognize the terms and conditions of the consent. All persons are urged to seek mutual agreement regarding access prior to bringing a controversy to the Commission.~~

~~(8) Use of confidential information during formal proceedings.~~

~~(a) The Commission may rely upon confidential information during a formal proceeding and such information, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential information in the record and otherwise protect its integrity.~~

~~(b) When information subject to a claim of confidentiality pursuant to Section 364.183(1) or a request is admitted into the evidentiary record of a hearing, if such information is not otherwise subject to a request for confidentiality filed with the Commission, the parties to the case and the Commission shall treat the information as confidential pending a ruling on the confidentiality of the information. To maintain continued confidentiality, the party to whom the information belongs shall file a request for confidential classification within 21 days of the conclusion of the hearing.~~

~~(c) When information subject to a claim of confidentiality pursuant to Section 364.183(1) or a request is contained in a party's brief or other post hearing filing filed with the Commission, the party filing such information shall notify the owner of the information at least three working days prior to the date that the filing will be made. To maintain continued confidential treatment, the party to whom the information belongs shall file, on the same date the brief or other post hearing filing is filed, either a notice of intent to request confidentiality treatment pursuant to (b) of this subsection, a request for confidential treatment, or a statement that the information is already subject to a request for confidentiality that has been filed with the Commission and the date that the request was filed.~~

~~(9) Duration of Confidential Classification.~~

~~(a) Orders of the Commission granting confidential classification shall limit the duration of such classification to a period not exceeding 18 months. The Commission may approve a longer period if it finds, for good cause, that such longer period is necessary to protect the ratepayers or the business operations of the utility or affected person.~~

~~(b) When confidential information is no longer needed for the Commission to conduct its business, the Commission shall order all persons holding such information to return it to the~~

~~utility or person providing the information.~~

~~(c) Confidential information not returned at the conclusion of the period established under paragraph (a) of this subsection, shall no longer be exempt from s. 119.07(1), F.S., unless the utility or affected person shows, and the Commission finds, that the information continues to be confidential. Upon such finding, the duration of confidential classification may be extended for a period of up to 18 months, or for a longer period if the Commission finds, for good cause, that such longer period is necessary to protect the business operations of the utility or affected person. While the Commission is considering an extension under this paragraph, the information in question shall remain exempt from s. 119.07(1), F.S.~~

~~(10) Judicial Review. When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of Records and Reporting. The material will thereafter receive confidential treatment through completion of judicial review.~~

~~Specific Authority: 350.127, F.S.~~

~~Law Implemented: 350.121, 364.183, 366.093, 367.156, F.S.~~

~~History: New 7/1/85, Amended 4/26/90, 4/21/96, Transferred to 25-41.002.~~

25-22.017 Rulemaking Proceeding -- Adoption.

~~(1) At a public meeting, the Commission shall consider the record, the proposed rule, timely exceptions to the presiding officer's final recommended version, if permitted, and the recommendation of the presiding officer. The Commission may also question staff and other persons as part of its deliberations prior to adopting, rejecting or modifying the proposed rule.~~

~~(2) Oral argument and petitions for reconsideration are not appropriate to the rulemaking process. However, any interested person may petition the Commission after a rule is adopted or amended, for initiation of rulemaking proceedings pursuant to Rule 25-22.012, to amend or otherwise modify the adopted rule or amendment.~~

~~(3) Where a variance from a rule is requested, the Commission shall treat the request as a petition for a s 120.57, F.S., hearing. Unless waived by all parties, the provisions of s 120.57(1), F.S., and Part IV of these rules shall apply whenever the proceeding involves a disputed issue of material fact. In cases where the provisions of s 120.57(1), F.S., do not apply, the provisions of s 120.57(2), (3), F.S., shall be followed.~~

~~Specific Authority 120.53 FS.~~

~~Law Implemented 120.53 FS.~~

History--New 12-21-81, Amended 10-25-83, Formerly 25-22.17,
Transferred to 25-43.007.

25-22.028 Filing, Service of Documents, and Computation of Time.

~~(1) Filing. Filing shall be accomplished by submitting the original document and the appropriate number of copies, as provided by rule, to the Division of Records and Reporting (Division). Filing may be made by U.S. Mail, hand delivery, or courier service. Filings on behalf of companies with gross annual operating revenues derived from intrastate business in excess of \$750,000, Class A water and sewer utilities, and parties to proceedings affecting these entities, shall also include a copy of the document on diskette in word processing or spreadsheet format, whichever is appropriate, when filing documents capable of being generated by word processing or spreadsheet software. Material for which a request for confidential classification is pending under Rule 25-22.006, Florida Administrative Code, should not be included in a diskette copy. The diskette filing need not recreate document attachments not originally generated for the purpose of filing with the Commission, such as exhibits attached to a petition. The copy of the document on diskette shall be filed within 1 working day of the date the original printed document is filed. Information about the word processing and spreadsheet software preferred by the Commission may be obtained from the Director of the Division. Each diskette shall be accompanied by a statement specifying the density of the diskette, the operating system and the software used to prepare the document on diskette. For purposes of the requirement that copies of documents be filed on diskette, "document" means all prehearing statements regardless of length, and pleadings, post hearing statements of positions on issues or briefs, proposed findings of fact and conclusions of law in excess of 5 pages exclusive of the service list. The prehearing officer assigned to the proceeding may grant exceptions to the requirement for filing documents on diskette on a case-by-case basis, for good cause shown. In case of a discrepancy between an original printed document that is filed and the document on diskette, the filed original document shall prevail. Filing shall be completed upon receipt by the Division; provided, however, that during the course of a hearing before the Commission or a panel thereof, the presiding chairman may accept a document for filing and shall note the filing date and transmit it to the Division. In this situation the responsible party shall ensure that a copy of the document is submitted on diskette to the Division within 5 working days. The date a document is submitted for filing shall be noted by the person making the filing on the first page of the document filed. Where a document is served upon a party pursuant~~

~~to these rules, its original and the appropriate copies, or, in the case of interrogatories or production of documents, a notice of service, shall be filed with the Division no later than 5 days after service.~~

~~(2) Service. A copy of all documents filed pursuant to these rules shall be served on each of the parties no later than the date of filing. In the event that the parties are so numerous that this requirement is onerous, the Commission on motion may limit the number of copies to be served. Service by mail shall be completed upon mailing.~~

~~(3) Method and Proof of Service.~~

~~(a) When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the Commission. Service on the attorney or party shall be made by hand delivery or by mail to the last known address. Delivery of a copy within this rule shall mean handing it to the attorney or to the party, or leaving it at the party's or attorney's usual office with the clerk or other person in charge, or if there is no one in charge, leaving it in a conspicuous place within the office, or if the office is closed, leaving it at the party's or attorney's usual place of abode with some person of the family above fifteen years of age and informing that person of the contents.~~

~~(b) When an attorney or a party certifies in substance: "I certify that a copy hereof has been furnished to (here insert name or names) by (delivery) (mail) this _____ day of _____, 19__"~~

~~Signature"~~

~~the certificate shall be taken as prima facie evidence of service in compliance with this rule.~~

~~(4) Additional Time after Service by Mail. Whenever a party is required or permitted to do an act within a prescribed time after service of a document, and the document is served by mail, five days shall be added to the prescribed time, except that responses to notices pursuant to Sections 350.113, 364.335, and 367.045, F.S., shall be filed within the time specified by statute. Any action required by a Commission order shall be completed on the specified date, if any, in the order.~~

~~(5) Computation of Time. In computing any period of time prescribed or allowed by these rules, by order of a presiding officer, or by any applicable statute, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. As used in these rules, legal~~

~~holiday means those days designated in 5 110.117, F.S., and any other day the Agency's offices are closed.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--Formerly 25-2.58, Amended 10-21-81, Formerly 25-22.28, Amended 2-11-92, Transferred to 25-46.104.

25-22.029 Point of Entry Into Proposed Agency Action Proceedings.

~~(1) At any time subsequent to the initiation of a proceeding before the Commission, the Commission may give notice of proposed agency action. Proposed agency action shall be made upon a vote of the Commission, and may be reflected in the form of an order or a notice of intended action.~~

~~(2) After agenda conference, the Division of Records and Reporting shall issue written notice of the proposed agency action, advising all parties of record that they have 21 days after issuance of the notice in which to file a request for a 5 120.57 hearing. For good cause shown, the Commission may provide that the time for requesting a 5 120.57 hearing shall be 14 days from issuance of the notice. The Commission may also serve copies of its notice on interested persons and may require a utility to serve written notice on its customers.~~

~~(3) The Commission may publish notice of its proposed agency action in the Florida Administrative Weekly or newspapers of general circulation in the area affected by its action and may require a utility to publish notice of the decision in newspapers of general circulation in its service area. Any such publication may be used in establishing the date of receiving notice.~~

~~(4) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a 5 120.57 hearing, in the form provided by Rule 25-22.036. Any such petition shall be filed within the time stated in the notice issued pursuant to subsection (2) of this rule. However, when a person has not been served notice of the decision and notice has been published, such person may file a petition within 14 days after publication of the notice.~~

~~(5) Any person who receives notice and who fails to file a timely request for a 5 120.57 hearing shall have waived his or her right to request a hearing on the decision.~~

~~(6) In the absence of a timely request for a 5 120.57 hearing, and unless otherwise provided by a Commission order, the proposed action shall become effective upon the expiration of the time within which to request a hearing.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 12-21-81, Formerly 25-22.29, Amended 7-8-92, Transferred to 25-46.111.

25-22.030 Injunctions.

~~(1) The Commission may seek relief in circuit court in the form of temporary or permanent injunctions, restraining orders or other appropriate orders where:~~

~~(a) The Commission finds that any entity within its jurisdiction has violated or is in violation of a Commission Order or rule; and~~

~~(b) The Commission finds that said violation impairs the operations or service of any entity over which it has jurisdiction.~~

~~(2) In any instance where there is an immediate threat to the public health, safety or welfare, no notice shall be required prior to the Commission's decision to seek the relief described in subsection (1).~~

~~(3) Seeking relief in circuit court is not conditioned on conducting a hearing pursuant to Chapter 120, Florida Statutes, Specific Authority 350.127(2) FS.~~

Law Implemented 364.015, 366.05(10), 367.121(1)(j) FS.

History--New 3-21-94, Transferred to 25-41.003.

25-22.032 Customer Complaints.

~~(1) Any customer of a utility regulated by this Commission may file a complaint with the Division of Consumer Affairs whenever he has an unresolved dispute with the utility regarding his electric, gas, telephone, water, or wastewater service. The complaint may be communicated orally or in writing. Upon receipt of the complaint a staff member designated by the Director of the Division shall notify the utility of the complaint and request a response. The response should explain the utility's actions in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and procedures, applicable state laws, and Commission rules, regulations, and orders.~~

~~(2) The designated staff member shall investigate the complaint and attempt to resolve the dispute informally. To that end, the staff member may request the parties to provide copies of bills, billing statements, field reports, written documents, or other information in their possession which may be necessary to resolve the dispute. The staff member may perform such tests, on-site inspections, and reviews of utility records as he considers appropriate and may request the utility to collect data and to perform tests which are necessary to aid in the resolution of the dispute.~~

~~(3) As soon as possible the staff member shall propose a resolution of the complaint based on his findings, applicable state laws, the utility's tariffs, and Commission rules, regulations, and orders. The proposed resolution may be communicated to the parties orally or in writing. Upon request, either party shall be entitled to a written copy of the proposed~~

resolution, which shall be delivered by first class mail.

~~(4) If a party objects to the proposed resolution, he may file a request for an informal conference on the complaint. The request shall be in writing and should be filed with the Division of Consumer Affairs within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs. If a conference is granted the appointed staff member shall have had no prior contact with the complaint. After consulting with the parties, the appointed staff member shall issue a written notice to the parties setting forth the procedures to be employed, the dates by which written materials are to be filed, and the time and place for the informal conference, which shall be held in the service area, or such other convenient location to which the parties agree, no sooner than 10 days following the notice.~~

~~(5) In conjunction with conducting the informal conference, the appointed staff member may:~~

~~(a) Require the utility to provide any information in its possession which may be relevant to the complaint and may specify the form in which such information is to be provided;~~

~~(b) Request a customer to provide any information in the customer's possession which is necessary to prove any facts the customer may assert in support of his position;~~

~~(c) Direct the utility to conduct meter tests and inspections, diversion of service inspections, and other tests the appointed staff member deems necessary or appropriate;~~

~~(d) Question the parties directly regarding all matters related to the case.~~

~~(6) At the conference, the parties shall have the opportunity to present information, orally or in writing, in support of their positions. During the conference, the appointed staff member may encourage the parties to discuss and resolve their dispute. The Commission shall be responsible for tape recording, but not transcribing, the informal conference. A party may arrange for transcription at his own expense.~~

~~(7) The appointed staff member may permit any party to file, following the conference, further information, documentation, or arguments. The opposing party shall have an opportunity to file a response.~~

~~(8) If a settlement is not reached, then within 20 days following the informal conference or the last post conference filing, the appointed staff member shall submit a recommendation to the Commission and shall mail copies of the recommendation to~~

~~the parties. The Commission shall dispose of the matter at the next available agenda conference by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes. The Commission may permit the parties to respond to the recommendation at the agenda conference.~~

~~(9) At any point during the complaint proceedings, a party has the right to be represented by an attorney or other qualified representative. For purposes of this rule a qualified representative may be any person the party chooses, unless the Commission sets the matter for hearing. At such hearing the parties must be represented by an attorney or Class B practitioner as provided for in Rule 25-22.008 or may represent themselves. Each party shall be responsible for his own expenses in the handling of the complaint.~~

~~(10) During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules.~~

~~(11) At any time the parties may agree to settle their dispute. If a settlement is reached, the parties or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on both parties and that the parties waive any right to further review or action by the Commission. The Division shall, if the complaint has been docketed, submit the statement to the Commission for approval. If the complaint has not been docketed, then the Division shall acknowledge the statement of settlement by letter to the parties.~~

~~Specific Authority 120.53(1), 350.127(2) FS.~~

~~Law Implemented 120.53(1), 120.57, 120.59(4) FS.~~

~~History--New 1-3-89, Amended 10-28-93, Transferred to 25-41.001.~~

25-22.033 Communications Between Commission Employees and Parties.

~~The Commission recognizes that Commission employees must exchange information with parties who have an interest in Commission proceedings. However, the Commission also recognizes that all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all~~

~~parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications.~~

~~(1) This rule shall govern communications between Commission employees and parties to docketed proceedings before the Commission. This rule shall not apply in proceedings under sections 120.54, 120.565, 367.0814, Fla. Stat., proposed agency action proceedings before the Commission has voted to issue a proposed agency action order, non-rate case tariffs, workshops or internal affairs meetings. Also exempted are docketed and undocketed audits, telephone service evaluations, and electric and gas safety inspections. Nothing in this rule is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable provisions of the Florida Rules of Civil Procedure, or affect communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.~~

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

~~(3) Scheduled Meetings and Conference Calls — All parties to the proceeding shall be given reasonable notice of the time and place of any scheduled meeting or conference call between Commission employees and parties. For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.~~

~~(4) Response to Communications — Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.~~

~~(5) Prohibited Communications — No Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited ex parte communication under section 350.042, Fla. Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a staff member who testifies in a case shall not discuss the merits of that case with any Commissioner during the pendency of that case.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 3-24-93, Transferred to 25-41.004.

25-22.036 Initiation of Formal Proceedings.

~~(1) Applicability. This section shall apply to all § 120.57(1) and (2) hearings including a hearing requested by a substantially affected person subsequent to proposed agency action. This rule shall not apply to the extent that a proceeding is governed by rules or statutes that prescribe alternative procedures.~~

~~(2) Initial Pleading. The initial pleading shall be entitled as either an application, petition, complaint, order, or notice, as set forth in subsections (3), (4), (5), and (6). Where the Commission has issued notice of proposed agency action, the initial pleading shall be entitled "Petition on Proposed Agency Action."~~

~~(3) Application. An application is appropriate when a person seeks authority from the Commission to engage in an activity subject to Commission jurisdiction.~~

~~(4) Petition. A petition is appropriate when:~~

~~(a) A person subject to Commission jurisdiction seeks authority to change its rates or service, or seeks some other Commission action not otherwise specified in these rules; or~~

~~(b) A substantially affected person seeks Commission action to change the rates or service of a person subject to Commission jurisdiction, or seeks some other Commission action not otherwise specified in these rules.~~

~~(5) Complaints. A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.~~

~~(6) Orders and Notices. Upon its own motion, the Commission may issue an order or notice initiating a proceeding. Such order or notice shall be served upon all persons named therein. The Commission may also transmit notice of its action to other persons requesting such notice, and may publish such notice in appropriate newspapers of general circulation and the Florida Administrative Weekly.~~

~~(7) Form and Content.~~

~~(a) Generally. Except for orders or notices issued by the Commission, each initial pleading should contain:~~

~~1. The name of the Commission and the Commission's docket number, if known;~~

~~2. The name and address of the applicant, complainant or petitioner, and an explanation of how his or her substantial interests will be or are affected by the Commission determination;~~

~~3. A statement of all known disputed issues of material fact. If there are none, the petition must so indicate;~~

~~4. A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief;~~

~~5. A demand for relief; and~~

~~6. Other information which the applicant, complainant or petitioner contends is material.~~

~~(b) Application. An application shall be governed by the statute or rules applicable to applications for authority. In the absence of a specific form and content, the application shall conform to this rule.~~

~~(c) Complaint. Each complaint, in addition to the requirements of paragraph (a) above shall also contain:~~

- ~~1. The rule, order, or statute that has been violated;~~
- ~~2. The actions that constitute the violation;~~
- ~~3. The name and address of the person against whom the complaint is lodged;~~
- ~~4. The specific relief requested, including any penalty sought.~~

~~(d) When a petitioner seeks relief against another person, the petition shall include the name and address of the person against whom relief is sought in addition to the requirements of paragraph (a) of this subsection.~~

~~(e) Petitions for rate relief shall conform to all applicable rules and statutes as to form and content, in addition to the requirements of paragraph (a) of this subsection.~~

~~(f) Petition on Proposed Agency Action. When a petition is filed in response to proposed agency action the petition shall also contain a statement of when and how notice of the Commission's proposed agency action was received.~~

~~(g) Amendments. A petition, application or complaint may be amended prior to the filing of a responsive pleading or the designation of a presiding officer by filing and serving an amended initial pleading in the manner prescribed for filing and serving an original petition, application or complaint. The petitioner, complainant, or applicant may amend its initial pleading after the designation of the presiding officer only upon order of the presiding officer.~~

~~(9) Disposition.~~

~~(a) Where an application, petition or complaint has been filed, and Commission action has not yet been proposed, the Commission may:~~

- ~~1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely;~~
- ~~2. Issue notice of proposed agency action where a rule or statute does not mandate a hearing as a matter of course, and after the time for responsive pleadings has passed;~~
- ~~3. Set the matter for hearing before the Commission, or member thereof, or request that a hearing officer from the Division of Administrative Hearings be assigned to conduct the hearing. The assignment of a matter for hearing shall be pursuant to Rule 25-22.0355;~~
- ~~4. Dispose of the matter as provided in § 120.57(2).~~

~~(b) Where a petition on proposed agency action has been filed, the Commission may:~~

~~1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely.~~

~~2. Grant the petition and determine if a Section 120.57(1) hearing or a Section 120.57(2) hearing is required.~~

~~(c) The Commission shall promptly give written notice to all parties of the action taken on the petition, and shall state with particularity its reasons therefore.~~

~~(d) If the Commission elects to request that a Hearing Officer of the Division of Administrative Hearings be assigned to conduct the hearing, the Commission shall forward the initial pleading, and all materials filed with the Commission, to the Division of Administrative Hearings, and shall notify all parties of its action.~~

~~(10) Service of Initial Pleadings. Where a petition seeks relief against a person, or a complaint is filed, a copy of the petition or complaint shall be served on all persons named therein. Where a petition on proposed agency action is filed, a copy shall be served on all parties of record.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 12-21-81, Formerly 25-22.36, Transferred to 25-46.201.

