

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: July 8, 2019
TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.C.*
RE: Docket No. 19980500-PU

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2019 JUL -8 AM 8:33
COMMISSION
CLERK

BellSouth Telecommunications, Inc. 904 224-9550
Suite 400
150 South Monroe Street
Tallahassee, Florida 32301

H. Frank Meiners
Executive Director

June 4, 1998

Ms. Teresa Tinker
Policy Coordinator
Office of the Governor
The Capitol
Tallahassee, FL 32399

RE: Administration Commission Agenda, June 9, 1998 - Item 9.

Dear Ms. Tinker:

This letter is to express BellSouth's position on the above, specifically, the FPSC's request for an exemption regarding FPSC Rule 25-22.060 regarding reconsideration of Commission orders. We apologize for the lateness of our input. It is my understanding that the new Uniform Rules of Procedure proposed by the Administration Commission apparently eliminates a number of procedural rules currently included in the FPSC's Rules of Procedure. Rules 25-22.001, et seq. F.A.C. The FPSC has previously petitioned the Administration Commission for exceptions to the Uniform Rules.

Of paramount importance to BellSouth is the FPSC's requested exception regarding "motions for reconsideration" of FPSC orders. Apparently, the Uniform Rules of Procedure do not permit "motions for reconsideration" of agency orders.

There are several reasons why the "motions for reconsideration" exemption requested by the FPSC meets the criteria for granting an exemption: First, and foremost, is the fact that the FPSC's Rules of Procedure authorizing "motions for reconsideration" is necessary to implement Section 350.01(5), Florida Statutes, 1996. That section specifically states that:

Ms. Teresa Tinker

Page 2

June 4, 1998

A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding.

Clearly, if the Legislature had intended that the FPSC have no authority to allow for reconsideration of Commission orders, the Legislature would not have addressed which commissioners can vote on motions for reconsideration.

Second, the requested exemption is necessary for the efficient operation of the FPSC. Motions for reconsideration serve a necessary role in allowing the FPSC to correct errors in its orders prior to invoking the appellate process. By permitting parties to petition for reconsideration, these parties can point out those areas in which the Commission's order may be deficient from a factual or a legal standpoint. Similarly, this procedure allows the parties to also seek clarification of the Commission's order. With this procedure, the Commission, the parties and the judicial system benefit from allowing deficiency in orders to be corrected at the administrative level and avoid the expense and delay associated with court appeals.

For the above reasons, BellSouth requests that the Administration Commission approve the FPSC's petition for exceptions on rule 25-22.060 Motions for Reconsideration, and we take no position on the other exception requests.

Yours truly,



Executive Director-Public Affairs

cc: Honorable Lawton Chiles
Honorable Robert Milligan
Honorable Bob Butterworth
Honorable Bob Crawford
Honorable Sandra Mortham
Honorable Bill Nelson
Honorable Frank Brogan
David Schwartz
Liz Cloud
Carroll Webb

FAX

FROM: BELLSOUTH TELECOMMUNICATIONS
Executive Department/Public Affairs
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
FAX: 850-222-4401

DATE: 6-5-98

PAGES: _____
(Plus Cover Sheet)

MESSAGE TO:

Rob Vandiver

MESSAGE FROM:
(Circle One)

Mike Raynor
850-224-6166

Frank Meiners
850-224-9560

Mike Moore
850-222-5993

Cathy Kessler
850-224-6167

Donna Williams
850-224-9561

850-224-4226

COMMENTS:

STATE OF FLORIDA

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JULLA L. JOHNSON
E. LEON JACOBS, JR.



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

Public Service Commission

April 9, 1999

Mr. John Rosner
Staff Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Re: Public Service Commission Rule 25-22.036(3)

Dear Mr. Rosner:

This letter is in response to your request for explication of the criteria governing when the Commission will transmit notice that it has initiated a proceeding to persons requesting such notice. This provision refers to notice to persons other than the companies whose interests might be directly affected by the proceeding--who are considered "persons named therein"--and the Public Counsel. Your question is, I believe, answered by our Statement of Agency Organization & Operations adopted pursuant to Rule 28-101.001, F.A.C., that provides for various mailing lists the Commission maintains. Prior to the repeal of agency's authority to have rules of organization, practice and procedure, these provisions were contained in Rule 25-22.005.

