

ORIGINAL

State of Florida



Public Service Commission

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

DATE: February 10, 2003
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Brubaker) JSB
RE: Docket No. 020398-EQ - Proposed revisions to Rule 25-22.082, F.A.C., Selection of Generating Capacity.

Please file the attached letter from John Rosner, Chief Attorney of the Joint Administrative Procedures Committee, dated January 23, 2003, in the docket file for the above-referenced docket.

JSB/dm

1:020398FM JSB

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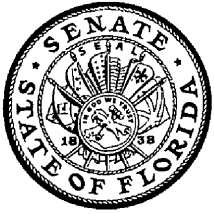
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**JOINT ADMINISTRATIVE
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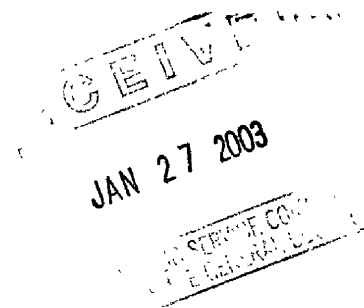


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CARROLL WEBB, EXECUTIVE DIRECTOR
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Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

January 23, 2003

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



Re: Public Service Commission Rule 25-22.082

Dear Ms. Brubaker:

I have completed a review of rule 25-22.082, including the notice of change, and prepared the following comments for your consideration and response.

The original notice of proposed rulemaking sets forth an incorrect date in referencing when the notice of rule development was published. The notice of change does not correct this matter. In fact, the notice of change contains an incorrect date when it references the notice of proposed rulemaking.

25-22.082

(6): The rule does not provide a definition of the term "good cause." This renders the rule vague and subject to inconsistent application. Please explain what is meant by the term.

(10): The rule does not provide a definition for "creative processes." Please explain what is meant by this term.

(18): The rule provides as follows:

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*. (e.s.)

Ms. Jennifer Brubaker

January 23, 2003

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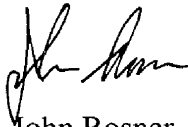
Section 120.542, F.S., establishes the statutory procedures in obtaining a variance or waiver from agency rules. Please reconcile the foregoing provision with section 120.542, F.S., and chapter 28-104, F.A.C.

Other issues pertaining to paragraph (18) are as follow. The rule provides that the Commission "may" waive the rule as described. However, no standards or criteria are disclosed to apprise the reader of whether or not the rule will be waived under any circumstances. Likewise, no indication is made as to what part would be waived. A rule vests unbridled discretion in an agency when it fails to establish adequate standards and reserves to the agency the arbitrary power to determine private rights. *Barrow v. Holland*, 125 So.2d 749 (Fla. 1960). Accordingly, section 120.52(8)(d), F. S., provides that a rule that is vague, fails to establish adequate standards for agency decision, or vests unbridled discretion in the agency constitutes an invalid exercise of delegated legislative authority.

Finally, the rule does not provide a definition for "public interest." Please explain the meaning of the term.

I am available at your convenience to discuss the foregoing comments.

Sincerely,



John Rosner
Chief Attorney

cc: Mr. Harold A. McLean

128985

JR:CB C:\DATA\WORD\JR\25-22.LTR