

State of Florida



Public Service Commission

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

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

DATE: November 3, 2017
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Kathryn Cowdery, Office of the General Counsel *KC*
RE: Docket No. 20170163-OT

Please file the attached rule certification packet materials for Rules 25-22.017, 25-22.039, 25-22.060 and 25-40.001, F.A.C., in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2017 NOV -3 PM 1:35
COMMISSION
CLERK

COMMISSIONERS:
JULIE I. BROWN, CHAIRMAN
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN
GARY F. CLARK

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 3, 2017

Mr. Ernest Reddick
Florida Department of State
Administrative Code and Register Section
Room 701, the Capitol
Tallahassee, FL 32399-0250

VIA HAND DELIVERY

Re: Rule Certification Packet for Rule 25-40.001, F.A.C.

Dear Mr. Reddick:

Enclosed for filing is a complete rule certification packet for Rule 25-40.001, F.A.C., consisting of:

- (1) One compact disc containing the coded text of the rule;
- (2) There are no materials incorporated by reference into these rule;
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the signed designation of minor violation rule certification form required by Rule 1-1.010, F.A.C.;
- (5) One original and two copies of the coded text of the rule, including the legal citations and history notes;
- (6) One original and two copies of the summary of the rule;
- (7) One original and two copies of the detailed written statement of the facts and circumstances justifying the rule; and
- (8) One original and two copies of the summary of the hearings held on the rule.

FILED
2017 NOV -3 AM 11:02
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Ernest Reddick
Page 2

The contact person's name and information for this rule are Kathryn G. W. Cowdery, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6216, kcowdery@psc.state.fl.us. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathryn G. W. Cowdery".

Kathryn G. W. Cowdery
Senior Attorney

Enclosures

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-40.001

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Carlotta S. Stauffer
CARLOTTA S. STAUFFER

Commission Clerk _____
Title 1
Number of Pages Certified _____

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No.

25-40.001 (entire rule)

Rules covered by this certification:

Rule No.

25-40.001



Signature of Agency Head

Chairman, Florida Public Service Commission
Title

25-40.001 Exceptions to the Uniform Rules of Procedure.

The following provisions of the Commission's rules are exceptions to the uniform rules of procedure:

UNIFORM RULE	COMMISSION RULE THAT IS AN EXCEPTION
CHAPTER 28-102, F.A.C. AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS	Rule 25-22.0021, F.A.C. Agenda Conference Participation.
CHAPTER 28-102, F.A.C. – AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS AND CHAPTER 28-106, F.A.C. – DECISIONS DETERMINING SUBSTANTIAL INTERESTS	Rule 25-22.0022, F.A.C. Oral Argument Rule.
Rule 28-102.001, F.A.C. Notice of Public Meeting, Hearing, or Workshop.	Rule 25-22.001, F.A.C. Notice of Meeting or Workshop.
Subsection 28-102.002(2), F.A.C. Agenda of Meetings, Hearings, and Workshops.	Rule 25-22.002, F.A.C. Agenda of Meetings.
CHAPTER 28-103, F.A.C. RULEMAKING	Rule 25-22.017, F.A.C. Rulemaking Proceeding—Adoption.
CHAPTER 28-106, F.A.C. DECISIONS DETERMINING SUBSTANTIAL INTERESTS	Rule 25-22.006, F.A.C. Confidential Information. Rule 25-22.029, F.A.C. Point of Entry Into Proposed Agency Action Proceedings. Rule 25-22.0376, F.A.C. Reconsideration of Non-Final Orders. Subsections 25-22.0406(7)-(8), F.A.C. Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies. Subsections 25-22.0407(8) and (10), F.A.C. Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities. Rule 25-22.060, F.A.C. Motion for Reconsideration of Final Orders.
Rule 28-106.205, F.A.C. Intervention.	Rule 25-22.039, F.A.C. Intervention.
Rule 28-106.208, F.A.C. Notice of Hearing.	Rule 25-22.029, F.A.C. Point of Entry into PAA Proceeding. Rule 25-22.0405, F.A.C. Notices of Hearings.
Rule 28-106.212, F.A.C. Subpoenas.	Rule 25-22.045, F.A.C. Subpoenas.
CHAPTER 28-107, F.A.C. LICENSING	Rule 25-22.075, F.A.C. Transmission Line Permitting Proceedings. Rule 25-22.080, F.A.C. Electrical Power Plant Permitting Proceedings.

Rulemaking Authority 120.54(5)(a)3. FS. Law Implemented 120.54(5)(a)3. FS. History—New 4-28-99, Amended 3-28-07, 9-28-15, _____.

SUMMARY OF THE RULE

Rule 25-40.001, F.A.C., is a listing of the Commission's rules that are exceptions to the Uniform Rules of Procedure and is required by Section 120.54(3)(a)3., F.S.

WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Rule 25-40.001, F.A.C., Exceptions to the Uniform Rules of Procedure, is amended to delete reference to the Uniform Rule of Procedure Chapters 28-103 and 28-107, F.A.C., and Rule 25-22.039, F.A.C., all of which are repealed.

SUMMARY OF ANY HEARINGS HELD ON THE RULE

No timely request for a hearing was received by the agency, and no hearing was held.

COMMISSIONERS:
JULIE I. BROWN, CHAIRMAN
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN
GARY F. CLARK

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 3, 2017

Mr. Ernest Reddick
Florida Department of State
Administrative Code and Register Section
Room 701, the Capitol
Tallahassee, FL 32399-0250

VIA HAND DELIVERY

Re: Rule Certification Packet for Rules 25-22.017, 25-22.039, and 25-22.060, F.A.C.