25-22.0376 Reconsideration of Non-Final Orders

~~(1) Any party who is adversely affected by a non-final order may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order. The Commission shall not entertain a motion for reconsideration of an order disposing of a motion for reconsideration.~~

~~(2) A party may file a response to a motion for reconsideration within 7 days after service of the motion for reconsideration.~~

~~(3) Failure to timely file a motion for reconsideration or a response shall constitute a waiver of the right to do so.~~

~~(4) Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds therefor and the signature of counsel or other person filing the motion.~~

~~(5) Oral argument on any motion filed pursuant to this rule may be granted at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 9-3-95, Amended 7-11-96, Transferred to 25-46.122.

9-27-83, Formerly 25-22.405, Transferred to 25-46.208.

25-22.0406 Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.

~~(1) The provisions of this rule shall be applicable to all requests for general rate increases by electric, gas and telephone companies subject to the Commission's jurisdiction.~~

~~(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service area affected.~~

~~(3) (a) Within 15 days after it has been notified by the Commission that the Minimum Filing Requirements (MFRs) have been met, the utility shall place a copy of the MFRs at its official headquarters and at its business office in each municipality in which service hearings were held in the last general rate case of the utility. Within 15 days after the time schedule has been mailed to the utility, copies of the MFRs shall be placed in the utility business office in each additional city in which service hearings are to be held. Upon customer request a copy of the MFRs shall be placed in a utility business office not located in a city where a service hearing is to be held. The copies of the MFRs shall be available for public inspection during the utility's regular business hours.~~

~~(b) In addition to the locations listed above, the Commission may require that copies of the MFRs be placed at other specified locations.~~

~~(4) (a) Within 15 days after the time schedule for the case has been mailed to the utility, the utility shall prepare and distribute a synopsis of the rate request. The synopsis shall be approved by the Commission or its staff prior to distribution and shall include:~~

- ~~1. A summary of the section of the MFRs showing a comparison of the present and proposed rates for major services;~~
- ~~2. A statement of the anticipated major issues involved in the rate case;~~
- ~~3. A copy of the executive summary filed with the MFRs;~~
- ~~4. A description of the ratemaking process and the time schedule established for the rate case; and~~
- ~~5. The locations at which complete MFRs are available.~~

~~(b) Copies of the synopsis shall be distributed to the same locations as required for the MFRs, to the main county library within or most convenient to the service area and to the chief executive officer of each county and municipality within the service area affected.~~

~~(5) Within 30 days after the rate case time schedule has been mailed to the utility, the utility shall begin sending a~~

~~notice approved by the Commission or its staff to its customers containing:~~

~~(a) A statement that the utility has applied for a rate increase and the general reasons for the request;~~

~~(b) The locations at which copies of the MFRs and synopsis are available;~~

~~(c) The time schedule established for the case, and the dates, times and locations of any hearings that have been scheduled; and~~

~~(d) A comparison of current rates and service charges and the proposed new rates and service charges.~~

~~1. Such notice shall be completed at least 10 days prior to the first scheduled service hearing.~~

~~(6) At least 7 days and not more than 20 days prior to each service hearing, the utility shall have published in a newspaper of general circulation in the area in which the hearing is to be held a display advertisement stating the date, time, location and purpose of the hearing. The advertisement shall be approved by the Commission or its staff prior to publication.~~

~~(7) When the Commission issues proposed agency action and a hearing is subsequently held, the utility shall give written notice of the hearing to its customers at least 14 days in advance of the hearing. This notice shall be approved by the Commission or its staff prior to distribution.~~

~~(8) After the Commission's issuance of an order granting or denying a rate change, the utility shall give notice to its customers of the order and the revised rates. The notice shall be approved in advance by the Commission or its staff and transmitted to the customers with the first bill containing the new rates.~~

Specific Authority 350.127(2), 366.05 FS.

Law Implemented 364.035(1), 366.06 FS.

History--New 9-27-83, Formerly 25-22.406, Amended 5-27-93.

Transferred to 25-46.1095.

25-22.0407 Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

~~(1) This rule applies to all requests for general rate increases made by water and wastewater utilities.~~

~~(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request. Each copy of the petition shall be accompanied by a statement that a copy of the minimum filing requirements (MFRs) when accepted by the Commission can be obtained from the petitioner upon request.~~

~~(3) Within 30 days after the official date of filing established by the Commission, the utility shall place a copy of~~

~~the petition and the MFRs at its official headquarters and at any business offices it has in the service areas included in the rate request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in its rate request, the utility shall place a copy of the petition and the MFRs at the main county library, the local community center or other appropriate location which is within or most convenient to the service area and which is willing to accept and provide public access to the copies. The Commission may require that copies of the petition and MFRs be placed at other specified locations.~~

~~(4) (a) Within 30 days after the official date of filing established by the Commission, the utility shall place a copy of its rate case synopsis at all locations where copies of the petition and MFRs were placed.~~

~~(b) Within 30 days after the official date of filing established by the Commission, the utility shall mail a copy of its rate case synopsis to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request.~~

~~(c) The utility's rate case synopsis shall be approved by the Commission staff prior to distribution and shall include the following:~~

- ~~1. A summary of the section of the MFRs showing a comparison of the present and proposed rates and charges;~~
- ~~2. A statement of the general reasons for the rate request;~~
- ~~3. A statement of any anticipated major issues involved in the rate case;~~
- ~~4. A description of the ratemaking process and the time schedule established for the rate case; and~~
- ~~5. The locations where complete MFRs are available.~~

~~(5) (a) Within 50 days after the official date of filing established by the Commission, the utility shall provide, in writing, an initial customer notice to all customers within the service areas included in the rate request and to all persons in the same service areas who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the petition is filed.~~

~~(b) The initial customer notice shall be approved by Commission staff prior to distribution and shall include the following:~~

- ~~1. The date the notice was issued;~~
- ~~2. A statement that the utility has filed a rate request with the Commission and a statement of the general~~

~~reasons for the request;~~

- ~~3. A statement of the locations where copies of the MFRs, petition, and rate case synopsis are available for public inspection and the hours and days when inspection may be made;~~
- ~~4. The time schedule established for the case, including the dates, times, and locations of any hearings scheduled;~~
- ~~5. A comparison of current rates and charges and the proposed new rates and charges;~~
- ~~6. The utility's address, telephone number, and business hours;~~
- ~~7. A statement that written comments regarding utility service or the proposed rates and charges should be addressed to the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to the proceeding;~~
- ~~8. A statement that complaints regarding service may be made to the Commission's Division of Consumer Affairs at the following toll free number: 1-800-342-3552; and~~
- ~~9. If the utility has not requested a change in its service availability charges as part of its rate request, a statement that the Commission will be reviewing the utility's service availability charges in the pending rate case and that the Commission may adjust those charges.~~
- ~~10. The docket number assigned by the Commission's Division of Records and Reporting.~~

~~(c) The initial customer notice shall be mailed to the out of town address of all customers who have provided the utility with an out of town address.~~

~~(6)(a) No less than 14 days and no more than 30 days prior to the date of each service hearing, in those cases where the Commission has scheduled a service hearing, the utility shall provide written notice of the date, time, location, and purpose of the service hearing to all customers within service areas designated by the prehearing officer or the Commission staff. The notice shall be approved by Commission staff prior to distribution. The notice shall be mailed to the out of town address of all customers who have provided the utility with an out of town address.~~

~~(b) No less than 14 days and no more than 30 days prior to the date of the hearing, in all cases, including those in which the Commission has scheduled a service hearing, the utility shall provide written notice of the date, time, location, and purpose of the hearing to all customers within the service areas included in the rate request. The notice shall be approved by Commission staff prior to distribution. The notice shall be mailed to the~~

~~out of town address of all customers who have provided the utility with an out of town address.~~

~~(7) No less than 14 days and no more than 30 days prior to the date of each hearing held in or near a utility service area included in the rate request, the utility shall have published in a newspaper of general circulation in the area in which such hearing is to be held a display advertisement stating the date, time, location, and purpose of the hearing. The notice shall be approved by Commission staff prior to publication.~~

~~(8) When a utility files for a petition for a general rate increase and requests that its case be processed as proposed agency action in accordance with section 367.081(8), F.S., the utility shall comply with the requirements of sections (2), (3), (4), and (5) of this rule.~~

~~(a) No less than 14 days and no more than 30 days prior to the date of a customer meeting conducted by the Commission staff, the utility shall provide written notice of the date, time, location, and purpose of the customer meeting to all customers within service areas designated by the Commission staff. The notice shall be approved by Commission staff prior to distribution. The notice shall be mailed to the out of town address of all customers who have provided the utility with an out of town address.~~

~~(b) If the proposed agency action order issued in the case is protested and any hearings are subsequently held, the utility shall give notice in accordance with subsections (6) and (7) above.~~

~~(9) When a utility applies for a staff-assisted rate case in accordance with section 367.0814, F.S., and Rule 25-30.455, F.A.C., and staff assistance is granted, the requirements of sections (2), (3), (4), and (5) of this rule shall not apply. (a) Upon receipt of the staff reports, the utility shall place two copies of its application for staff assistance and the staff reports at any business offices it has in its service area. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in its service area, the utility shall place two copies of its application and the staff reports at the main county library, the local community center or other appropriate location that is within or most convenient to the service area and that is willing to accept and provide public access to the copies.~~

~~(b) No less than 14 days and no more than 30 days prior to the date of a customer meeting conducted by the Commission staff, the utility shall provide, in writing, a customer meeting notice to all customers within its service area and to all persons in the same service areas who have filed a written request for service or who have been provided a written estimate for service~~

~~within the 12 calendar months prior to the month the petition is filed.~~

~~(c) The customer meeting notice shall be approved by Commission staff prior to distribution and shall include the following:~~

- ~~1. The date the notice was issued;~~
- ~~2. The time, date, location, and purpose of the customer meeting;~~
- ~~3. A statement that the utility has applied for a staff-assisted rate case and the general reasons for doing so;~~
- ~~4. A statement of the location where copies of the application and staff reports are available for public inspection and the times during which inspection may be made;~~
- ~~5. A comparison of current rates and charges and the proposed new rates and charges;~~
- ~~6. The utility's address, telephone number, and business hours;~~
- ~~7. A statement that written comments regarding utility service or the proposed rates and charges should be addressed to the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to the proceeding;~~
- ~~8. A statement that complaints regarding service may be made to the Commission's Division of Consumer Affairs at the following toll-free number: 1-800-342-3552;~~
- ~~9. A statement that the Commission will be reviewing the utility's service availability charges in the pending case and that the Commission may adjust those charges;~~
- ~~10. The docket number assigned by the Commission's Division of Records and Reporting.~~

~~(d) The customer meeting notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.~~

~~(e) If the proposed agency action order issued in the case is protested and any hearings are subsequently held, the utility shall give notice in accordance with subsections (6) and (7) above.~~

~~(10) After the Commission issues an order granting or denying a rate change, the utility shall notify its customers of the order and any revised rates. The customer notification shall be approved by Commission staff and be distributed no later than with the first bill containing any revised rates.~~

Specific Authority 350.127(2), 367.121(1)(f) FS.
Law Implemented 367.081, 367.0814(1), 367.091 FS.
History--New 5-27-93, Transferred to 25-46.1096.

25-22.0408 Notice of Requests for New or Revised Service Availability Charges or Policies and Notice of Requests for Allowance for Funds Prudently Invested (AFPI) Charges.

~~(1) This rule applies to all requests for new or revised service availability charges or policies and to all requests for allowance for funds prudently invested (AFPI) charges made by water and wastewater utilities, including those requests made in conjunction with a request for a general rate increase.~~

~~(2) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall place a copy of the application at its official headquarters and at any business offices it has in the service areas included in the request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in the request, the utility shall place a copy of the application at the main county library, the local community center or other appropriate location which is within or most convenient to the service area and which is willing to accept and provide public access to said copies. The Commission may require that copies of the application be placed at other specified locations.~~

~~(3) (a) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall have published a notice of application in a newspaper of general circulation in the service areas included in the petition.~~

~~(b) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall mail or hand deliver a notice of application to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application is filed.~~

~~(c) The Commission may require such other notice as it finds reasonably necessary.~~

~~(d) The notice of petition shall include the following:~~

- ~~1. The date the notice was issued;~~
- ~~2. A statement that the utility has filed a petition for new or revised service availability charges or policies or AFPI charges with the Commission;~~
- ~~3. A statement that the requested service availability charge or AFPI charge is to pay for growth in the utility system and the requested charges are to be paid by new, not existing, customers;~~
- ~~4. A statement of the locations where copies of the application are available for public inspection and the times during which inspection may be made;~~
- ~~5. A comparison of the present and proposed policy and charges;~~
- ~~6. The utility's address, telephone number and business~~

hours, and

~~7. A statement that any comments concerning the policy or charges should be addressed to the Director of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.~~

Specific Authority 350.127(2), 367.121(1)(f) FS.

Law Implemented 367.101, 367.111, 367.091 FS.

History--New 5-27-93, Transferred to 25-30.4345.

25-22.045 Subpoenas.

~~(1) When the proceeding is before the Commission or member thereof, subpoenas may be issued by the presiding officer or the Division of Records and Reporting on subpoena forms supplied by the Commission. When the proceeding is before a hearing officer of the Division of Administrative Hearings, subpoenas may be issued by the Hearing Officer.~~

~~(2) A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of records, files, and memoranda from any place in the state, at any designated place of hearing before the presiding officer, for the purpose of taking the testimony of such witness or inspection of documents. An application for the subpoena shall state the name and address of the witness for whom the subpoena is to be issued, and the time and place for the witness to appear.~~

~~(3) Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena with the agency having jurisdiction of the dispute. The motion shall set forth the grounds relied upon.~~

~~(4) A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if service is not made by an officer authorized by law to do so.~~

~~(5) Service of a subpoena may also be effected by certified mail, in which case the return receipt must be signed by the person named in the subpoena.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--Formerly 25-2.100, Amended 12-21-81, Formerly 25-22.45,
Transferred to 25-46.212.

25-22.046 Witnesses and Witness Fees.

~~(1) All witnesses shall be sworn and subject to examination and cross examination.~~

~~(2) The presiding officer may allow members of the general public to appear as witnesses at a hearing, and to present oral or written communications without the necessity of being a party or intervenor. The presiding officer may set fair and reasonable~~

~~conditions on such appearances, and the communications shall be subject to cross examination, challenge and rebuttal.~~

~~(3) Witness fees shall be paid by the party at whose instance the witness is summoned. Witness fees shall be tendered at the time of service of a subpoena. Except in the case of state employees, the fees allowed shall be the same as those allowed by the circuit courts of the state. State employees shall be entitled to compensation at the rate provided under Section 112.061, F.S. This section shall not limit the fees of expert witnesses.~~

Specific Authority 120.53 FS.

Law Implemented 120.53 FS.

History--New 12-21-81, Formerly 25-22.46, Transferred to 25-46.2125.

25-22.058 Oral Argument.

~~(1) The Commission may grant oral argument upon request of any party to a section 120.57 formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.~~

~~(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.~~

~~(3) Requests for oral argument on recommended or proposed orders and exceptions pursuant to section 120.58(1)(e), F.S., must be filed no later than 10 days after exceptions are filed. Specific Authority 120.53 FS.~~

Law Implemented 120.53, 120.58(1)(e) FS.

History--New 12-21-81, Formerly 25-22.58, Amended 3-23-93, Transferred to 25-46.220.

25-22.060 Motion for Reconsideration.

~~(1) Scope and General Provisions:~~

~~(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. The Commission will not entertain any motion for reconsideration of any order which disposes of a motion for reconsideration. The Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, regardless of the form of the Notice and regardless of whether or not the proposed action has become effective under Rule 25-22.029(6).~~

~~(b) A party may file a response to a motion for reconsideration and may file a cross motion for reconsideration.~~

~~A party may file a response to a cross motion for reconsideration.~~

~~(c) A final order shall not be deemed rendered for the purpose of judicial review until the Commission disposes of any motion and cross motion for reconsideration of that order, but this provision does not serve automatically to stay the effectiveness of any such final order. The time period for filing a motion for reconsideration is not tolled by the filing of any other motion for reconsideration.~~

~~(d) Failure to file a timely motion for reconsideration, cross motion for reconsideration, or response, shall constitute waiver of the right to do so.~~

~~(e) A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under § 120.54(5), F.S., and Rule 25-22.012.~~

~~(f) Oral argument on any pleading filed under this rule shall be granted solely at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.~~

~~(2) Contents. Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds for reconsideration, and the signature of counsel, if any.~~

~~(3) Time. A motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. A response to a motion for reconsideration or a cross motion for reconsideration shall be served within 7 days of service of the motion for reconsideration to which the response or cross motion is directed. A response to a cross motion for reconsideration shall be served within 7 days of service of the cross motion.~~

~~Specific Authority 120.53 FS.~~

~~Law Implemented 120.53 FS.~~

~~History--New 12-21-81, Amended 10-4-84, Formerly 25-22.60,~~

~~Amended 7-11-96, Transferred to 25-46.123.~~

25-22.061 Stay Pending Judicial Review.

~~(1)(a) When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.~~

~~(b) In determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as:~~

- ~~1. Terms that will discourage appeals when there is little possibility of success; and~~
- ~~2. A rate of interest that takes into consideration:~~
 - ~~a. The use of the money that the stay permits;~~

~~b. The prime and other prevailing rates of interest at commercial banks and other potential sources of capital in the amount involved in the appeal.~~

~~(2) Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, among other things, consider:~~

~~(a) Whether the petitioner is likely to prevail on appeal;~~

~~(b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and~~

~~(c) Whether the delay will cause substantial harm or be contrary to the public interest.~~

~~(3) (a) When a public body or public official appeals an order involving an increase in a utility's or company's rates, which appeal operates as an automatic stay, the Commission shall vacate the stay upon motion by the utility or company and the posting of good and sufficient bond or corporate undertaking. When determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as those set forth in subparagraph (1)(b)2.~~

~~(b) When a public body or public official appeals an order that does not involve an increase in rates, the Commission may vacate the stay or impose any lawful conditions.~~

~~(4) When a stay or vacation of a stay is conditioned upon the posting of a bond or corporate undertaking, the Commission may at the time it grants the stay or vacation of the stay, set the rate of interest to be paid by the utility or company in the event that the Court's decision requires a refund to customers.~~

~~(5) Motions filed pursuant to subsections (1) or (2) of this rule shall be heard by those Commissioners who participated in the proceeding which resulted in the order being appealed. However, motions filed under subsection (3) of this rule may be ruled upon by the Chairman or the Commissioner assigned as the prehearing officer in the case.~~

Specific Authority 350.127(2), 120.53(1) FS.

Law Implemented 350.127(2), 120.53(1), 120.68(3) FS.

History--New 2-1-82, Formerly 25-22.61, Transferred to 25-53.101.

25-22.070 Ten-Year Site Plans -- Definitions.

~~(1) "Electric Utility" means any municipal electric utility, investor owned electric utility, rural electric cooperative, public utility district, joint operating agency, or combinations thereof, that owns, maintains, or operates an electric generation, transmission, or distribution system within the state.~~

~~(2) "Power Plant" means any electrical generating facility using any process or fuel, including nuclear materials, and shall~~

~~include those directly associated transmission lines required to connect to an existing transmission network.~~

~~(3) "Directly Associated Transmission Lines" means only new corridors and transmission lines from the power plant to the first structure on an existing transmission system.~~

~~(4) "Potential Sites" are sites within the state that an electric utility is considering for possible location of a power plant, a power plant alteration, or an addition resulting in an increase in generating capacity.~~

~~(5) "Preferred Sites" are sites within the state on which an electric utility intends to construct a power plant, a power plant alteration, or an addition resulting in an increase in generating capacity.~~

Specific Authority 350.127(2), 186.801(4) FS.