Dear Mr. Reddick:

Enclosed for filing is a complete rule certification packet for Rules 25-22.017, 25-22.039, and 25-22.060, F.A.C., consisting of:

- (1) One compact disc containing the coded text of the rules;
- (2) There are no materials incorporated by reference into these rules;
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the signed designation of minor violation rule certification form required by Rule 1-1.010, F.A.C.;
- (5) One original and two copies of the coded text of the rules, including the legal citations and history notes;
- (6) One original and two copies of the summary of the rules;
- (7) One original and two copies of the detailed written statement of the facts and circumstances justifying the rules; and
- (8) One original and two copies of the summary of the hearings held on the rules.

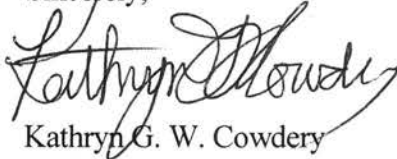
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA
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Ernest Reddick

Page 2

The contact person's name and information for this rule are Kathryn G. W. Cowdery, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6216, kcowdery@psc.state.fl.us. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn G. W. Cowdery". The signature is written in black ink and is positioned above the printed name and title.

Kathryn G. W. Cowdery
Senior Attorney

Enclosures

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

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(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

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Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-22.017

25-22.039

25-22.060

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Carlotta S. Stauffer
CARLOTTA S. STAUFFER

Commission Clerk _____
Title _____
Number of Pages Certified 3

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule Nos.

25-22.017 (entire rule)

25-22.039 (entire rule)

25-22.060 (entire rule)

Rules covered by this certification:

Rule Nos.

25-22.017

25-22.039

25-22.060



Signature of Agency Head

Chairman, Florida Public Service Commission
Title

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 28-103.006, F.A.C., to amend or otherwise modify the adopted rule or amendment.~~

~~*Rulemaking Authority 350.127(2) FS. Law Implemented 120.525, 120.54(3) FS. History—New 12-21-81, Amended 10-25-83, Formerly 25-22.17, Amended 5-3-99. Repealed _____.*~~

25-22.017 Rulemaking Proceeding - Adoption.

~~*Rulemaking Authority 350.127(2) FS. Law Implemented 120.525, 120.54(3) FS. History—New 12-21-81, Amended 10-25-83, Formerly 25-22.17, Amended 5-3-99. Repealed _____.*~~

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 Uniform subsection 28-106.201(2), F.A.C., 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.~~

Rulemaking Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History—Formerly 25-2.34, Amended 12-21-81, Formerly 25-22.39, Repealed.

25-22.039 Intervention.

Rulemaking Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History—Formerly 25-2.34, Amended 12-21-81, Formerly 25-22.39, Repealed.

25-22.060 Motion for Reconsideration of Final Orders.

(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 that disposes of a motion for reconsideration. Petitions for reconsideration are not authorized in the rulemaking process, and the Commission will not entertain any motion for reconsideration on the adoption, repeal, or amendment of a rule.

(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 Section 120.54(7), F.S. and Rule 28-103.006, F.A.C.~~

(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.

Rulemaking Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History—New 12-21-81, Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96, 1-1-07, _____.

SUMMARY OF THE RULE

These three rules are rules of procedure and are exceptions to the Uniform Rules of Procedure. Rule 25-22.017, Rulemaking Proceeding – Adoption addresses rulemaking adoption procedure. Rule 25-22.039, Intervention, addresses intervention procedure. Rule 25-22.060, Motion for Reconsideration of Final Orders, addresses procedure for motions for reconsideration of final orders.

WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Rule 25-22.017, F.A.C., Rulemaking Proceeding – Adoption, is repealed because it is obsolete to the extent that it refers to Uniform Rule 28-103.006, F.A.C., which has been repealed. Further, Rule 25-22.017, F.A.C., is unnecessary for implementation of Section 120.54, F.S., because Section 120.54, F.S., addresses the specific procedural requirements that are followed by the Commission for rule adoptions.

Rule 25-22.039, F.A.C., Intervention, is repealed and replaced with the Uniform Rule of Procedure Rule 25-106.205, F.A.C., Intervention, because the provisions in the Uniform Rule are better aligned with hearing procedure at the Commission. The Uniform Rule provides that, except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing, rather than 5 days before hearing as was required in Rule 25-22.039, F.A.C. The 20-day time period should allow intervenors more time prior to hearing and therefore more meaningful participation in the proceeding. In addition, the Uniform Rule is advantageous in that it provides specifically for a 7-day time period for filing a response in opposition to a motion to intervene; provides that a presiding officer may impose terms and conditions on the intervenor to limit prejudice to parties; provides specifically what information a motion to intervene shall contain; and provides that specifically-named persons whose substantial interests are being determined may become a party by entering an appearance and need not request leave to intervene.

Rule 25-22.060, F.A.C., Motion for Reconsideration of Final Orders, is amended to delete the provision that a motion for reconsideration of a final order will be treated as a petition to adopt, repeal or amend a rule under Section 120.54(7), F.S., and Rule 28-103.106, F.A.C. This provision is obsolete because Rule 28-103.106, F.A.C., has been repealed. In addition this provision is unnecessary to implementation of Section 120.54, F.S., because Section 120.54(7), F.S., gives the specific requirements to be followed for a person to petition an agency to adopt, amend, or repeal a rule. Rule 25-22.060, F.A.C., is amended to clarify that petitions for reconsideration are not

authorized in the rulemaking process, and the Commission will not entertain any motion for reconsideration on the adoption, repeal, or amendment of a rule.

SUMMARY OF ANY HEARINGS HELD ON THE RULE

No timely request for a hearing was received by the agency, and no hearing was held.