Law Implemented 186.801, 366.04(5) FS.

History--New 11-10-97, Transferred to 25-51.101.

25-22.071 Submission and Review of the Ten-Year Site Plans.

~~(1) Filing Requirements:~~

~~(a) All electric utilities in the State of Florida with existing generating capacity of 250 megawatt (MW) or greater shall prepare a ten year site plan, and submit 25 copies to the Florida Public Service Commission's Division of Records and Reporting on the first working day of April of each year, unless extended. The plan shall date from December 31 of the prior calendar year.~~

~~(b) Any electric utility, other than those filing ten year site plans pursuant to (1)(a), that elects to construct an additional generating facility exceeding 75 MW gross generating capacity shall prepare a ten year site plan, and submit 25 copies to the Public Service Commission's Division of Records and Reporting in the year the decision to construct is made or at least three years prior to application for site certification, and every year thereafter until the facility becomes fully operational.~~

~~(2) The Commission will provide a copy of the ten year site plans to appropriate federal, state, and local agencies, water management districts, and regional planning councils.~~

~~(3) The Commission will solicit comments from various federal, state, and local agencies, water management districts, and regional planning councils regarding the individual utility ten year site plans. Any written comments shall be filed with the Commission within 90 days from the date of receipt of the plans. The state agencies from which comments will be solicited will include:~~

~~(a) The Department of Environmental Protection.~~

~~(b) The Department of Transportation.~~

~~(c) The Department of Agriculture and Consumer Services.~~

~~(d) The Department of Health.~~

~~(e) The Game and Fresh Water Fish Commission.~~

~~(f) The Board of Trustees of the Internal Improvement Trust~~

Fund-

~~(g) The Department of Community Affairs.~~

~~(4) The Commission will complete its review of the plans within nine months following submission and will report its findings, along with any comments or recommendations, to the Florida Department of Environmental Protection and the utilities filing a plan. Other agencies to which the Commission sent the plan for review, and other entities may request a copy of the review from the Division of Electric and Gas, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.~~

~~(5) Plans that have been previously classified by the Commission as unsuitable may be classified suitable based on additional data.~~

~~(6) The electric utilities in Florida shall compile aggregate statewide and peninsular Florida (the area east of the Apalachicola River) data derived from individual electric utility plans and shall submit this data to the Commission by July 1 of each year.~~

Specific Authority 350.127(2), 186.801(4) FS.

Law Implemented 186.801, 366.04(5), 366.05(7) FS.

History--New 11-10-97, Transferred to 25-51.102.

25-22.072 Contents of Ten-Year Site Plans.

~~(1) Individual electric utility ten year site plans required by Rule 25-22.071 shall include at a minimum the information listed in Form PGC/EAG 43, Form PGC/EAG 43 (11/97), entitled "Electric Utility Ten Year Site Plan Information and Data Requirements," is incorporated by reference into this rule and is available from the Division of Electric and Gas.~~

~~(2) When an application for certification of a preferred site for a proposed facility has been filed with the Department of Environmental Protection, no further environmental or land use data shall be submitted to the Commission for that site.~~

Specific Authority 350.127(2), 186.801(4) FS.

Law Implemented 186.801, 366.04(5), 366.05(7) FS.

History--New 11-10-97, Transferred to 25-51.103.

PART VI PERMITTING PROCEEDINGS

25-22.075 Transmission Line Permitting Proceedings.

~~(1) Proceedings to determine the need for a proposed transmission line as defined in Section 403.522(21), F.S., shall begin with a petition by a utility or an order issued on the Commission's own motion and shall be disposed of as provided in Chapter 25-22, F.A.C., except that the time deadlines and notice requirements in Section 403.537, F.S., shall control. Proceedings may begin whether or not an application for corridor site certification of a proposed transmission line pursuant to Sections 403.52 through 403.5365, F.S., is pending. A petition for reconsideration shall be filed within 5 days of the Commission's decision.~~

~~(a) In order for the Commission to have sufficient information to provide the 45 days notice of final hearing required by Section 403.537, F.S., a utility that intends to petition for a transmission line need determination may file a Notice of Intent to File Petition for Transmission Line Need Determination at least 30 days prior to the filing of a petition. The notice of intent shall identify the proposed beginning and ending points of the transmission line, and the counties, regional planning councils, and water management districts in whose jurisdiction the transmission line could be placed. The notice of intent shall further specify the date on which the utility reasonably expects to file the petition for need determination.~~

~~(b) If the Commission does not receive a Notice of Intent to File Petition for Transmission Line Need Determination at least 30 days prior to the filing of a petition, or does not receive the petition within 5 days after the date specified in the notice of intent, the Commission shall have good cause, pursuant to s. 403.537(3), F.S., to extend the time for conduct of the hearing for 30 days.~~

~~(2) Upon receipt of a Notice of Intent to File Petition for Transmission Line Need Determination or a petition by a utility, whichever occurs first, or upon issuance of an order pursuant to subsection (1), the Commission shall schedule a hearing and shall give notice of the proceeding to:~~

~~(a) The affected utility or utilities, if appropriate;~~

~~(b) The Department of Community Affairs, Division of Local Resource Management;~~

~~(c) The Department of Environmental Regulation;~~

~~(d) Each person who has requested placement on the mailing list for receipt of such notice;~~

~~(e) The counties, water management districts, and regional planning councils in whose jurisdiction the transmission line could be placed;~~

~~(f) The Department of Natural Resources; and~~

~~(g) The Game and Fresh Water Fish Commission.~~

~~(3) The Commission shall also publish notice of the hearing at least 45 days before the hearing date in the Florida Administrative Weekly.~~

~~(4) The utility shall publish notice of the hearing at least 45 days before the hearing date in newspapers of general circulation in the counties where the transmission line could be placed. Every notice published in a newspaper shall be at least one quarter page in size. A copy of each newspaper notice, which includes the date of publication, shall be filed with the Division of Records and Reporting at least 30 days prior to the hearing date.~~

Specific Authority 120.53(1)(c), 403.537(2) FS.

Law Implemented 403.537 FS.

History--New 12-20-81, Formerly 25-2.130, Formerly 25-22.75.

Amended 10-9-91, Transferred to 25-51.105.

25-22.076 Contents of Petition.

~~Petitions submitted to commence a determination of need proceeding or responses to the Commission's order commencing a proceeding shall comply with the other requirements of Chapter 25-2, F.A.C., as to form and style and shall contain the following information:~~

~~(1) A general description of the existing load and electrical characteristics of the electrical transmission grid including an electrical system map indicating the general location and configuration of existing and the proposed transmission line or lines.~~

~~(2) A general description of the proposed transmission line or lines, including the project name, the starting and ending points of the transmission line or lines as defined by the utility, the design and the operating voltage of the proposed transmission line or lines, the approximate cost, and the projected in-service date or dates of the proposed transmission line or lines.~~

~~(3) A statement of the specific situations, conditions, contingencies, or other factors which indicate that need exists for the proposed transmission line or lines, including the general time within which the proposed transmission line or lines will be needed. Documentation shall include load flow studies on a peninsular Florida basis, a Gulf Power basis, a Southern Electric System basis or some combination of these and, when applicable, inclusion of adjoining states showing power flows and voltage profiles on the transmission lines in the more critical operating conditions. Load flows should cover the general time period within which the proposed transmission line or lines will be needed, but at the option of the utility, may cover a period of several years. One copy of the complete load flow analysis, including supporting documentation shall be filed with the Commission. The load flow analysis shall identify the load forecasts upon which the load levels are based. Supplemental studies, such as transient stability or short circuit analysis, may be submitted at the option of the utility or upon request of the Commission, if needed to support the need for the proposed transmission line or lines.~~

~~(4) A summary discussion of the major alternative transmission lines or transmission improvements which were examined and evaluated by the utility in arriving at the decision to pursue the proposed project. The discussion shall consist of:~~

~~(a) a general description of the other transmission line alternatives, including, if appropriate, load flow analyses and electrical system diagrams showing power flows and voltage profiles on the transmission lines in the more critical operating conditions and~~

~~(b) a discussion of the performance of each alternative in terms of economics, reliability, long term flexibility and usefulness, or other relevant factors.~~

~~(5) A statement of the major reason or reasons for adding~~

~~the proposed transmission line or lines, specifically whether the proposed transmission line or lines will:~~

- ~~(a) Improve or maintain reliability;~~
 - ~~(b) Improve intra or inter system power transfer capabilities;~~
 - ~~(c) Integrate power supply sources;~~
 - ~~(d) Correct thermal overloads or low voltage conditions;~~
 - ~~(e) Accommodate load growth;~~
 - ~~(f) Improve system economics;~~
 - ~~(g) Accommodate relocations;~~
 - ~~(h) Conserve or displace oil;~~
 - ~~(i) Serve any other useful purpose;~~
 - ~~(j) Any combination of the above.~~
- ~~(6) A statement of the adverse consequences to the electrical system which will result if the project is delayed or if the Commission denies the application.~~
- ~~(7) An estimate of the time for full project development and an explanation of the factors and considerations which justify the proposed phasing of the project where development of the project will be phased over an extended period of time.~~

~~Specific Authority 120.53(1)(c), 403.537(2) FS.~~

~~Law Implemented 403.537 FS.~~

~~History--New 12-20-81, Formerly 25-2.131, Formerly 25-22.76.~~

~~Transferred to 25-51.106.~~

25-22.080 Electrical Power Plant Permitting Proceedings.

~~(1) Proceedings to determine the need for a proposed electrical power plant, as defined in Section 403.503(7), F.S., shall begin with a petition by a utility or on the Commission's own motion and shall be disposed of in accordance with the provisions of Chapter 25-2, F.A.C., except that the time deadlines set forth in this rule and in Sections 403.501 through 403.517, F.S., to the extent applicable, shall control. Proceedings may begin prior to the filing of an application for site certification of the proposed electrical power plant.~~

~~(2) Within 7 days following receipt of a petition, or in its order commencing a proceeding on its own motion, the Commission shall set a date for hearing, which shall be within 90 days of receipt of the petition or of issuance of its order. Following the hearing, each party may make submittals to the Commission on a time schedule to be determined in accordance with the requirements of each proceeding, but terminating no later than 120 days from the receipt of the petition. The matter will be placed before the Commission on an agenda which will permit a decision no later than 135 days from the date of receiving the petition or the issuance of the order commencing the proceeding. A petition for reconsideration must be filed within 5 days of the Commission's decision.~~

~~(3) Upon receipt of a petition by a utility or issuance of an order pursuant to subsection (1), notice shall be given of the commencement of the proceeding to:~~

- ~~(a) The affected utility or utilities, if appropriate;~~
- ~~(b) The Department of Community Affairs, Division of Local Resource Management;~~
- ~~(c) The Department of Environmental Regulation; and~~
- ~~(d) Each person who has requested placement on the mailing list for receipt of such notice.~~

Specific Authority 120.53(1)(c), 350.01(6), 366.05(1) FS.
Law Implemented 403.519 FS.

History--New 12-20-81, Formerly 25-2.132, Formerly 25-22.80,
Transferred to 25-51.110.

25-22.081 Contents of Petition.

~~Petitions submitted to commence a proceeding to determine the need for a proposed electrical power plant or responses to the Commission's order commencing such a proceeding shall comply with the other requirements of Chapter 25-22, Florida Administrative Code, as to form and style except that a utility may, at its option, submit its petition in the same format and style as its application for site certification pursuant to Sections 403.501 through 403.517, Florida Statutes, so long as the informational requirements of this rule and Chapter 25-22, Florida Administrative Code, are satisfied. The petition, to allow the Commission to take into account the need for electric system reliability and integrity, the need for adequate reasonable cost electricity, and the need to determine whether the proposed plant is the most cost effective alternative available, shall contain the following information:~~

- ~~(1) A general description of the utility or utilities primarily affected, including the load and electrical characteristics, generating capability, and interconnections.~~
- ~~(2) A general description of the proposed electrical power plant, including the size, number of units, fuel type and supply modes, the approximate costs, and projected in-service date or dates.~~
- ~~(3) A statement of the specific conditions, contingencies or other factors which indicate a need for the proposed electrical power plant including the general time within which the generating units will be needed. Documentation shall include historical and forecasted summer and winter peaks, number of customers, net energy for load, and load factors with a discussion of the more critical operating conditions. Load forecasts shall identify the model or models on which they were based and shall include sufficient detail to permit analysis of the model or models. If a determination is sought on some basis in addition to or in lieu of capacity needs, such as oil blackout, then detailed analysis and supporting documentation of costs and benefits is required.~~
- ~~(4) A summary discussion of the major available generating alternatives which were examined and evaluated in arriving at the decision to pursue the proposed generating unit. The discussion shall include a general description of the generating unit~~

~~alternatives, including purchases where appropriate, and an evaluation of each alternative in terms of economics, reliability, long term flexibility and usefulness and any other relevant factors. These major generating technologies generally available and potentially appropriate for the timing of the proposed plant and other conditions specific to it shall be discussed. In addition, each investor owned utility shall include a detailed description of the selection process used and a detailed description of the generating unit alternatives proposed by each finalist, if any, selected to participate in subsequent contract negotiations pursuant to Rule 25-22.082, Florida Administrative Code.~~

~~(5) A discussion of viable nongenerating alternatives including an evaluation of the nature and extent of reductions in the growth rates of peak demand, kWh consumption and oil consumption resulting from the goals and programs adopted pursuant to the Florida Energy Efficiency and Conservation Act both historically and prospectively and the effects on the timing and size of the proposed plant.~~

~~(6) An evaluation of the adverse consequences which will result if the proposed electrical power plant is not added in the approximate size sought or in the approximate time sought.~~

~~(7) If the generation addition is the result of a purchased power agreement between an investor owned utility and a non-utility generator, the petition shall include a discussion of the potential for increases or decreases in the utility's cost of capital, the effect of the seller's financing arrangements on the utility's system reliability, any competitive advantage the financing arrangements may give the seller and the seller's fuel supply adequacy.~~

Specific Authority 120.53(1)(c), 350.127(2), 366.05(1) FS.
Law Implemented 403.519 FS.

History--New 12-22-81, Formerly 25-2.133, 25-22.81, Amended 1-10-94, Transferred to 25-51.111.

25-22.082 Selection of Generating Capacity.

~~(i) Definitions. For the purpose of this rule, the following terms shall have the following meaning:~~

~~(a) Next Planned Generating Unit: the next generating unit addition planned for construction by an investor owned utility that will require certification pursuant to Section 403.519, Florida Statutes.~~

~~(b) Request for Proposals (RFP): a document in which an investor owned utility publishes the price and non-price attributes of its next planned generating unit in order to solicit and screen, for subsequent contract negotiations, competitive proposals for supply side alternatives to the utility's next planned generating unit.~~

~~(c) Participant: a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a utility's RFP. A participant may include~~

~~utility and non-utility generators as well as providers of turnkey offerings and other utility supply side alternatives.~~

~~(d) Finalist: one or more participants selected by the utility with whom to conduct subsequent contract negotiations.~~

~~(2) Prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519, Florida Statutes, each investor owned electric utility shall evaluate supply side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP).~~

~~(3) Each investor owned utility shall provide timely notification of its issuance of an RFP by publishing public notices in major newspapers, periodicals and trade publications to ensure statewide and national circulation. The public notice given shall include, at a minimum:~~

~~(a) the name and address of the contact person from whom an RFP package may be requested;~~

~~(b) a general description of the utility's next planned generating unit, including its planned in-service date, MW size, location, fuel type and technology; and~~

~~(c) a schedule of critical dates for the solicitation, evaluation, screening of proposals and subsequent contract negotiations.~~

~~(4) Each utility's RFP shall include, at a minimum:~~

~~(a) a detailed technical description of the utility's next planned generating unit or units on which the RFP is based, as well as the financial assumptions and parameters associated with it, including, at a minimum, the following information:~~

~~1. a description of the utility's next planned generating unit(s) and its proposed location(s);~~

~~2. the MW size;~~

~~3. the estimated in-service date;~~

~~4. the primary and secondary fuel type;~~

~~5. an estimate of the total direct cost;~~

~~6. an estimate of the annual revenue requirements;~~

~~7. an estimate of the annual economic value of deferring construction;~~

~~8. an estimate of the fixed and variable operation and maintenance expense;~~

~~9. an estimate of the fuel cost;~~

~~10. an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;~~

~~11. a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;~~

~~12. a discussion of the actions necessary to comply with environmental requirements; and~~

~~13. a summary of all major assumptions used in developing the above estimates;~~

~~(b) a schedule of critical dates for solicitation, evaluation, screening of proposals and subsequent contract~~

negotiations;

~~(c) a description of the price and non-price attributes to be addressed by each alternative generating proposal including, but not limited to:~~

- ~~1. technical and financial viability;~~
- ~~2. dispatchability;~~
- ~~3. deliverability (interconnection and transmission);~~
- ~~4. fuel supply;~~
- ~~5. water supply;~~
- ~~6. environmental compliance;~~
- ~~7. performance criteria;~~
- ~~8. pricing structure; and~~

~~(d) a detailed description of the methodology to be used to evaluate alternative generating proposals on the basis of price and non-price attributes.~~

~~(5) As part of its RFP, the utility shall require each participant to publish a notice in a newspaper of general circulation in each county in which the participant's proposed generating facility would be located. The notice shall be at least one quarter of a page and shall be published no later than 10 days after the date that proposals are due. The notice shall state that the participant has submitted a proposal to build an electrical power plant, and shall include the name and address of the participant submitting the proposal, the name and address of the utility that solicited proposals, and a general description of the proposed power plant and its location.~~

~~(6) Within 30 days after the utility has selected finalists, if any, from the participants who responded to the RFP, the utility shall publish notice in a newspaper of general circulation in each county in which a finalist has proposed to build an electrical power plant. The notice shall include the name and address of each finalist, the name and address of the utility, and a general description of each proposed power plant, including its location, size, fuel type, and associated facilities.~~

~~(7) Each electric utility shall file a copy of its RFP with the Commission.~~

~~(8) The Commission shall not allow potential suppliers of capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.~~

~~(9) The Commission may waive this rule or any part thereof upon a showing that the waiver would likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.~~

Specific Authority 120.53(1)(c), 350.127(2), 366.05(1), 366.051 FS.

Law Implemented 403.519, 366.051 FS.

History--New 1-10-94, Transferred to 25-51.112.

25-22.090 Natural Gas Transmission Pipeline Permitting Proceedings.

~~(1) Proceedings to determine the need for a proposed natural gas transmission pipeline pursuant to section 403.9422, Florida Statutes, shall begin with a petition filed by a new or existing natural gas transmission pipeline company or an order issued on the Commission's own motion and shall be disposed of as provided in Chapter 25-22, Florida Administrative Code, except that the time deadlines and notice requirements in section 403.9422, Florida Statutes, shall control. Proceedings may begin whether or not an application for corridor site certification of a proposed natural gas transmission pipeline pursuant to sections 403.9401 through 403.9425, Florida Statutes, is pending.~~

~~(a) In order for the Commission to have sufficient information to provide the 45 days notice of final hearing required by section 403.9422, Florida Statutes, a natural gas transmission pipeline company that intends to petition for a natural gas transmission pipeline need determination may file a Notice of Intent to File Petition for Natural Gas Transmission Pipeline Need Determination at least 30 days prior to the filing of a petition. The notice of intent shall identify the proposed beginning and ending points of the natural gas transmission pipeline, and the counties, regional planning councils, and water management districts in whose jurisdiction the natural gas transmission pipeline could be placed. The notice of intent shall further specify the date on which the natural gas transmission pipeline company reasonably expects to file the petition for need determination.~~

~~(b) If the Commission does not receive a Notice of Intent to File Petition for Natural Gas Transmission Pipeline Need Determination at least 30 days prior to the filing of a petition, or does not receive the petition within 5 days after the date specified in the notice of intent, the Commission shall have good cause, pursuant to section 403.9422(3), Florida Statutes, to extend the time for conduct of the hearing for 30 days.~~

~~(2) Upon receipt of a Notice of Intent to File Petition for Natural Gas Transmission Pipeline Need Determination or a petition by a natural gas transmission pipeline company, whichever occurs first, or upon issuance of an order pursuant to subsection (1), the Commission shall schedule a hearing and shall give notice of the proceeding to:~~

~~(a) All interstate and intrastate natural gas transmission companies within Florida and all electric and natural gas utilities;~~

~~(b) The Department of Community Affairs;~~

~~(c) The Department of Environmental Protection;~~

~~(d) Each person who has requested placement on the mailing list for receipt of such notice;~~

~~(e) The counties, water management districts, and regional planning councils in whose jurisdiction the natural gas transmission pipeline could be placed;~~

- ~~_____ (f) The Game and Fresh Water Fish Commission;~~
- ~~_____ (g) The Department of Transportation; and~~
- ~~_____ (h) The Department of State, Division of Historical Resources.~~

~~_____ (3) The Commission shall also publish notice of the hearing at least 45 days before the hearing date in the Florida Administrative Weekly.~~

~~_____ (4) The natural gas transmission pipeline company shall publish notice of the hearing at least 45 days before the hearing date in newspapers of general circulation in each county where the natural gas transmission pipeline may be placed. Every notice published in a newspaper shall be at least one quarter page in size. A copy of each newspaper notice, which includes the date of publication, shall be filed with the Division of Records and Reporting at least 30 days prior to the hearing date.~~
Specific Authority 350.127(2), 403.9422(2) FS.
Law Implemented 403.9422 FS.
History--New 1-25-95, Transferred to 25-51.115.

25-22.091 Contents of Petition.

~~Petitions submitted to commence a determination of need proceeding or responses to the Commission's order commencing a proceeding shall comply with the other requirements of Chapter 25-22, Florida Administrative Code, as to form and style, and shall contain the following information:~~

~~_____ (1) Identification of existing natural gas transmission pipelines including a general description and map of all existing, all Florida Public Service Commission (FPSC) or Federal Energy Regulatory Commission (FERC) approved but not yet in service and all proposed natural gas transmission pipelines, including laterals, within any Florida county in which the proposed project will be located.~~

~~_____ (2) Description of proposed natural gas transmission pipeline, ownership and financial information including:~~

~~_____ (a) Project name and ownership, including all company officers, their addresses and phone numbers, and all corporate affiliations.~~

~~_____ (b) Copies of the annual reports to shareholders and 10K Reports to the Securities and Exchange Commission for the last three years for each of the principal companies involved in the project. If annual reports for any of the companies are not prepared, audited financial statements for those entities for the last three years shall be provided.~~

~~_____ (c) Copies of all rating agency and security analyst reports for the last two years for each of the principal companies involved in the project.~~

~~_____ (d) Copies of all presentations related to the project given by the principal companies involved in the project to, or prepared for, banks and other lenders, security analysts, and rating agencies for the last two years.~~

~~_____ (e) A description of the project, including all main or~~

~~trunk pipelines and all laterals from origination to terminus of each mainline or lateral. The description shall include starting and ending points of each line, initial design capacity and operating pressures, estimated total cost and projected in-service date or dates of the project. The description shall also include the diameter of all pipelines in the proposed project, projected initial operating pressures for all pipelines, and the type and horsepower of all compressor stations. If the pipeline includes phased implementation such that extensions or expansions are to be installed at times later than the time of the initial installation's operational date, similar but separate detailed descriptions as provided for the initial installation shall be provided.~~

~~(f) Maps on the scale of 1 inch equals 50 miles of the preferred route and any planned alternate routes, planned locations of compressor stations and other affiliated facilities. Detailed maps of all laterals up to and including individual terminus points shall be provided.~~

~~(3) Evidence of the safety and integrity of the proposed project which shall include a statement that the engineering, construction and operation of the project will comply with all provisions of sections 368.01 through 368.061, Florida Statutes, The Gas Safety Law of 1967, Chapter 25-12, Florida Administrative Code, and 49 CFR, Parts 190 through 199, Pipeline Safety Regulations of the United States Department of Transportation, and codes and standards incorporated therein.~~

~~(4) Evidence of need for natural gas transmission capacity in the market area including:~~

~~(a) A statement of the specific situations, conditions, contingencies, or other factors that indicate that need exists for the proposed natural gas transmission pipeline or pipelines, including the approximate time when the additional natural gas transmission capacity will be needed.~~

~~(b) Evidence of need for natural gas delivery capability up to initial design capacity including supporting contracts, precedent agreements, binding letters of intent, or other forms of evidence the applicant believes sufficient to meet its burden of proof that need exists.~~

~~(c) Evidence of need for natural gas delivery capability beyond initial design capacity if future expansion capability is built into the pipeline through use of larger diameter pipeline than needed for planned initial throughput. The petitioner shall provide market area load forecasts by customer type, region of state, expected dates of added load, and other information necessary to support projected future load growth, including region specific natural gas load forecasts supporting each phase of the proposed pipeline installation, taking into account existing and FPSC or FERC approved regional pipeline capacity. Detailed cost information to permit analysis of the cost effectiveness of using such larger diameter pipeline shall also be provided.~~

~~(5) Evidence of access to gas supplies and adequacy of upstream natural gas transmission pipeline capacity to the supply areas including the following:~~

~~(a) As initial evidence of reliability of access to gas supplies, identification of sources of gas or access to gas supply areas for the project pipeline and for upstream pipeline;~~

~~(b) As evidence of reliability of natural gas transmission pipeline capacity to the point of origination of the proposed project, detailed information on currently available firm or interruptible capacity on upstream pipelines and identification of all additions required to enable upstream pipelines to supply gas in volumes sufficient to meet throughput design capacity of the project. The petitioner shall also provide all available contracts, precedent agreements or binding letters of intent as evidence of adequate capacity on upstream pipelines;~~

~~(c) As additional evidence of reliability of natural gas transmission pipeline capacity to the point of origination of the project, information on any federal requirements that must be met by any upstream pipeline before it can provide natural gas transmission service to supply the project. Information on timing of any necessary expansions of upstream pipeline, including proposed federal filing dates and projected in-service dates of additions shall also be provided.~~

~~(6) Specific reasons for the proposed natural gas transmission pipeline including whether the proposed pipeline will:~~

~~(a) Improve or maintain deliverability, reliability, safety, and integrity of natural gas transmission within Florida;~~

~~(b) Accommodate load growth;~~

~~(c) Improve the economics of natural gas transmission within Florida to assure the economic well being of the public;~~

~~(d) Conserve or displace oil;~~

~~(e) Serve any other useful purpose.~~

~~(7) A statement of adverse consequences to the public that will result if the project is delayed or if the Commission denies the application. The petitioner shall specifically address any adverse consequences to the economic well being of the public due to delay or denial of approval of the project.~~

~~Specific Authority 350.127(2), 403.9422(2) FS.~~

~~Law Implemented 403.94055, 403.9422 FS.~~

~~History--New 1-25-95, Transferred to 25-51.116.~~

PART VII INDEXING OF FINAL ORDERS

25-22.100 Authority.

~~These rules regarding the indexing, management, and availability of Commission orders are issued pursuant to Section 120.533, Florida Statutes, and Chapter 16-6, Florida Administrative Code, and have been approved by the Department of State pursuant to Section 120.53(2)(c), Florida Statutes.~~
~~Specific Authority 120.533 FS.~~

Law Implemented 120.53(2) -- (4) FS.
History--New 9-24-92, Amended 12-27-94, Transferred to 25-52.100.

25-22.101 Purpose.

~~The purpose of this part is to provide public access to and availability of all Commission orders.~~

Specific Authority 120.533 FS.

Law Implemented 120.53(2) -- (4) FS.

History--New 9-24-92, Amended 12-27-94, Transferred to 25-52.101.

25-22.103 Orders Indexed.

~~All Commission orders shall be indexed.~~

Specific Authority 120.533 FS.

Law Implemented 120.53(2)(a)3., (d) FS.

History--New 9-24-92, Amended 12-27-94, Transferred to 25-52.103.

25-22.1035 Designation of Official Reporter.

~~The official reporter of the Florida Public Service Commission shall be the Florida Public Service Commission Reporter (FPSCR), published by FALR, Inc. The official reporter shall index orders of the Commission as required by Rule 25-22.103, Florida Administrative Code, and shall publish the index and all orders. The Florida Public Service Commission Reporter is found at some county law libraries and is available by subscription at the offices of FALR, Inc., P.O. Box 385, Gainesville, FL 32602. A copy of the Florida Public Service Commission Reporter is also available for public inspection at the Division of Records and Reporting.~~

Specific Authority 120.533 FS.

Law Implemented 120.53(2)(a)3., (2)(d), (4)(a) FS.

History--New 12-27-94, Transferred to 25-52.1035.

25-22.104 Numbering of Orders.

~~(1) All orders shall be sequentially numbered as rendered using a two part number separated by a dash with the first part before the dash indicating the year and the second part indicating the numerical sequence of the order issued for that year beginning with the number 0001 each new calendar year. Amendatory orders will be assigned the same order number as the order being amended, with the addition of the letter "A" immediately following the order number. The assigned agency prefix which is "FPC" shall precede the two part number.~~

~~(2) The applicable order category shall be added as a suffix succeeding the agency designation prefix and the two part number. The order category suffix for proposed agency action orders will be either "FOF" or "FOI", depending on the type of proceeding in which the order was issued. The order categories are as follows:~~

~~DS—Declaratory Statement~~

~~FOI—Final Order Informal Proceedings~~

~~FOF—Final Order Formal Proceedings~~

~~S—Stipulation~~

~~AG — Agreed Settlement
CO — Consent Order
PCO — Procedural Order
PHO — Prehearing Order
CFO — Confidentiality Order
NOR — Notice of Rulemaking~~

~~(3) After the order category, the applicable industry designation shall be inserted. The industry designations are as follows:~~

~~BI — Electric Utility — Investor Owned
EM — Electric Utility — Municipality
EC — Electric Utility — Rural Electric Cooperative
EU — Electric Utility — All
EG — Energy Conservation
EQ — Qualifying Cogeneration Facility
GU — Gas Industry
GP — Gas Pipeline
TA — Telephone Utility — Alternate Access Vendor
TC — Telephone Utility — Coin (Pay) Telephone Company
TI — Telephone Utility — Interexchange Company
TL — Telephone Utility — Local Exchange Company
TS — Telephone Utility — Shared Tenant Company
TP — Telephone (Communications) Industry Generally
WU — Water Utility
EU — Wastewater (Sewer) Utility
WS — Water and Wastewater Utility
PU — Public Utilities Generally — Applies to matters which pertain to two or more industries.
OT — Other Matters — Administrative Matters not related to a particular industry.~~

~~Specific Authority 120.533(1)(f) FS.~~

~~Law Implemented 120.53(2) -- (4) FS.~~

~~History--New 9-24-92, Amended 12-27-94, Transferred to 25-52.104.~~

~~25-22.105 System for Indexing Orders.~~

~~(1) The index shall be alphabetically arranged by main subject headings representing major categories of the Commission's regulatory jurisdiction and taken from the Florida Statutes index, when applicable. The applicable titles of citations of the Florida Statutes construed within the final order may determine the main subject headings and subheadings in the index. The index shall show the main subject headings in all capital letters, flush left on the page, followed by relevant subheadings which shall be initial caps and lower case letters indented. Subheadings and sub-subheadings shall reflect increasingly specific areas or subjects addressed in Commission orders and may be taken from the text of the Florida Statutes construed. Subheadings and sub-subheadings at equal indentations shall also be alphabetized. The FPCGR citation to orders shall be listed sequentially in an indentation immediately below the applicable sub- or sub-subheading. Cross references shall be used~~

~~to direct the user to subject headings which contain the relevant information. Related key words (specific words, terms, and phrases) and common and colloquial words shall be listed and cross referenced to the appropriate main subject headings. New subject headings will be added when necessary.~~

~~(2) The index shall be cumulative for at least one calendar year and shall be updated and made available to the public at least quarterly.~~

Specific Authority 120.533(1)(f) FS.

Law Implemented 120.53(2) -- (4) FS.

History--New 9-24-92, Amended 12-27-94, Transferred to 25-52.105.

25-22.107 Plan for Making Orders and Index Available to the Public.

~~(1) The Commission shall make orders accessible and available to the public by sequentially numbering and maintaining all orders.~~

~~(2) The Division of Records and Reporting shall assist the public in obtaining information pertaining to Commission orders.~~

~~(3) Copies of orders, in numerical order, and a copy of the Commission's official reporter shall be maintained in the office of the Division of Records and Reporting.~~

Specific Authority 120.53(2), (8) FS.

Law Implemented 120.52(2) FS.

History--New 9-24-92, Amended 12-27-94, Transferred to 25-52.107.

ORIGINAL

~~25-41.005~~ ~~25-21.050~~ Acceptance of Gifts.

(1) This rule is adopted to implement section 112.326, Florida Statutes, authorizing agencies to impose more stringent standards of conduct upon their employees than those specified in Chapter 112, Part III, Florida Statutes. The provisions of (2) apply in addition to that part.

(2) A Commission employee shall not knowingly accept anything of value for which equal or greater consideration is not given from any entity listed below, its officers or employees. This prohibition shall further apply to any business entity that either directly or indirectly owns, controls, is an affiliate of or is a subsidiary of the listed entities. These include:

- (a) An entity regulated by the Commission;
- (b) An entity that is currently a party or has been a party in a Commission proceeding during the preceding 12 months; or
- (c) A person or entity acting on behalf of a regulated entity or party.

(3) The provisions of (2) shall not apply:

(a) When it is obvious from the circumstances that it is a relationship with a relative, as defined in section 112.312(21), Florida Statutes, or a personal relationship that pre-existed the regulatory relationship and which involves reciprocity, rather than the regulatory relationship, that is the motivating factor for offering a thing of value;

(b) To incidental items with a value of \$3.00 or less, determined as provided in section 112.3148(7), Florida Statutes;

(c) To items that are offered to the public at large or to public or private groups, such as professional, community, religious, social, or sports organizations, of which the employee is a member and where the group is not limited to employees of the Commission. However, a Commission employee shall not accept without payment food or beverages provided at a reception or similar event that is held in conjunction with a conference or meeting when the reception or similar event is sponsored by a regulated entity, association of regulated entities, or a party.

(d) To retirement or other post-employment benefits received as a result of prior employment with a regulated entity or party to a proceeding, which benefits the employee would receive regardless of employment by the Commission.

(e) To the acceptance of assistance in circumstances endangering the employee's or another person's life or property.

(f) To employees in secretarial, clerical, maintenance, or similar positions, unless the employee serves in a secretarial position under the direct supervision of a Commissioner.

(g) To the acceptance of transportation in a regulated entity's vehicle by an employee on a field visit to a site that is remote or difficult to access in a Commission vehicle.

(4) Violation of this rule shall constitute grounds for

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FPSC-RECORDS/REPORTING

Attachment 2

disciplinary action for conduct unbecoming a public employee.

(5) An employee who is uncertain about accepting anything of value may request a written advisory opinion from the General Counsel and Executive Director.

Specific Authority 112.326 FS.

Law Implemented 112.326 FS.

History--New 5-23-95, Formerly 25-21.050.

25-42.001 ~~25-22.001~~ Notice of Meeting or Workshop.

(1) Except in the case of emergency meetings the Commission shall give at least seven (7) days' public notice of any meeting or workshop by publication in the Florida Administrative Weekly.

(2) The Commission shall use the following form in providing notice of the meeting or workshop.

NOTICE OF PUBLIC MEETING OR WORKSHOP

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

DATE AND TIME: _____

PLACE: _____

PURPOSE: _____

A copy of the agenda for any public meeting may be obtained by writing to the Division of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

(3) A meeting, for the purposes of notice herein, is limited to a gathering of Commissioners for the purpose of conducting public business. The term meeting includes Agenda Conference.

(4) A workshop is a gathering where Commissioners may be present or Commission staff or person(s) designated by the commission are meeting with interested persons for a specific purpose as designated in the notice. The term workshop includes gatherings for the specific purpose of rule drafting at which time no official votes are taken or policy adopted.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.525 ~~120.53~~ FS.

History--New 12-21-81, Formerly 25-22.01, 25-22.001.

25-42.002 ~~25-22.002~~ Agenda of Meetings.

(1) The agenda for meetings shall be prepared by the Commission in time to insure that a copy may be received at least seven (7) days before the meeting by any person in the State who has requested a copy and pays \$1.00 per copy.

(2) The agenda shall list and specify the items to be considered at the meeting.

(3) For good cause stated on the record, the person designated to preside may make specific changes in the agenda after it has been made available for distribution. A majority

vote of a quorum of the Commission is required to modify the presiding officer's decision.

(4) Copies of staff recommendations for items on the agenda may be obtained from the Division of Records and Reporting upon request and the payment of the applicable copying fee. Parties to a proceeding are entitled to one copy of the staff recommendation filed in the proceeding at no cost.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.525 ~~120.53~~ FS.

History--New 12-21-81, Formerly 25-22.02, Amended 4-18-94,
Formerly 25-22.002.

25-42.004 ~~25-22.002~~ Agenda Conference Participation.

(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.

(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.

(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.525 ~~120.53~~ FS.

History--New 3-23-93, Formerly 25-22.002.

25-41.002 ~~25-22.006~~ Confidential Information.

(1) Definitions.

(a) "Confidential Information" means material that has been determined, pursuant to this rule, to be proprietary confidential business information under Section 350.121, 364.183, 366.093, or 367.156, F.S.

(b) "Formal proceeding" means a proceeding docketed in the Commission's Division of Records and Reporting.

(c) "Inquiry" means an investigation pursuant to section 350.121, F.S. An inquiry is set in motion by the Commission Chairman, the Executive Director, or the General Counsel to evaluate a complaint, allegation, or develop information as a basis to initiate action on or dispose of any matter within the Commission's jurisdiction.

(d) "Material" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other recorded information regardless of physical form or characteristics.

(e) "Obtaining material" means receiving material pursuant to filing or taking physical control of material by removing the original material or a copy of it from the utility's or other person's premises. Obtaining material also means the extraction of data from material for inclusion in working papers or memoranda.

(2) Material obtained during an inquiry.

(a) All material obtained incident to an inquiry by the Commission, its staff, or any consultant employed by the Commission is exempt from the public access requirements of Section 119.07(1), F.S., and will be accorded stringent procedural safeguards against public disclosure during the pendency of the inquiry. When the Commission or its staff is requesting information incident to an inquiry, the source shall be informed in writing that the request is made incident to an inquiry.

(b) An inquiry will terminate 40 days after the transmittal of a notice of termination by the Division of Records and Reporting. This notice will be sent to all sources from whom material was obtained during the inquiry and will include a list of all materials obtained from the source during the inquiry and any portions of staff work papers, analyses, and reports containing materials obtained from the source during the inquiry. The notice will indicate whether the Commission intends to retain, destroy, or return the materials listed. A source may, within 30 days after issuance of the notice, file with the Division of Records and Reporting a written request that the material the Commission intends to retain be classified as confidential and exempt from Section 119.07(1), F.S. Requests filed in response to the notice of termination shall meet the same criteria and be processed in the same manner as other requests for confidential classification under subsection (4) of this rule. If no timely request for confidential classification is filed, confidentiality is waived and the material becomes subject to inspection and examination pursuant to Section 119.01 (7), F.S.

(3) Material obtained outside of an inquiry. Material obtained by the Commission or its staff outside of an inquiry shall be subject to inspection and examination pursuant to Section 119.07(1), F.S., unless the utility or other person requests that it be classified as confidential information.

(a) 1. If the utility or other person believes information requested by staff is confidential, the utility or other person may require that the staff request be in writing. Prior to the staff obtaining any material, a utility or other person may receive temporary exemption from Section 119.07(1), F.S., by filing a notice of intent to request confidential

classification. The notice of intent to request confidential classification shall be filed with the Division of Records and Reporting and shall have appended thereto a copy of any written request for the material to which it relates. A copy of the notice shall be provided to the division requesting the material. To maintain continued confidential handling of the material the utility or other person must, within 21 days after the staff has obtained the material, file a request for confidential classification with the Division of Records and Reporting. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.

2. In the case of material obtained by the Commission's auditors, the utility shall indicate on the document request Form PSC/AFA 6 (2/95) whether the information is believed by the utility to be confidential. To maintain continued confidential handling of the material, the utility must, within 21 days after the audit exit conference or, if waived, the date the audit exit conference would have taken place, file a request for confidential classification with the Division of Records and Reporting. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality.

(b) When the material is obtained incident to a formal proceeding, the utility or other person requesting confidential classification shall also serve a copy or summary of its request on all parties of record and on Public Counsel. The summary shall describe the material in sufficient detail so as to reasonably inform the reader of the nature of the material. Any party to a formal proceeding may file an objection to the request for confidential classification within 14 days after service of the copy or summary.

(c) Requests for confidential classification, including motions for protective orders under Paragraph 6(a), and any objections filed in response thereto shall be ruled on expeditiously by the prehearing officer assigned to the docket. The Commission panel assigned to the case will hear any motion for reconsideration filed regarding the prehearing officer's ruling. If a request is received outside a docketed proceeding, the request itself will be docketed.

(d) All material that has been classified as confidential, for which a ruling on confidentiality is pending, is subject to a notice of intent to request confidential classification, or is subject to a claim of confidentiality as provided for in Section 364.183(1), F.S., shall be exempt from Section 119.07(1), F.S., and will be accorded stringent internal procedural safeguards against public disclosure. Any staff or consultant reports or work products containing confidential information extracted from material having been classified as confidential, or which has been claimed to be confidential or for which a ruling on confidentiality is pending, shall be handled in the same manner as the material so classified. The Commission shall have

discretion to retain any confidential material in its possession. Upon the consent of the Department of State, the Commission may return or, after consulting with the source, destroy any material that is no longer needed.

(4) Requests for confidential classification.

(a) A request for confidential classification of material shall be filed in writing with the Division of Records and Reporting. All such requests, including motions for protective orders based on confidentiality, shall be styled to clearly indicate on their face that confidentiality is being requested. The utility or other person shall file with the request one copy of the material for which confidential treatment is requested. On this copy, the specific information asserted to be confidential shall be highlighted. Along with the highlighted copy, the utility or other person shall file two or more edited copies as required by the type of proceeding, which will be made available for public inspection. In the edited copies, the specific information asserted to be confidential shall be blocked out by the use of an opaque marker or other masking device. The utility or other person shall identify the page and line at which the confidential material is found and shall correlate the page and line identified with the specific justification proffered in support of the classification of such material.

(b) In the case of electronically stored material, one unedited version shall be submitted along with a written identification of the specific data fields for which confidential classification is requested along with a field-by-field justification for the confidential classification.

(c) In the line-by-line or field-by-field justification for confidential classification, the utility or other person must demonstrate how the information asserted to be confidential qualifies as one of the statutory examples listed in section 364.183(3), 366.093(3), or 367.156(3), P.S. If no statutory example is applicable, then the utility or other person shall include a statement explaining how the ratepayers or the person's or utility's business operations will be harmed by disclosure.

(d) The request shall include an affirmative statement that the material for which confidential classification is sought is intended to be and is treated by the utility or other person as private and has not been disclosed.

(e) The burden of proof shall be on the utility or other person to show that the material in question contains bona fide proprietary confidential business information. A request for confidential classification that fails to identify the material for which confidential classification is sought in sufficient detail to permit a reasoned analysis or which fails to provide the required justification for classification may be denied as insufficient on its face.

(f) The Division of Records and Reporting shall make available for public inspection a listing of daily filings with the Commission requesting confidentiality.

(g) The Commission shall have the discretion to modify the requirements of this subsection in order to alleviate the financial burden of entities qualifying as small businesses under section 288.702, F.S.

(h) A utility may petition the Commission for a waiver of the justification for particular sections of certain routinized filings. The Commission may require conditions to be met by the utility that may include, but not be limited to:

1. Filings which are routine, filed periodically, and which have been filed for a minimum of six months;

2. Information which has regularly been classified as confidential in the past; and

3. While the utility must identify material to be classified by line-by-line reference, the utility may cite to a previous order for justification.

If the waiver is approved, the Commission will issue an order referencing the appropriate previous order stating the relevant justification. No party will be denied the opportunity to object to a request for confidentiality made pursuant to this subparagraph.

(5) Claim of confidential treatment pursuant to section 364.183(1), F.S.

(a) Telecommunications companies or other persons claiming confidential treatment for materials pursuant to section 364.183(1), F.S., shall file with the Division of Records and Reporting one copy of all such materials and include a cover letter stating that confidentiality is being claimed. The telecommunications company or other person also shall file one copy of the material on which the specific information claimed as confidential shall be highlighted. Along with the highlighted copy, the telecommunications company or other person shall file two edited copies which will be made available for public inspection. In the edited copies, the specific information claimed to be confidential shall be blocked out by the use of an opaque marker or other masking device.

(b) In the case of electronically stored material, one unedited version shall be submitted along with a written identification of the specific data fields for which confidentiality is claimed, along with a field-by-field justification for the confidential classification.

(c) 1. The materials claimed to be confidential shall be kept confidential until returned to the provider pursuant to subsection (6)(d) of this rule, unless the materials will be used in a Commission proceeding or are the subject of a request pursuant to Section 119.07(1), F.S.

2. Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to 364.183(1), F.S. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the

filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings.

(6) Discovery.

(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

(b) The Commission's protective orders shall exempt proprietary confidential business information from section 119.07(1), F.S. While a request for a protective order is pending, the information asserted to be confidential shall also be exempt from section 119.07(1), F.S. Such exemption shall apply whether the information is in the possession of an entity, individual, or state agency, including the Office of Public Counsel.

(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under paragraph (a) above. If the information is not to be used in a proceeding before the Commission, then Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

(d) Confidential information which has not been entered into the official record of the proceeding shall be returned to the utility or person who provided the information no later than 60 days after the final order, unless the final order is appealed. If the final order is appealed, the confidential information which has not been made a part of the record shall be returned no later than 30 days after the decision on appeal.

(7) (a) Any person may file a petition to inspect and examine any material which the Commission has ruled exempt from s. 119.07(1), F.S., or which is exempted under paragraph 3(d) pending the Commission's ruling or as the result of the filing of a notice of intent to request confidentiality. A copy of the petition must be served on the affected utility or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings. Material

obtained by the Commission in connection with an inquiry shall not be subject to requests for inspection and examination until after the inquiry is terminated.

(b) A finding of confidentiality notwithstanding, a source may consent to inspection or examination by any person. Such consent shall not constitute a waiver of confidentiality and only the person specified in the consent may inspect or examine the material. The Commission may be requested to issue a protective order to recognize the terms and conditions of the consent. All persons are urged to seek mutual agreement regarding access prior to bringing a controversy to the Commission.

(8) Use of confidential information during formal proceedings.

(a) The Commission may rely upon confidential information during a formal proceeding and such information, if otherwise admissible, will be received in evidence. In such event, reasonable precautions will be taken to segregate confidential information in the record and otherwise protect its integrity.

(b) When information subject to a claim of confidentiality pursuant to Section 364.183(1) or a request is admitted into the evidentiary record of a hearing, if such information is not otherwise subject to a request for confidentiality filed with the Commission, the parties to the case and the Commission shall treat the information as confidential pending a ruling on the confidentiality of the information. To maintain continued confidentiality, the party to whom the information belongs shall file a request for confidential classification within 21 days of the conclusion of the hearing.

(c) When information subject to a claim of confidentiality pursuant to Section 364.183(1) or a request is contained in a party's brief or other post hearing filing filed with the Commission, the party filing such information shall notify the owner of the information at least three working days prior to the date that the filing will be made. To maintain continued confidential treatment, the party to whom the information belongs shall file, on the same date the brief or other post-hearing filing is filed, either a notice of intent to request confidentiality treatment pursuant to (b) of this subsection, a request for confidential treatment, or a statement that the information is already subject to a request for confidentiality that has been filed with the Commission and the date that the request was filed.

(9) Duration of Confidential Classification.

(a) Orders of the Commission granting confidential classification shall limit the duration of such classification to a period not exceeding 18 months. The Commission may approve a longer period if it finds, for good cause, that such longer period is necessary to protect the ratepayers or the business operations of the utility or affected person.

(b) When confidential information is no longer needed for the Commission to conduct its business, the Commission shall

order all persons holding such information to return it to the utility or person providing the information.

(c) Confidential information not returned at the conclusion of the period established under paragraph (a) of this subsection, shall no longer be exempt from s. 119.07(1), F.S., unless the utility or affected person shows, and the Commission finds, that the information continues to be confidential. Upon such finding, the duration of confidential classification may be extended for a period of up to 18 months, or for a longer period if the Commission finds, for good cause, that such longer period is necessary to protect the business operations of the utility or affected person. While the Commission is considering an extension under this paragraph, the information in question shall remain exempt from s. 119.07(1), F.S.

(10) Judicial Review. When the Commission denies a request for confidential classification, the material will be kept confidential until the time for filing an appeal has expired. The utility or other person may request continued confidential treatment until judicial review is complete. The request shall be in writing and filed with the Division of Records and Reporting. The material will thereafter receive confidential treatment through completion of judicial review.

Specific Authority: 350.127, F.S.

Law Implemented: 350.121, 364.183, 366.093, 367.156, F.S.

History: New 7/1/85, Amended 4/26/90, 4/21/96, Formerly 25-22.006.

25-43.007 ~~25-22.017~~ Rulemaking Proceeding -- Adoption.

(1) At a public meeting, the Commission shall consider the record, the proposed rule, timely exceptions to the presiding officer's final recommended version, if permitted, and the recommendation of the presiding officer. The Commission may also question staff and other persons as part of its deliberations prior to adopting, rejecting or modifying the proposed rule.

(2) Oral argument and petitions for reconsideration are not appropriate to the rulemaking process. However, any interested person may petition the Commission after a rule is adopted or amended, for initiation of rulemaking proceedings pursuant to Rule 25-22.012, to amend or otherwise modify the adopted rule or amendment.

(3) Where a variance from a rule is requested, the Commission shall treat the request as a petition for a § 120.57, F.S., hearing. Unless waived by all parties, the provisions of § 120.57(1), F.S., and Part IV of these rules shall apply whenever the proceeding involves a disputed issue of material fact. In cases where the provisions of § 120.57(1), F.S., do not apply, the provisions of § 120.57(2), (3), F.S., shall be followed.
Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.525, 120.54(3)(e) ~~120.53~~ FS.
History--New 12-21-81, Amended 10-25-83, Formerly 25-22.17, 25-
22.017.

25-46.104 ~~25-22.028~~ Filing, Service of Documents, and Computation
of Time.

(1) Filing. Filing shall be accomplished by submitting the original document and the appropriate number of copies, as provided by rule, to the Division of Records and Reporting (Division). Filing may be made by U.S. Mail, hand delivery, or courier service. Filings on behalf of companies with gross annual operating revenues derived from intrastate business in excess of \$750,000, Class A water and sewer utilities, and parties to proceedings affecting these entities, shall also include a copy of the document on diskette in word processing or spreadsheet format, whichever is appropriate, when filing documents capable of being generated by word processing or spreadsheet software. Material for which a request for confidential classification is pending under Rule 25-22.006, Florida Administrative Code, should not be included in a diskette copy. The diskette filing need not recreate document attachments not originally generated for the purpose of filing with the Commission, such as exhibits attached to a petition. The copy of the document on diskette shall be filed within 1 working day of the date the original printed document is filed. Information about the word processing and spreadsheet software preferred by the Commission may be obtained from the Director of the Division. Each diskette shall be accompanied by a statement specifying the density of the diskette, the operating system and the software used to prepare the document on diskette. For purposes of the requirement that copies of documents be filed on diskette, "document" means all prehearing statements regardless of length, and pleadings, post hearing statements of positions on issues or briefs, proposed findings of fact and conclusions of law in excess of 5 pages exclusive of the service list. The prehearing officer assigned to the proceeding may grant exceptions to the requirement for filing documents on diskette on a case-by-case basis, for good cause shown. In case of a discrepancy between an original printed document that is filed and the document on diskette, the filed original document shall prevail. Filing shall be completed upon receipt by the Division; provided, however, that during the course of a hearing before the Commission or a panel thereof, the presiding chairman may accept a document for filing and shall note the filing date and transmit it to the Division. In this situation the responsible party shall ensure that a copy of the document is submitted on diskette to the Division within 5 working days. The date a document is submitted for filing shall

be noted by the person making the filing on the first page of the document filed. Where a document is served upon a party pursuant to these rules, its original and the appropriate copies, or, in the case of interrogatories or production of documents, a notice of service, shall be filed with the Division no later than 5 days after service.

(2) Service. A copy of all documents filed pursuant to these rules shall be served on each of the parties no later than the date of filing. In the event that the parties are so numerous that this requirement is onerous, the Commission on motion may limit the number of copies to be served. Service by mail shall be completed upon mailing.

(3) Method and Proof of Service.

(a) When service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the Commission. Service on the attorney or party shall be made by hand delivery or by mail to the last known address. Delivery of a copy within this rule shall mean handing it to the attorney or to the party, or leaving it at the party's or attorney's usual office with the clerk or other person in charge, or if there is no one in charge, leaving it in a conspicuous place within the office, or if the office is closed, leaving it at the party's or attorney's usual place of abode with some person of the family above fifteen years of age and informing that person of the contents.

(b) When an attorney or a party certifies in substance: "I certify that a copy hereof has been furnished to (here insert name or names) by (delivery) (mail) this _____ day of _____, 19--:

Signature"

the certificate shall be taken as prima facie evidence of service in compliance with this rule.

(4) Additional Time after Service by Mail. Whenever a party is required or permitted to do an act within a prescribed time after service of a document, and the document is served by mail, five days shall be added to the prescribed time, except that responses to notices pursuant to Sections 350.113, 364.335, and 367.045, F.S., shall be filed within the time specified by statute. Any action required by a Commission order shall be completed on the specified date, if any, in the order.

(5) Computation of Time. In computing any period of time prescribed or allowed by these rules, by order of a presiding officer, or by any applicable statute, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday in which event the period

shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. As used in these rules, legal holiday means those days designated in § 110.117, F.S., and any other day the Agency's offices are closed.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57 ~~120.53~~ FS.

History--Formerly 25-2.58, Amended 10-21-81, Formerly 25-22.28, Amended 2-11-92, Formerly 25-22.028.

25-46.111 ~~25-22.029~~ Point of Entry Into Proposed Agency Action Proceedings.

(1) At any time subsequent to the initiation of a proceeding before the Commission, the Commission may give notice of proposed agency action. Proposed agency action shall be made upon a vote of the Commission, and may be reflected in the form of an order or a notice of intended action.

(2) After agenda conference, the Division of Records and Reporting shall issue written notice of the proposed agency action, advising all parties of record that they have 21 days after issuance of the notice in which to file a request for a § 120.57 hearing. For good cause shown, the Commission may provide that the time for requesting a § 120.57 hearing shall be 14 days from issuance of the notice. The Commission may also serve copies of its notice on interested persons and may require a utility to serve written notice on its customers.

(3) The Commission may publish notice of its proposed agency action in the Florida Administrative Weekly or newspapers of general circulation in the area affected by its action and may require a utility to publish notice of the decision in newspapers of general circulation in its service area. Any such publication may be used in establishing the date of receiving notice.

(4) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a § 120.57 hearing, in the form provided by Rule 25-22.036. Any such petition shall be filed within the time stated in the notice issued pursuant to subsection (2) of this rule. However, when a person has not been served notice of the decision and notice has been published, such person may file a petition within 14 days after publication of the notice.

(5) Any person who receives notice and who fails to file a timely request for a § 120.57 hearing shall have waived his or her right to request a hearing on the decision.

(6) In the absence of a timely request for a § 120.57 hearing, and unless otherwise provided by a Commission order, the proposed action shall become effective upon the expiration of the time within which to request a hearing.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57 ~~120.53~~ FS.

History--New 12-21-81, Formerly 25-22.29, Amended 7-8-92,
Formerly 25-22.029.

25-41.003 ~~25-22.030~~ Injunctions.

(1) The Commission may seek relief in circuit court in the form of temporary or permanent injunctions, restraining orders or other appropriate orders where:

(a) The Commission finds that any entity within its jurisdiction has violated or is in violation of a Commission Order or rule; and

(b) The Commission finds that said violation impairs the operations or service of any entity over which it has jurisdiction.

(2) In any instance where there is an immediate threat to the public health, safety or welfare, no notice shall be required prior to the Commission's decision to seek the relief described in subsection (1).

(3) Seeking relief in circuit court is not conditioned on conducting a hearing pursuant to Chapter 120, Florida Statutes. Specific Authority 350.127(2) FS.

Law Implemented 364.015, 366.05(10), 367.121(1)(j) FS.
History--New 3-21-94, Formerly 25-22.030.

25-41.001 ~~25-22.032~~ Customer Complaints.

(1) Any customer of a utility regulated by this Commission may file a complaint with the Division of Consumer Affairs whenever he has an unresolved dispute with the utility regarding his electric, gas, telephone, water, or wastewater service. The complaint may be communicated orally or in writing. Upon receipt of the complaint a staff member designated by the Director of the Division shall notify the utility of the complaint and request a response. The response should explain the utility's actions in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and procedures, applicable state laws, and Commission rules, regulations, and orders.

(2) The designated staff member shall investigate the complaint and attempt to resolve the dispute informally. To that end, the staff member may request the parties to provide copies of bills, billing statements, field reports, written documents, or other information in their possession which may be necessary to resolve the dispute. The staff member may perform such tests, on-site inspections, and reviews of utility records as he considers appropriate and may request the utility to collect data and to perform tests which are necessary to aid in the resolution of the dispute.

(3) As soon as possible the staff member shall propose a resolution of the complaint based on his findings, applicable state laws, the utility's tariffs, and Commission rules,

regulations, and orders. The proposed resolution may be communicated to the parties orally or in writing. Upon request, either party shall be entitled to a written copy of the proposed resolution, which shall be delivered by first-class mail.

(4) If a party objects to the proposed resolution, he may file a request for an informal conference on the complaint. The request shall be in writing and should be filed with the Division of Consumer Affairs within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs. If a conference is granted the appointed staff member shall have had no prior contact with the complaint. After consulting with the parties, the appointed staff member shall issue a written notice to the parties setting forth the procedures to be employed, the dates by which written materials are to be filed, and the time and place for the informal conference, which shall be held in the service area, or such other convenient location to which the parties agree, no sooner than 10 days following the notice.

(5) In conjunction with conducting the informal conference, the appointed staff member may:

(a) Require the utility to provide any information in its possession which may be relevant to the complaint and may specify the form in which such information is to be provided;

(b) Request a customer to provide any information in the customer's possession which is necessary to prove any facts the customer may assert in support of his position;

(c) Direct the utility to conduct meter tests and inspections, diversion of service inspections, and other tests the appointed staff member deems necessary or appropriate;

(d) Question the parties directly regarding all matters related to the case.

(6) At the conference, the parties shall have the opportunity to present information, orally or in writing, in support of their positions. During the conference, the appointed staff member may encourage the parties to discuss and resolve their dispute. The Commission shall be responsible for tape-recording, but not transcribing, the informal conference. A party may arrange for transcription at his own expense.

(7) The appointed staff member may permit any party to file, following the conference, further information, documentation, or arguments. The opposing party shall have an opportunity to file a response.

(8) If a settlement is not reached, then within 20 days

following the informal conference or the last post-conference filing, the appointed staff member shall submit a recommendation to the Commission and shall mail copies of the recommendation to the parties. The Commission shall dispose of the matter at the next available agenda conference by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes. The Commission may permit the parties to respond to the recommendation at the agenda conference.

(9) At any point during the complaint proceedings, a party has the right to be represented by an attorney or other qualified representative. For purposes of this rule a qualified representative may be any person the party chooses, unless the Commission sets the matter for hearing. At such hearing the parties must be represented by an attorney or Class B practitioner as provided for in Rule 25-22.008 or may represent themselves. Each party shall be responsible for his own expenses in the handling of the complaint.

(10) During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules.

(11) At any time the parties may agree to settle their dispute. If a settlement is reached, the parties or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on both parties and that the parties waive any right to further review or action by the Commission. The Division shall, if the complaint has been docketed, submit the statement to the Commission for approval. If the complaint has not been docketed, then the Division shall acknowledge the statement of settlement by letter to the parties. Specific Authority ~~120.53(1)~~, 350.127(2) FS.
Law Implemented ~~120.53(1)~~, 120.569, 120.57, ~~120.59(4)~~ FS.
History--New 1-3-89, Amended 10-28-93, Formerly 25-22.032.

25-41.004 ~~25-22.033~~ Communications Between Commission Employees and Parties.

The Commission recognizes that Commission employees must exchange information with parties who have an interest in Commission proceedings. However, the Commission also recognizes that all parties to adjudicatory proceedings need to be notified

and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications.

(1) This rule shall govern communications between Commission employees and parties to docketed proceedings before the Commission. This rule shall not apply in proceedings under sections 120.54, 120.565, 367.0814, Fla. Stat., proposed agency action proceedings before the Commission has voted to issue a proposed agency action order, non-rate case tariffs, workshops or internal affairs meetings. Also exempted are docketed and undocketed audits, telephone service evaluations, and electric and gas safety inspections. Nothing in this rule is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable provisions of the Florida Rules of Civil Procedure, or affect communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.

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

(3) Scheduled Meetings and Conference Calls -- All parties to the proceeding shall be given reasonable notice of the time and place of any scheduled meeting or conference call between Commission employees and parties. For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.

(4) Response to Communications -- Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

(5) Prohibited Communications -- No Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited ex parte communication under section 350.042, Fla. Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a staff member who testifies in a case shall not discuss the merits of that case with any Commissioner during the pendency of that case.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57, 120.66, 350.042 ~~120.53~~ FS.

History--New 3-24-93, Formerly 25-22.033.

25-46.201 ~~25-22-036~~ Initiation of Formal Proceedings.

(1) Applicability. This section shall apply to all § 120.57(1) and (2) hearings including a hearing requested by a substantially affected person subsequent to proposed agency action. This rule shall not apply to the extent that a proceeding is governed by rules or statutes that prescribe alternative procedures.

(2) Initial Pleading. The initial pleading shall be entitled as either an application, petition, complaint, order, or notice, as set forth in subsections (3), (4), (5), and (6). Where the Commission has issued notice of proposed agency action, the initial pleading shall be entitled "Petition on Proposed Agency Action."

(3) Application. An application is appropriate when a person seeks authority from the Commission to engage in an activity subject to Commission jurisdiction.

(4) Petition. A petition is appropriate when:

(a) A person subject to Commission jurisdiction seeks authority to change its rates or service, or seeks some other Commission action not otherwise specified in these rules; or

(b) A substantially affected person seeks Commission action to change the rates or service of a person subject to Commission jurisdiction, or seeks some other Commission action not otherwise specified in these rules.

(5) Complaints. A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

(6) Orders and Notices. Upon its own motion, the Commission may issue an order or notice initiating a proceeding. Such order or notice shall be served upon all persons named therein. The Commission may also transmit notice of its action to other persons requesting such notice, and may publish such notice in appropriate newspapers of general circulation and the Florida Administrative Weekly.

(7) Form and Content.

(a) Generally. Except for orders or notices issued by the Commission, each initial pleading should contain:

1. The name of the Commission and the Commission's docket number, if known;
2. The name and address of the applicant, complainant or petitioners, and an explanation of how his or her substantial interests will be or are affected by the Commission determination;
3. A statement of all known disputed issues of material fact. If there are none, the petition must so indicate;
4. A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief;
5. A demand for relief; and

6. Other information which the applicant, complainant or petitioner contends is material.

(b) Application. An application shall be governed by the statute or rules applicable to applications for authority. In the absence of a specific form and content, the application shall conform to this rule.

(c) Complaint. Each complaint, in addition to the requirements of paragraph (a) above shall also contain:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged;
4. The specific relief requested, including any penalty sought.

(d) When a petitioner seeks relief against another person, the petition shall include the name and address of the person against whom relief is sought in addition to the requirements of paragraph (a) of this subsection.

(e) Petitions for rate relief shall conform to all applicable rules and statutes as to form and content, in addition to the requirements of paragraph (a) of this subsection.

(f) Petition on Proposed Agency Action. When a petition is filed in response to proposed agency action the petition shall also contain a statement of when and how notice of the Commission's proposed agency action was received.

(8) Amendments. A petition, application or complaint may be amended prior to the filing of a responsive pleading or the designation of a presiding officer by filing and serving an amended initial pleading in the manner prescribed for filing and serving an original petition, application or complaint. The petitioner, complainant, or applicant may amend its initial pleading after the designation of the presiding officer only upon order of the presiding officer.

(9) Disposition.

(a) Where an application, petition, or complaint has been filed, and Commission action has not yet been proposed, the Commission may:

1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely;
2. Issue notice of proposed agency action where a rule or statute does not mandate a hearing as a matter of course, and after the time for responsive pleadings has passed;
3. Set the matter for hearing before the Commission, or member thereof, or request that a hearing officer from the Division of Administrative Hearings be assigned to conduct the hearing. The assignment of a matter for hearing shall be pursuant to Rule 25-22.0355;
4. Dispose of the matter as provided in § 120.57(2).

(b) Where a petition on proposed agency action has been filed, the Commission may:

1. Deny the petition if it does not adequately state a substantial interest in the Commission determination or if it is untimely.
2. Grant the petition and determine if a Section 120.57(1) hearing or a Section 120.57(2) hearing is required.

(c) The Commission shall promptly give written notice to all parties of the action taken on the petition, and shall state with particularity its reasons therefore.

(d) If the Commission elects to request that a Hearing Officer of the Division of Administrative Hearings be assigned to conduct the hearing, the Commission shall forward the initial pleading, and all materials filed with the Commission, to the Division of Administrative Hearings, and shall notify all parties of its action.

(10) Service of Initial Pleadings. Where a petition seeks relief against a person, or a complaint is filed, a copy of the petition or complaint shall be served on all persons named therein. Where a petition on proposed agency action is filed, a copy shall be served on all parties of record.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57 ~~120.53~~ FS.

History--New 12-21-81, Formerly 25-22.36, 25-22.036.

25-46.122 ~~25-22.0376~~ Reconsideration of Non-Final Orders.

(1) Any party who is adversely affected by a non-final order may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order. The Commission shall not entertain a motion for reconsideration of an order disposing of a motion for reconsideration.

(2) A party may file a response to a motion for reconsideration within 7 days after service of the motion for reconsideration.

(3) Failure to timely file a motion for reconsideration or a response shall constitute a waiver of the right to do so.

(4) Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds therefor and the signature of counsel or other person filing the motion.

(5) Oral argument on any motion filed pursuant to this rule may be granted at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57, 350.01 ~~120.53~~ FS.

History--New 9-3-95, Amended 7-11-96, Formerly 25-22.0376.

25-46.205 ~~25-22.039~~ Intervention.

Persons, other than the original parties to a pending

proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Commission Rule 25-22.036(7)(a), and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.
Specific Authority 150.127(2) ~~120.53~~ FS.
Law Implemented 120.569, 120.57 ~~120.53~~ FS.
History--Formerly 25-2.34, Amended 12-21-81, Formerly 25-22.39, 25-22.039.

25-46.208 ~~25-22.0405~~ Notices of Public Hearings.

(1) The provisions of this rule shall apply to all public hearings conducted by the Commission, except rulemaking hearings held pursuant to Rules 25-22.010 through 25-22.018, F.A.C.

(2) Notice of such public hearings shall be given by the Commission to the clerk of the board of county commissioners of each county affected, the chief executive officer of each municipality to the area affected, all parties of record and all persons who have requested notice of such proceedings.

(3) A summary of the subject matter and notice of hearing shall be published by the Commission in the Florida Administrative Weekly. The summary shall be drawn and notice given as required by the provisions of the statute under which relief is sought, if applicable, but shall not be published less than 14 days prior to the hearing.

(4) The Commission may require any public utility in such proceedings to publish additional notices in newspapers of general circulation in the area affected and to give notice to its customers by mail, as may be deemed reasonably necessary by the Commission to afford adequate notice to the customers of the utility.

(5) When the Commission determines that the health, safety, or welfare of the public requires an emergency hearing, notice may be accomplished by giving notice to those parties listed in subsection (2) not less than 48 hours prior to the time scheduled for the hearing.

Specific Authority 350.127(2), 366.05, 367.121(1)(f) FS.
Law Implemented 120.569, 120.57, 364.03, 364.035(1), 364.07, 364.14, 364.15, 364.16, 364.27, 366.04, 366.05, 367.081, 367.111 FS.

History--New 1-27-72, Formerly 25-2.981, Amended 12-21-81, 9-27-83, Formerly 25-22.405, 25-22.0405.

25-46.1095 ~~25-22.0406~~ Notice and Public Information on General

Rate Increase Requests by Electric, Gas and Telephone Companies.

(1) The provisions of this rule shall be applicable to all requests for general rate increases by electric, gas and telephone companies subject to the Commission's jurisdiction.

(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service area affected.

(3) (a) Within 15 days after it has been notified by the Commission that the Minimum Filing Requirements (MFRs) have been met, the utility shall place a copy of the MFRs at its official headquarters and at its business office in each municipality in which service hearings were held in the last general rate case of the utility. Within 15 days after the time schedule has been mailed to the utility, copies of the MFRs shall be placed in the utility business office in each additional city in which service hearings are to be held. Upon customer request a copy of the MFRs shall be placed in a utility business office not located in a city where a service hearing is to be held. The copies of the MFRs shall be available for public inspection during the utility's regular business hours.

(b) In addition to the locations listed above, the Commission may require that copies of the MFRs be placed at other specified locations.

(4) (a) Within 15 days after the time schedule for the case has been mailed to the utility, the utility shall prepare and distribute a synopsis of the rate request. The synopsis shall be approved by the Commission or its staff prior to distribution and shall include:

1. A summary of the section of the MFRs showing a comparison of the present and proposed rates for major services;
2. A statement of the anticipated major issues involved in the rate case;
3. A copy of the executive summary filed with the MFRs;
4. A description of the ratemaking process and the time schedule established for the rate case; and
5. The locations at which complete MFRs are available.

(b) Copies of the synopsis shall be distributed to the same locations as required for the MFRs, to the main county library within or most convenient to the service area and to the chief executive officer of each county and municipality within the service area affected.

(5) Within 30 days after the rate case time schedule has been mailed to the utility, the utility shall begin sending a notice approved by the Commission or its staff to its customers containing:

(a) A statement that the utility has applied for a rate increase and the general reasons for the request;

(b) The locations at which copies of the MFRs and synopsis are available;

(c) The time schedule established for the case, and the dates, times and locations of any hearings that have been scheduled; and

(d) A comparison of current rates and service charges and the proposed new rates and service charges.

1. Such notice shall be completed at least 10 days prior to the first scheduled service hearing.

(6) At least 7 days and not more than 20 days prior to each service hearing, the utility shall have published in a newspaper of general circulation in the area in which the hearing is to be held a display advertisement stating the date, time, location and purpose of the hearing. The advertisement shall be approved by the Commission or its staff prior to publication.

(7) When the Commission issues proposed agency action and a hearing is subsequently held, the utility shall give written notice of the hearing to its customers at least 14 days in advance of the hearing. This notice shall be approved by the Commission or its staff prior to distribution.

(8) After the Commission's issuance of an order granting or denying a rate change, the utility shall give notice to its customers of the order and the revised rates. The notice shall be approved in advance by the Commission or its staff and transmitted to the customers with the first bill containing the new rates.

Specific Authority 350.127(2), 366.05 FS.

Law Implemented ~~364.19~~, 364.035(1), ~~366.05(1)~~, 366.06 FS.

History--New 9-27-83, Formerly 25-22.406, Amended 5-27-93,
Formerly ~~25-22.0406~~.

~~25-46.1096~~ ~~25-22.0407~~ Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.

(1) This rule applies to all requests for general rate increases made by water and wastewater utilities.

(2) Upon filing a petition for a general rate increase, the utility shall mail a copy of the petition to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request. Each copy of the petition shall be accompanied by a statement that a copy of the minimum filing requirements (MFRs) when accepted by the Commission can be obtained from the petitioner upon request.

(3) Within 30 days after the official date of filing established by the Commission, the utility shall place a copy of the petition and the MFRs at its official headquarters and at any business offices it has in the service areas included in the rate request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in its rate request, the utility shall place a copy of the petition and the MFRs at the main county library, the local community center or other appropriate location which is within or most convenient to the service area and which is willing to accept and provide

public access to the copies. The Commission may require that copies of the petition and MFRs be placed at other specified locations.

(4) (a) Within 30 days after the official date of filing established by the Commission, the utility shall place a copy of its rate case synopsis at all locations where copies of the petition and MFRs were placed.

(b) Within 30 days after the official date of filing established by the Commission, the utility shall mail a copy of its rate case synopsis to the chief executive officer of the governing body of each municipality and county within the service areas included in the rate request.

(c) The utility's rate case synopsis shall be approved by the Commission staff prior to distribution and shall include the following:

1. A summary of the section of the MFRs showing a comparison of the present and proposed rates and charges;
2. A statement of the general reasons for the rate request;
3. A statement of any anticipated major issues involved in the rate case;
4. A description of the ratemaking process and the time schedule established for the rate case; and
5. The locations where complete MFRs are available.

(5) (a) Within 50 days after the official date of filing established by the Commission, the utility shall provide, in writing, an initial customer notice to all customers within the service areas included in the rate request and to all persons in the same service areas who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the petition is filed.

(b) The initial customer notice shall be approved by Commission staff prior to distribution and shall include the following:

1. The date the notice was issued;
2. A statement that the utility has filed a rate request with the Commission and a statement of the general reasons for the request;
3. A statement of the locations where copies of the MFRs, petition, and rate case synopsis are available for public inspection and the hours and days when inspection may be made;
4. The time schedule established for the case, including the dates, times, and locations of any hearings scheduled;
5. A comparison of current rates and charges and the proposed new rates and charges;
6. The utility's address, telephone number, and business hours;

7. A statement that written comments regarding utility service or the proposed rates and charges should be addressed to the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to the proceeding;
8. A statement that complaints regarding service may be made to the Commission's Division of Consumer Affairs at the following toll-free number: 1-800-342-3552; and
9. If the utility has not requested a change in its service availability charges as part of its rate request, a statement that the Commission will be reviewing the utility's service availability charges in the pending rate case and that the Commission may adjust those charges.
10. The docket number assigned by the Commission's Division of Records and Reporting.

(c) The initial customer notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(6) (a) No less than 14 days and no more than 30 days prior to the date of each service hearing, in those cases where the Commission has scheduled a service hearing, the utility shall provide written notice of the date, time, location, and purpose of the service hearing to all customers within service areas designated by the prehearing officer or the Commission staff. The notice shall be approved by Commission staff prior to distribution. The notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(b) No less than 14 days and no more than 30 days prior to the date of the hearing, in all cases, including those in which the Commission has scheduled a service hearing, the utility shall provide written notice of the date, time, location, and purpose of the hearing to all customers within the service areas included in the rate request. The notice shall be approved by Commission staff prior to distribution. The notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(7) No less than 14 days and no more than 30 days prior to the date of each hearing held in or near a utility service area included in the rate request, the utility shall have published in a newspaper of general circulation in the area in which such hearing is to be held a display advertisement stating the date, time, location, and purpose of the hearing. The notice shall be approved by Commission staff prior to publication.

(8) When a utility files for a petition for a general rate increase and requests that its case be processed as proposed agency action in accordance with section 367.081(8), F.S., the utility shall comply with the requirements of sections (2), (3), (4), and (5) of this rule.

(a) No less than 14 days and no more than 30 days prior to

the date of a customer meeting conducted by the Commission staff, the utility shall provide written notice of the date, time, location, and purpose of the customer meeting to all customers within service areas designated by the Commission staff. The notice shall be approved by Commission staff prior to distribution. The notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(b) If the proposed agency action order issued in the case is protested and any hearings are subsequently held, the utility shall give notice in accordance with subsections (6) and (7) above.

(9) When a utility applies for a staff-assisted rate case in accordance with section 367.0814, F.S., and Rule 25-30.455, F.A.C., and staff-assistance is granted, the requirements of sections (2), (3), (4), and (5) of this rule shall not apply.

(a) Upon receipt of the staff reports, the utility shall place two copies of its application for staff-assistance and the staff reports at any business offices it has in its service area. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in its service area, the utility shall place two copies of its application and the staff reports at the main county library, the local community center or other appropriate location that is within or most convenient to the service area and that is willing to accept and provide public access to the copies.

(b) No less than 14 days and no more than 30 days prior to the date of a customer meeting conducted by the Commission staff, the utility shall provide, in writing, a customer meeting notice to all customers within its service area and to all persons in the same service areas who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the petition is filed.

(c) The customer meeting notice shall be approved by Commission staff prior to distribution and shall include the following:

1. The date the notice was issued;
2. The time, date, location, and purpose of the customer meeting;
3. A statement that the utility has applied for a staff-assisted rate case and the general reasons for doing so;
4. A statement of the location where copies of the application and staff reports are available for public inspection and the times during which inspection may be made;
5. A comparison of current rates and charges and the proposed new rates and charges;
6. The utility's address, telephone number, and business

- hours;
7. A statement that written comments regarding utility service or the proposed rates and charges should be addressed to the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to the proceeding;
 8. A statement that complaints regarding service may be made to the Commission's Division of Consumer Affairs at the following toll-free number: 1-800-342-3552;
 9. A statement that the Commission will be reviewing the utility's service availability charges in the pending case and that the Commission may adjust those charges;
 10. The docket number assigned by the Commission's Division of Records and Reporting.

(d) The customer meeting notice shall be mailed to the out-of-town address of all customers who have provided the utility with an out-of-town address.

(e) If the proposed agency action order issued in the case is protested and any hearings are subsequently held, the utility shall give notice in accordance with subsections (6) and (7) above.

(10) After the Commission issues an order granting or denying a rate change, the utility shall notify its customers of the order and any revised rates. The customer notification shall be approved by Commission staff and be distributed no later than with the first bill containing any revised rates.

Specific Authority 350.127(2), 367.121(1)(f) FS.
Law Implemented 367.081, 367.0814(1), 367.081(1)(h), 367.091,
367.121(1)(f) FS.

History--New 5-27-93, Formerly 25-22.0407.

~~25-30.4345~~ ~~25-22.0408~~ Notice of Requests for New or Revised Service Availability Charges or Policies and Notice of Requests for Allowance for Funds Prudently Invested (AFPI) Charges.

(1) This rule applies to all requests for new or revised service availability charges or policies and to all requests for allowance for funds prudently invested (AFPI) charges made by water and wastewater utilities, including those requests made in conjunction with a request for a general rate increase.

(2) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall place a copy of the application at its official headquarters and at any business offices it has in the service areas included in the request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in the request, the utility shall place a copy of the application at the main county library, the local community center or other appropriate location which is within or most convenient to the service area and which is willing to

accept and provide public access to said copies. The Commission may require that copies of the application be placed at other specified locations.

(c) (a) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall have published a notice of application in a newspaper of general circulation in the service areas included in the petition.

(b) Upon filing an application for new or revised service availability charges or policies or an application for AFPI charges, the utility shall mail or hand deliver a notice of application to all persons in the service areas included in the application who have filed a written request for service or who have been provided a written estimate for service within the 12 calendar months prior to the month the application is filed.

(c) The Commission may require such other notice as it finds reasonably necessary.

(d) The notice of petition shall include the following:

1. The date the notice was issued;
2. A statement that the utility has filed a petition for new or revised service availability charges or policies or AFPI charges with the Commission;
3. A statement that the requested service availability charge or AFPI charge is to pay for growth in the utility system and the requested charges are to be paid by new, not existing, customers;
4. A statement of the locations where copies of the application are available for public inspection and the time during which inspection may be made;
5. A comparison of the present and proposed policy and charges;
6. The utility's address, telephone number and business hours; and
7. A statement that any comments concerning the policy or charges should be addressed to the Director of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

Specific Authority 350.127(2), 367.121(1)(f) FS.

Law Implemented 367.101, 367.111, 367.091 FS.

History--New 5-27-93, Formerly 25-22.0408.

25-46.212 ~~25-22-045~~ Subpoenas.

(1) When the proceeding is before the Commission or member thereof, subpoenas may be issued by the presiding officer or the Division of Records and Reporting on subpoena forms supplied by the Commission. When the proceeding is before a hearing officer of the Division of Administrative Hearings, subpoenas may be issued by the Hearing Officer.

(2) A party shall apply in writing for the issuance of subpoenas requiring the attendance of witnesses or production of

records, files, and memoranda from any place in the state, at any designated place of hearing before the presiding officer, for the purpose of taking the testimony of such witness or inspection of documents. An application for the subpoena shall state the name and address of the witness for whom the subpoena is to be issued, and the time and place for the witness to appear.

(3) Any party or person against whom a subpoena is directed may file a motion to quash or limit the subpoena with the agency having jurisdiction of the dispute. The motion shall set forth the grounds relied upon.

(4) A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if service is not made by an officer authorized by law to do so.

(5) Service of a subpoena may also be effected by certified mail, in which case the return receipt must be signed by the person named in the subpoena.

Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57, 350.123 ~~120.53~~ FS.

History--Formerly 25-2.100, Amended 12-21-81, Formerly 25-22.45, 25-22.045.

25-46.220 ~~25-22.056~~ Oral Argument.

(1) The Commission may grant oral argument upon request of any party to a section 120.57 formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Failure to file a timely request for oral argument shall constitute waiver thereof.

(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.

(3) Requests for oral argument on recommended or proposed orders and exceptions pursuant to section 120.58(1)(e), F.S., must be filed no later than 10 days after exceptions are filed. Specific Authority 350.127(2) ~~120.53~~ FS.

Law Implemented 120.569, 120.57 ~~120.53, 120.58(1)(e)~~ FS.

History--New 12-21-81, Formerly 25-22.58, Amended 3-23-93, Formerly 25-22.058.

25-46.123 ~~25-22.060~~ Motion for Reconsideration.

(1) Scope and General Provisions.

(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration.

of that order. The Commission will not entertain any motion for reconsideration of any order which disposes of a motion for reconsideration. The Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, regardless of the form of the Notice and regardless of whether or not the proposed action has become effective under Rule 25-22.029(6).

(b) A party may file a response to a motion for reconsideration and may file a cross motion for reconsideration. A party may file a response to a cross motion for reconsideration.

(c) A final order shall not be deemed rendered for the purpose of judicial review until the Commission disposes of any motion and cross motion for reconsideration of that order, but this provision does not serve automatically to stay the effectiveness of any such final order. The time period for filing a motion for reconsideration is not tolled by the filing of any other motion for reconsideration.

(d) Failure to file a timely motion for reconsideration, cross motion for reconsideration, or response, shall constitute waiver of the right to do so.

(e) A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under § 120.54(5), F.S., and Rule 25-22.012.

(f) Oral argument on any pleading filed under this rule shall be granted solely at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.

(2) Contents. Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds for reconsideration, and the signature of counsel, if any.

(3) Time. A motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. A response to a motion for reconsideration or a cross motion for reconsideration shall be served within 7 days of service of the motion for reconsideration to which the response or cross motion is directed. A response to a cross motion for reconsideration shall be served within 7 days of service of the cross motion. Specific Authority 350.127(2) ~~120-53~~ FS. Law Implemented 120.569, 120.57, 350.01(5) ~~120-53~~ FS. History--New 12-21-81, Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96, Formerly 25-22.060.

25-53.101 ~~25-22-061~~ Stay Pending Judicial Review.

(1)(a) When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient

bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

(b) In determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as:

1. Terms that will discourage appeals when there is little possibility of success; and
2. A rate of interest that takes into consideration:
 - a. The use of the money that the stay permits;
 - b. The prime and other prevailing rates of interest at commercial banks and other potential sources of capital in the amount involved in the appeal.

(2) Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

- (a) Whether the petitioner is likely to prevail on appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

(3) (a) When a public body or public official appeals an order involving an increase in a utility's or company's rates, which appeal operates as an automatic stay, the Commission shall vacate the stay upon motion by the utility or company and the posting of good and sufficient bond or corporate undertaking. When determining the amount and conditions of the bond or corporate undertaking, the Commission may consider such factors as those set forth in subparagraph (1)(b)2.

(b) When a public body or public official appeals an order that does not involve an increase in rates, the Commission may vacate the stay or impose any lawful conditions.

(4) When a stay or vacation of a stay is conditioned upon the posting of a bond or corporate undertaking, the Commission may at the time it grants the stay or vacation of the stay, set the rate of interest to be paid by the utility or company in the event that the Court's decision requires a refund to customers.

(5) Motions filed pursuant to subsections (1) or (2) of this rule shall be heard by those Commissioners who participated in the proceeding which resulted in the order being appealed. However, motions filed under subsection (3) of this rule may be ruled upon by the Chairman or the Commissioner assigned as the prehearing officer in the case.

Specific Authority 350.127(2), ~~120.53(1)~~ FS.

Law Implemented ~~350.127(2)~~, ~~120.53(1)~~, 120.68(3) FS.

History--New 2-1-82, Formerly 25-22.61, 25-22.061.

25-51.101 ~~25-22-070~~ Ten-Year Site Plans -- Definitions.

(1) "Electric Utility" means any municipal electric utility, investor-owned electric utility, rural electric cooperative, public utility district, joint operating agency, or combinations thereof, that owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

(2) "Power Plant" means any electrical generating facility using any process or fuel, including nuclear materials, and shall include those directly associated transmission lines required to connect to an existing transmission network.

(3) "Directly Associated Transmission Lines" means only new corridors and transmission lines from the power plant to the first structure on an existing transmission system.

(4) "Potential Sites" are sites within the state that an electric utility is considering for possible location of a power plant, a power plant alteration, or an addition resulting in an increase in generating capacity.

(5) "Preferred Sites" are sites within the state on which an electric utility intends to construct a power plant, a power plant alteration, or an addition resulting in an increase in generating capacity.

Specific Authority 350.127(2), 186.801(4) FS.

Law Implemented 186.801, 366.04(5) FS.

History--New 11-10-97, Formerly 25-22.070.

25-51.102 ~~25-22-071~~ Submission and Review of the Ten-Year Site Plans.

(1) Filing Requirements:

(a) All electric utilities in the State of Florida with existing generating capacity of 250 megawatt (mW) or greater shall prepare a ten-year site plan, and submit 25 copies to the Florida Public Service Commission's Division of Records and Reporting on the first working day of April of each year, unless extended. The plan shall date from December 31 of the prior calendar year.

(b) Any electric utility, other than those filing ten-year site plans pursuant to (1)(a), that elects to construct an additional generating facility exceeding 75 mW gross generating capacity shall prepare a ten-year site plan, and submit 25 copies to the Public Service Commission's Division of Records and Reporting in the year the decision to construct is made or at least three years prior to application for site certification, and every year thereafter until the facility becomes fully operational.

(2) The Commission will provide a copy of the ten-year site plans to appropriate federal, state, and local agencies, water management districts, and regional planning councils.

(3) The Commission will solicit comments from various federal, state, and local agencies, water management districts, and regional planning councils regarding the individual utility

ten-year site plans. Any written comments shall be filed with the Commission within 90 days from the date of receipt of the plans. The state agencies from which comments will be solicited will include:

- (a) The Department of Environmental Protection.
- (b) The Department of Transportation.
- (c) The Department of Agriculture and Consumer Services.
- (d) The Department of Health.
- (e) The Game and Fresh Water Fish Commission.
- (f) The Board of Trustees of the Internal Improvement Trust

Fund.

- (g) The Department of Community Affairs.

(4) The Commission will complete its review of the plans within nine months following submission and will report its findings, along with any comments or recommendations, to the Florida Department of Environmental Protection and the utilities filing a plan. Other agencies to which the Commission sent the plan for review, and other entities may request a copy of the review from the Division of Electric and Gas, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

(5) Plans that have been previously classified by the Commission as unsuitable may be classified suitable based on additional data.

(6) The electric utilities in Florida shall compile aggregate statewide and peninsular Florida (the area east of the Apalachicola River) data derived from individual electric utility plans and shall submit this data to the Commission by July 1 of each year.

Specific Authority 350.127(2), 186.801(4) FS.

Law Implemented 186.801, 366.04(5), 366.05(7) FS.

History--New 11-10-97, Formerly 45-22.071.

25-51.103 ~~25-22.072~~ Contents of Ten-Year Site Plans.

(1) Individual electric utility ten-year site plans required by Rule 25-22.071 shall include at a minimum the information listed in Form PSC/EAG 43. Form PSC/EAG 43 (11/97), entitled "Electric Utility Ten-Year Site Plan Information and Data Requirements," is incorporated by reference into this rule and is available from the Division of Electric and Gas.

(2) When an application for certification of a preferred site for a proposed facility has been filed with the Department of Environmental Protection, no further environmental or land use data shall be submitted to the Commission for that site.

Specific Authority 350.127(2), 186.801(4) FS.

Law Implemented 186.801, 366.04(5), 366.05(7) FS.

History--New 11-10-97, Formerly 25-22.072.

PART VI PERMITTING PROCEEDINGS

25-51.105 ~~25-22.075~~ Transmission Line Permitting Proceedings.

- (1) Proceedings to determine the need for a proposed

transmission line as defined in Section 403.522(21), F.S., shall begin with a petition by a utility or an order issued on the Commission's own motion and shall be disposed of as provided in Chapter 25-22, F.A.C., except that the time deadlines and notice requirements in Section 403.537, F.S., shall control. Proceedings may begin whether or not an application for corridor site certification of a proposed transmission line pursuant to Sections 403.52 through 403.5365, F.S., is pending. A petition for reconsideration shall be filed within 5 days of the Commission's decision.

(a) In order for the Commission to have sufficient information to provide the 45 days notice of final hearing required by Section 403.537, F.S., a utility that intends to petition for a transmission line need determination may file a Notice of Intent to File Petition for Transmission Line Need Determination at least 30 days prior to the filing of a petition. The notice of intent shall identify the proposed beginning and ending points of the transmission line, and the counties, regional planning councils, and water management districts in whose jurisdiction the transmission line could be placed. The notice of intent shall further specify the date on which the utility reasonably expects to file the petition for need determination.

(b) If the Commission does not receive a Notice of Intent to File Petition for Transmission Line Need Determination at least 30 days prior to the filing of a petition, or does not receive the petition within 5 days after the date specified in the notice of intent, the Commission shall have good cause, pursuant to s. 403.537(3), F.S., to extend the time for conduct of the hearing for 30 days.

(2) Upon receipt of a Notice of Intent to File Petition for Transmission Line Need Determination or a petition by a utility, whichever occurs first, or upon issuance of an order pursuant to subsection (1), the Commission shall schedule a hearing and shall give notice of the proceeding to:

- (a) The affected utility or utilities, if appropriate;
- (b) The Department of Community Affairs, Division of Local Resource Management;
- (c) The Department of Environmental Regulation;
- (d) Each person who has requested placement on the mailing list for receipt of such notice;
- (e) The counties, water management districts, and regional planning councils in whose jurisdiction the transmission line could be placed;
- (f) The Department of Natural Resources; and
- (g) The Game and Fresh Water Fish Commission.

(3) The Commission shall also publish notice of the hearing at least 45 days before the hearing date in the Florida Administrative Weekly.

(4) The utility shall publish notice of the hearing at least 45 days before the hearing date in newspapers of general

circulation in the counties where the transmission line could be placed. Every notice published in a newspaper shall be at least one-quarter page in size. A copy of each newspaper notice, which includes the date of publication, shall be filed with the Division of Records and Reporting at least 30 days prior to the hearing date.

Specific Authority 350.127(2) ~~120.53(1)(e)~~, 403.537(2) FS.
Law Implemented 403.537 FS.

History--New 12-20-81, Formerly 25-2.130, Formerly 25-22.75,
Amended 10-9-91, Formerly 25-22.075.

25-51.106 ~~25-22.076~~ Contents of Petition.

Petitions submitted to commence a determination of need proceeding or responses to the Commission's order commencing a proceeding shall comply with the other requirements of Chapter 25-2, F.A.C., as to form and style and shall contain the following information:

(1) A general description of the existing load and electrical characteristics of the electrical transmission grid including an electrical system map indicating the general location and configuration of existing and the proposed transmission line or lines.

(2) A general description of the proposed transmission line or lines, including the project name, the starting and ending points of the transmission line or lines as defined by the utility, the design and the operating voltage of the proposed transmission line or lines, the approximate cost, and the projected in-service date or dates of the proposed transmission line or lines.

(3) A statement of the specific situations, conditions, contingencies, or other factors which indicate that need exists for the proposed transmission line or lines, including the general time within which the proposed transmission line or lines will be needed. Documentation shall include load flow studies on a peninsular Florida basis, a Gulf Power basis, a Southern Electric System basis or some combination of these and, when applicable, inclusion of adjoining states showing power flows and voltage profiles on the transmission lines in the more critical operating conditions. Load flows should cover the general time period within which the proposed transmission line or lines will be needed, but at the option of the utility, may cover a period of several years. One copy of the complete load flow analysis, including supporting documentation shall be filed with the Commission. The load flow analysis shall identify the load forecasts upon which the load levels are based. Supplemental studies, such as transient stability or short circuit analysis, may be submitted at the option of the utility or upon request of the Commission, if needed to support the need for the proposed transmission line or lines.

(4) A summary discussion of the major alternative transmission lines or transmission improvements which were

examined and evaluated by the utility in arriving at the decision to pursue the proposed project. The discussion shall consist of:

(a) a general description of the other transmission line alternatives, including, if appropriate, load flow analyses and electrical system diagrams showing power flows and voltage profiles on the transmission lines in the more critical operating conditions and

(b) a discussion of the performance of each alternative in terms of economics, reliability, long-term flexibility and usefulness, or other relevant factors.

(5) A statement of the major reason or reasons for adding the proposed transmission line or lines, specifically whether the proposed transmission line or lines will:

(a) Improve or maintain reliability;

(b) Improve intra- or inter-system power transfer capabilities;

(c) Integrate power supply sources;

(d) Correct thermal overloads or low voltage conditions;

(e) Accommodate load growth;

(f) Improve system economics;

(g) Accommodate relocations;

(h) Conserve or displace oil;

(i) Serve any other useful purpose;

(j) Any combination of the above.

(6) A statement of the adverse consequences to the electrical system which will result if the project is delayed or if the Commission denies the application.

(7) An estimate of the time for full project development and an explanation of the factors and considerations which justify the proposed phasing of the project where development of the project will be phased over an extended period of time.

Specific Authority ~~25-53(1)(e)~~, 350.127(2), 403.537(2) FS.

Law Implemented 403.537 FS.

History--New 12-20-81, Formerly 25-2.131, Formerly 25-22 76, 25-22.076.

25-51.110 ~~25-22-080~~ Electrical Power Plant Permitting Proceedings.

(1) Proceedings to determine the need for a proposed electrical power plant, as defined in Section 403.503(7), F.S., shall begin with a petition by a utility or on the Commission's own motion and shall be disposed of in accordance with the provisions of Chapter 25-2, F.A.C., except that the time deadlines set forth in this rule and in Sections 403.501 through 403.517, F.S., to the extent applicable, shall control. Proceedings may begin prior to the filing of an application for site certification of the proposed electrical power plant.

(2) Within 7 days following receipt of a petition, or in its order commencing a proceeding on its own motion, the Commission shall set a date for hearing, which shall be within 90 days of receipt of the petition or of issuance of its order. Following

the hearing, each party may make submittals to the Commission on a time schedule to be determined in accordance with the requirements of each proceeding, but terminating no later than 120 days from the receipt of the petition. The matter will be placed before the Commission on an agenda which will permit a decision no later than 135 days from the date of receiving the petition or the issuance of the order commencing the proceeding. A petition for reconsideration must be filed within 5 days of the Commission's decision.

(3) Upon receipt of a petition by a utility or issuance of an order pursuant to subsection (1), notice shall be given of the commencement of the proceeding to:

- (a) The affected utility or utilities, if appropriate;
- (b) The Department of Community Affairs, Division of Local Resource Management;
- (c) The Department of Environmental Regulation; and
- (d) Each person who has requested placement on the mailing list for receipt of such notice.

Specific Authority ~~20.53(1)(e)~~, 350.01(6), 350.127(2), 366.05(1) FS.

Law Implemented 403.519 FS.

History--New 12-20-81, Formerly 25-2.132, Formerly 25-22.80, 25-22.080.

25-51.111 ~~25-22.081~~ Contents of Petition.

Petitions submitted to commence a proceeding to determine the need for a proposed electrical power plant or responses to the Commission's order commencing such a proceeding shall comply with the other requirements of Chapter 25-22, Florida Administrative Code, as to form and style except that a utility may, at its option, submit its petition in the same format and style as its application for site certification pursuant to Sections 403.501 through 403.517, Florida Statutes, so long as the informational requirements of this rule and Chapter 25-22, Florida Administrative Code, are satisfied. The petition, to allow the Commission to take into account the need for electric system reliability and integrity, the need for adequate reasonable cost electricity, and the need to determine whether the proposed plant is the most cost effective alternative available, shall contain the following information:

(1) A general description of the utility or utilities primarily affected, including the load and electrical characteristics, generating capability, and interconnections.

(2) A general description of the proposed electrical power plant, including the size, number of units, fuel type and supply modes, the approximate costs, and projected in-service date or dates.

(3) A statement of the specific conditions, contingencies or other factors which indicate a need for the proposed electrical power plant including the general time within which the generating units will be needed. Documentation shall include

historical and forecasted summer and winter peaks, number of customers, net energy for load, and load factors with a discussion of the more critical operating conditions. Load forecasts shall identify the model or models on which they were based and shall include sufficient detail to permit analysis of the model or models. If a determination is sought on some basis in addition to or in lieu of capacity needs, such as oil blackout, then detailed analysis and supporting documentation of costs and benefits is required.

(4) A summary discussion of the major available generating alternatives which were examined and evaluated in arriving at the decision to pursue the proposed generating unit. The discussion shall include a general description of the generating unit alternatives, including purchases where appropriate; and an evaluation of each alternative in terms of economics, reliability, long-term flexibility and usefulness and any other relevant factors. These major generating technologies generally available and potentially appropriate for the timing of the proposed plant and other conditions specific to it shall be discussed. In addition, each investor-owned utility shall include a detailed description of the selection process used and a detailed description of the generating unit alternatives proposed by each finalist, if any, selected to participate in subsequent contract negotiations pursuant to Rule 25-22.082, Florida Administrative Code.

(5) A discussion of viable nongenerating alternatives including an evaluation of the nature and extent of reductions in the growth rates of peak demand, KWH consumption and oil consumption resulting from the goals and programs adopted pursuant to the Florida Energy Efficiency and Conservation Act both historically and prospectively and the effects on the timing and size of the proposed plant.

(6) An evaluation of the adverse consequences which will result if the proposed electrical power plant is not added in the approximate size sought or in the approximate time sought.

(7) If the generation addition is the result of a purchased power agreement between an investor-owned utility and a nonutility generator, the petition shall include a discussion of the potential for increases or decreases in the utility's cost of capital, the effect of the seller's financing arrangements on the utility's system reliability, any competitive advantage the financing arrangements may give the seller and the seller's fuel supply adequacy.

Specific Authority ~~120-53(1)(c)~~, 350.127(2), 366.05(1) FS.

Law Implemented 403.519 FS.

History--New 12-22-81, Formerly 25-2.133, 25-22.81, Amended 1-10-94, Formerly 25-22.081.

25-51.112 ~~25-22-082~~ Selection of Generating Capacity.

(1) Definitions. For the purpose of this rule, the following terms shall have the following meaning:

(a) Next Planned Generating Unit: the next generating unit addition planned for construction by an investor-owned utility that will require certification pursuant to Section 403.519, Florida Statutes.

(b) Request for Proposals (RFP): a document in which an investor-owned utility publishes the price and non-price attributes of its next planned generating unit in order to solicit and screen, for subsequent contract negotiations, competitive proposals for supply-side alternatives to the utility's next planned generating unit.

(c) Participant: a potential generation supplier who submits a proposal in compliance with both the schedule and informational requirements of a utility's RFP. A participant may include utility and non-utility generators as well as providers of turnkey offerings and other utility supply side alternatives.

(d) Finalist: one or more participants selected by the utility with whom to conduct subsequent contract negotiations.

(2) Prior to filing a petition for determination of need for an electrical power plant pursuant to Section 403.519, Florida Statutes, each investor-owned electric utility shall evaluate supply-side alternatives to its next planned generating unit by issuing a Request for Proposals (RFP).

(3) Each investor-owned utility shall provide timely notification of its issuance of an RFP by publishing public notices in major newspapers, periodicals and trade publications to ensure statewide and national circulation. The public notice given shall include, at a minimum:

(a) the name and address of the contact person from whom an RFP package may be requested;

(b) a general description of the utility's next planned generating unit, including its planned in-service date, MW size, location, fuel type and technology; and

(c) a schedule of critical dates for the solicitation, evaluation, screening of proposals and subsequent contract negotiations.

(4) Each utility's RFP shall include, at a minimum:

(a) a detailed technical description of the utility's next planned generating unit or units on which the RFP is based, as well as the financial assumptions and parameters associated with it, including, at a minimum, the following information:

1. a description of the utility's next planned generating unit(s) and its proposed location(s);
2. the MW size;
3. the estimated in-service date;
4. the primary and secondary fuel type;
5. an estimate of the total direct cost;
6. an estimate of the annual revenue requirements;
7. an estimate of the annual economic value of deferring construction;
8. an estimate of the fixed and variable operation and maintenance expense;

9. an estimate of the fuel cost;
10. an estimate of the planned and forced outage rates, heat rate, minimum load and ramp rates, and other technical details;
11. a description and estimate of the costs required for associated facilities such as gas laterals and transmission interconnection;
12. a discussion of the actions necessary to comply with environmental requirements; and
13. a summary of all major assumptions used in developing the above estimates;

(b) a schedule of critical dates for solicitation, evaluation, screening of proposals and subsequent contract negotiations;

(c) a description of the price and non-price attributes to be addressed by each alternative generating proposal including, but not limited to:

1. technical and financial viability;
2. dispatchability;
3. deliverability (interconnection and transmission);
4. fuel supply;
5. water supply;
6. environmental compliance;
7. performance criteria;
8. pricing structure; and

(d) a detailed description of the methodology to be used to evaluate alternative generating proposals on the basis of price and non-price attributes.

(5) As part of its RFP, the utility shall require each participant to publish a notice in a newspaper of general circulation in each county in which the participant's proposed generating facility would be located. The notice shall be at least one-quarter of a page and shall be published no later than 10 days after the date that proposals are due. The notice shall state that the participant has submitted a proposal to build an electrical power plant, and shall include the name and address of the participant submitting the proposal, the name and address of the utility that solicited proposals, and a general description of the proposed power plant and its location.

(6) Within 30 days after the utility has selected finalists, if any, from the participants who responded to the RFP, the utility shall publish notice in a newspaper of general circulation in each county in which a finalist has proposed to build an electrical power plant. The notice shall include the name and address of each finalist, the name and address of the utility, and a general description of each proposed power plant, including its location, size, fuel type, and associated facilities.

(7) Each electric utility shall file a copy of its RFP with the Commission.

(8) The Commission shall not allow potential suppliers of

capacity who were not participants to contest the outcome of the selection process in a power plant need determination proceeding.

(9) The Commission may waive this rule or any part thereof upon a showing that the waiver would likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or is otherwise in the public interest.

Specific Authority ~~20-53(1)(e)~~, 350.127(2), 366.05(1), 366.051 FS.

Law Implemented 403.519, 366.051 FS.

History--New 1-10-94, Formerly 25-22.082.

25-51.115 ~~25-22.090~~ Natural Gas Transmission Pipeline Permitting Proceedings.

(1) Proceedings to determine the need for a proposed natural gas transmission pipeline pursuant to section 403.9422, Florida Statutes, shall begin with a petition filed by a new or existing natural gas transmission pipeline company or an order issued on the Commission's own motion and shall be disposed of as provided in Chapter 25-22, Florida Administrative Code, except that the time deadlines and notice requirements in section 403.9422, Florida Statutes, shall control. Proceedings may begin whether or not an application for corridor site certification of a proposed natural gas transmission pipeline pursuant to sections 403.9401 through 403.9425, Florida Statutes, is pending.

(a) In order for the Commission to have sufficient information to provide the 45 days notice of final hearing required by section 403.9422, Florida Statutes, a natural gas transmission pipeline company that intends to petition for a natural gas transmission pipeline need determination may file a Notice of Intent to File Petition for Natural Gas Transmission Pipeline Need Determination at least 30 days prior to the filing of a petition. The notice of intent shall identify the proposed beginning and ending points of the natural gas transmission pipeline, and the counties, regional planning councils, and water management districts in whose jurisdiction the natural gas transmission pipeline could be placed. The notice of intent shall further specify the date on which the natural gas transmission pipeline company reasonably expects to file the petition for need determination.

(b) If the Commission does not receive a Notice of Intent to File Petition for Natural Gas Transmission Pipeline Need Determination at least 30 days prior to the filing of a petition, or does not receive the petition within 5 days after the date specified in the notice of intent, the Commission shall have good cause, pursuant to section 403.9422(3), Florida Statutes, to extend the time for conduct of the hearing for 30 days.

(2) Upon receipt of a Notice of Intent to File Petition for Natural Gas Transmission Pipeline Need Determination or a petition by a natural gas transmission pipeline company,

whichever occurs first, or upon issuance of an order pursuant to subsection (1), the Commission shall schedule a hearing and shall give notice of the proceeding to:

(a) All interstate and intrastate natural gas transmission companies within Florida and all electric and natural gas utilities;

(b) The Department of Community Affairs;

(c) The Department of Environmental Protection;

(d) Each person who has requested placement on the mailing list for receipt of such notice;

(e) The counties, water management districts, and regional planning councils in whose jurisdiction the natural gas transmission pipeline could be placed;

(f) The Game and Fresh Water Fish Commission;

(g) The Department of Transportation; and

(h) The Department of State, Division of Historical Resources.

(3) The Commission shall also publish notice of the hearing at least 45 days before the hearing date in the Florida Administrative Weekly.

(4) The natural gas transmission pipeline company shall publish notice of the hearing at least 45 days before the hearing date in newspapers of general circulation in each county where the natural gas transmission pipeline may be placed. Every notice published in a newspaper shall be at least one-quarter page in size. A copy of each newspaper notice, which includes the date of publication, shall be filed with the Division of Records and Reporting at least 30 days prior to the hearing date.

Specific Authority 350.127(2), 403.9422(2) FS.

Law Implemented 403.9422 FS.

History--New 1-25-95, Formerly 25-22.090.

25-51.116 ~~25-22-091~~ Contents of Petition.

Petitions submitted to commence a determination of need proceeding or responses to the Commission's order commencing a proceeding shall comply with the other requirements of Chapter 25-22, Florida Administrative Code, as to form and style, and shall contain the following information:

(1) Identification of existing natural gas transmission pipelines including a general description and map of all existing, all Florida Public Service Commission (FPSC) or Federal Energy Regulatory Commission (FERC) approved but not yet in service and all proposed natural gas transmission pipelines, including laterals, within any Florida county in which the proposed project will be located.

(2) Description of proposed natural gas transmission pipeline, ownership and financial information including:

(a) Project name and ownership, including all company officers, their addresses and phone numbers, and all corporate affiliations.

(b) Copies of the annual reports to shareholders and 10K

Reports to the Securities and Exchange Commission for the last three years for each of the principal companies involved in the project. If annual reports for any of the companies are not prepared, audited financial statements for those entities for the last three years shall be provided.

(c) Copies of all rating agency and security analyst reports for the last two years for each of the principal companies involved in the project.

(d) Copies of all presentations related to the project given by the principal companies involved in the project to, or prepared for, banks and other lenders, security analysts, and rating agencies for the last two years.

(e) A description of the project, including all main or trunk pipelines and all laterals from origination to terminus of each mainline or lateral. The description shall include starting and ending points of each line, initial design capacity and operating pressures, estimated total cost and projected in-service date or dates of the project. The description shall also include the diameter of all pipelines in the proposed project, projected initial operating pressures for all pipelines, and the type and horsepower of all compressor stations. If the pipeline includes phased implementation such that extensions or expansions are to be installed at times later than the time of the initial installation's operational date, similar but separate detailed descriptions as provided for the initial installation shall be provided.

(f) Maps on the scale of 1 inch equals 50 miles of the preferred route and any planned alternate routes, planned locations of compressor stations and other affiliated facilities. Detailed maps of all laterals up to and including individual terminus points shall be provided.

(3) Evidence of the safety and integrity of the proposed project which shall include a statement that the engineering, construction and operation of the project will comply with all provisions of sections 368.01 through 368.061, Florida Statutes, The Gas Safety Law of 1967, Chapter 25-12, Florida Administrative Code, and 49 CFR, Parts 190 through 199, Pipeline Safety Regulations of the United States Department of Transportation, and codes and standards incorporated therein.

(4) Evidence of need for natural gas transmission capacity in the market area including:

(a) A statement of the specific situations, conditions, contingencies, or other factors that indicate that need exists for the proposed natural gas transmission pipeline or pipeline, including the approximate time when the additional natural gas transmission capacity will be needed.

(b) Evidence of need for natural gas delivery capability up to initial design capacity including supporting contracts, precedent agreements, binding letters of intent, or other forms of evidence the applicant believes sufficient to meet its burden of proof that need exists.

(c) Evidence of need for natural gas delivery capability beyond initial design capacity if future expansion capability is built into the pipeline through use of larger diameter pipeline than needed for planned initial throughput. The petitioner shall provide market area load forecasts by customer type, region of state, expected dates of added load, and other information necessary to support projected future load growth, including region specific natural gas load forecasts supporting each phase of the proposed pipeline installation, taking into account existing and FPSC or FERC approved regional pipeline capacity. Detailed cost information to permit analysis of the cost-effectiveness of using such larger diameter pipeline shall also be provided.

(5) Evidence of access to gas supplies and adequacy of upstream natural gas transmission pipeline capacity to the supply areas including the following:

(a) As initial evidence of reliability of access to gas supplies: identification of sources of gas or access to gas supply areas for the project pipeline and for upstream pipelines.

(b) As evidence of reliability of natural gas transmission pipeline capacity to the point of origination of the proposed project: detailed information on currently available firm or interruptible capacity on upstream pipelines and identification of all additions required to enable upstream pipelines to supply gas in volumes sufficient to meet throughput design capacity of the project. The petitioner shall also provide all available contracts, precedent agreements or binding letters of intent as evidence of adequate capacity on upstream pipelines.

(c) As additional evidence of reliability of natural gas transmission pipeline capacity to the point of origination of the project: information on any federal requirements that must be met by any upstream pipeline before it can provide natural gas transmission service to supply the project. Information on timing of any necessary expansions of upstream pipeline, including proposed federal filing dates and projected in-service dates of additions shall also be provided.

(6) Specific reasons for the proposed natural gas transmission pipeline including whether the proposed pipeline will:

(a) Improve or maintain deliverability, reliability, safety, and integrity of natural gas transmission within Florida;

(b) Accommodate load growth;

(c) Improve the economics of natural gas transmission within Florida to assure the economic well-being of the public;

(d) Conserve or displace oil;

(e) Serve any other useful purpose.

(7) A statement of adverse consequences to the public that will result if the project is delayed or if the Commission denies the application. The petitioner shall specifically address any adverse consequences to the economic well-being of the public due to delay or denial of approval of the project.

Specific Authority 350.127(2), 403.9422(2) FS.
Law Implemented 403.94055, 403.9422 FS.
History--New 1-25-95, Formerly 25-22.091.

PART VII INDEXING OF FINAL ORDERS

25-52.100 ~~25-22.100~~ Authority.

These rules regarding the indexing, management, and availability of Commission orders are issued pursuant to Section 120.533, Florida Statutes, and Chapter 1S-6, Florida Administrative Code, and have been approved by the Department of State pursuant to Section 120.53(2)(c), Florida Statutes. Specific Authority 120.533, 350.127(2) FS.
Law Implemented 120.53(2) (4) FS.
History--New 9-24-92, Amended 12-27-94, Formerly 25-22.100.

25-52.101 ~~25-22.101~~ Purpose.

The purpose of this part is to provide public access to and availability of all Commission orders. Specific Authority 120.53, 350.127(2) ~~120.533~~ FS.
Law Implemented 120.53(2) (4) FS.
History--New 9-24-92, Amended 12-27-94, Formerly 25-22.101.

25-52.103 ~~25-22.103~~ Orders Indexed.

All Commission orders shall be indexed. Specific Authority 120.53, 350.127(2) ~~120.533~~ FS.
Law Implemented 120.53(2) (a)3., (d) FS.
History--New 9-24-92, Amended 12-27-94, Formerly 25-22.103.

25-52.1035 ~~25-22.1035~~ Designation of Official Reporter.

The official reporter of the Florida Public Service Commission shall be the Florida Public Service Commission Reporter (FPSCR), published by FALR, Inc. The official reporter shall index orders of the Commission as required by Rule 25-22.103, Florida Administrative Code, and shall publish the index and all orders. The Florida Public Service Commission Reporter is found at some county law libraries and is available by subscription at the offices of FALR, Inc., P.O. Box 385, Gainesville, FL 32602. A copy of the Florida Public Service Commission Reporter is also available for public inspection at the Division of Records and Reporting. Specific Authority 120.53, 350.127(2) ~~120.533~~ FS.
Law Implemented 120.53(2) (a)3., (2) (d), (4) (a) FS.
History--New 12-27-94, Formerly 25-22.1035.

25-52.104 ~~25-22.104~~ Numbering of Orders.

(1) All orders shall be sequentially numbered as rendered using a two-part number separated by a dash with the first part before the dash indicating the year and the second part indicating the numerical sequence of the order issued for that year beginning with the number 0001 each new calendar year.

Amendatory orders will be assigned the same order number as the order being amended, with the addition of the letter "A" immediately following the order number. The assigned agency prefix which is "PSC" shall precede the two-part number.

(2) The applicable order category shall be added as a suffix succeeding the agency designation prefix and the two-part number. The order category suffix for proposed agency action orders will be either "FOF" or "FOI", depending on the type of proceeding in which the order was issued. The order categories are as follows:

DS -- Declaratory Statement
FOI -- Final Order Informal Proceedings
FOF -- Final Order Formal Proceedings
S -- Stipulation
AS -- Agreed Settlement
CO -- Consent Order
PCO -- Procedural Order
PHO -- Prehearing Order
CFO -- Confidentiality Order
NOR -- Notice of Rulemaking

(3) After the order category, the applicable industry designation shall be inserted. The industry designations are as follows:

EI -- Electric Utility -- Investor Owned
EM -- Electric Utility -- Municipality
EC -- Electric Utility -- Rural Electric Cooperative
EU -- Electric Utility -- All
EG -- Energy Conservation
EQ -- Qualifying Cogeneration Facility
GU -- Gas Industry
GP -- Gas Pipeline
TA -- Telephone Utility -- Alternate Access Vendor
TC -- Telephone Utility -- Coin (Pay) Telephone Company
TI -- Telephone Utility -- Interexchange Company
TL -- Telephone Utility -- Local Exchange Company
TS -- Telephone Utility -- Shared Tenant Company
TP -- Telephone (Communications) Industry Generally
WU -- Water Utility
SU -- Wastewater (Sewer) Utility
WS -- Water and Wastewater Utility
PU -- Public Utilities Generally -- Applies to matters which pertain to two or more industries.
OT -- Other Matters -- Administrative Matters not related to a particular industry.

Specific Authority 120.53, 350.127(2) ~~120.533(1)(f)~~ FS.

Law Implemented 120.53(2) ~~(4)~~ FS.

History--New 9-24-92, Amended 12-27-94, Formerly 25-22.104.

25-52.105 ~~25-22-105~~ System for Indexing Orders.

(1) The index shall be alphabetically arranged by main subject headings representing major categories of the Commission's regulatory jurisdiction and taken from the Florida

Statutes index, when applicable. The applicable titles of citations of the Florida Statutes construed within the final order may determine the main subject headings and subheadings in the index. The index shall show the main subject headings in all capital letters, flush left on the page, followed by relevant subheadings which shall be initial caps and lower case letters indented. Subheadings and sub-subheadings shall reflect increasingly specific areas or subjects addressed in Commission orders and may be taken from the text of the Florida Statutes construed. Subheadings and sub-subheadings at equal indentations shall also be alphabetized. The FPSCR citation to orders shall be listed sequentially in an indentation immediately below the applicable sub or sub-subheading. Cross references shall be used to direct the user to subject headings which contain the relevant information. Related key words (specific words, terms, and phrases) and common and colloquial words shall be listed and cross-referenced to the appropriate main subject headings. New subject headings will be added when necessary.

(2) The index shall be cumulative for at least one calendar year and shall be updated and made available to the public at least quarterly.

Specific Authority 120.53, 350.127(2) ~~120.533(1)+(f)~~ FS.

Law Implemented 120.53(2) ~~(4)~~ FS.

History--New 9-24-92, Amended 12-27-94, Formerly 25-22.105.

25-52.107 ~~25-22.107~~ Plan for Making Orders and Index Available to the Public.

(1) The Commission shall make orders accessible and available to the public by sequentially numbering and maintaining all orders.

(2) The Division of Records and Reporting shall assist the public in obtaining information pertaining to Commission orders.

(3) Copies of orders, in numerical order, and a copy of the Commission's official reporter shall be maintained in the offices of the Division of Records and Reporting.

Specific Authority 120.53(2), ~~(8)~~ FS.

Law Implemented 120.53, 350.127(2) ~~120.52(2)~~ FS.

History--New 9-24-92, Amended 12-27-94, Formerly 25-22.107.