There are two methods for being placed on a list to receive notice that the Commission has initiated a proceeding. Such a person may simply make the request and pay a subscription fee of \$20.00 per year to be mailed a weekly report. If the person submits a written request showing how his or her substantial interests may be affected by action in the categories of his interest, they are placed on the mailing list and there is no subscription fee. The Director of Records and Reporting maintains the various lists and adds the name and address of any person making the request. I have checked back to 1980 and no request has ever been denied.


As to when the Commission may publish notice in the F.A.W. or a newspaper that it has initiated a proceeding, this is done when the Commission finds, at the time it votes to initiate the proceeding, that it is in the public interest to publish such notice in this manner. It applies to notices

April 9, 1999
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for which publication is entirely discretionary--not notices the Commission is legally required to publish in this manner.

We intend to file the Chapter 25-22 rules for adoption on Monday, April 12, 1999. Please do not hesitate to call me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Christiana T. Moore".

Christiana T. Moore
Associate General Counsel

CTM/

cc: Blanca S. Bayó, Director of Records & Reporting
Noreen S. Davis, Director of Legal Services

TONI JENNINGS
President



Senator Walter "Skip" Campbell, Chairman
Representative Bill Posey, Vice Chairman
Senator Ginny Brown-Waite
Senator Lisa Carlton
Representative O. R. "Rick" Minton, Jr.
Representative Adam H. Putnam

JOHN THRASHER
Speaker



CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

April 7, 1999

Ms. Christiana T. Moore
Division of Appeals
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule 25-22.036

Dear Ms. Moore:

I have completed a review of the Commission's proposed amendments to rule chapter 25-22 and prepared the following comments for your consideration and response.

25-22.036(3): Please explicate the criteria governing when the Commission will transmit notice of its action to persons requesting such notice. Likewise, please explicate the criteria governing when the Commission will publish the notice in newspapers and the FAW.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Rosner".

John Rosner
Staff Attorney

#118585
JR:CW S:\ATTY\25-22.JR

RECEIVED
99 APR -8 PM 3:10
LEGISLATIVE SERVICES

M E M O R A N D U M

April 14, 1998

TO : DIVISION OF RECORDS & REPORTING
FROM : MARY ANNE HELTON, ASSOCIATE GENERAL COUNSEL *MAH*
RE : DOCKET NO. 950500-PU

Enclosed are an original and seven copies of a Notice that the Commission is filing a Petition for Exceptions to the Uniform Rules with the Administration Commission for publication in the Florida Administrative Weekly. The Notice must be received by the Department of State no later than noon, April 15, 1998.

Attachments

cc: Wanda Terrell

petfaw.mah

FLORIDA PUBLIC SERVICE COMMISSION

The PSC seeks exceptions to the following Uniform Rules of Procedure for the most efficient operation of the agency.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-102.001, Notice of Public Meeting, Hearing, or Workshop.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional provisions on noticing found in subsections (3) and (4) of PSC Rule 25-22.001 that define the terms "meeting" and "workshop" to avoid doubt or controversy concerning what constitutes a meeting or workshop that must be noticed by publication in the Florida Administrative Weekly.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-102.002(2), Agenda of Meetings, Hearings, and Workshops.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.002(3) that "[a] majority vote of a quorum of the Commission is required to modify the presiding officer's decision" on specific changes in the agenda. This provision avoids doubt or controversy concerning the procedure for overriding the presiding officer's decision to change the agenda.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-105.003, Disposition.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.022(3) that discourages oral argument on declaratory statements at its public

agenda conferences. Petitions for declaratory statements must be answered based on the facts and circumstances alleged in the petition. Anyone who wishes to address the merits may contact commissioners prior to agenda conferences pursuant to Section 350.042(1), Florida Statutes.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.102,
Presiding Officer.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional requirement in PSC Rule 25-22.035(1) that "[u]nless good cause is shown, all motions for disqualification of a presiding officer shall be made at least five days prior to the date scheduled for the final hearing." This exception will prevent parties from delaying proceedings by moving to disqualify a commissioner the day a final hearing is scheduled to commence.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.104, Filing.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to keep the additional filing requirements contained in PSC Rules 25-22.028(1) and 25-22.0375(3). Specifically, the PSC seeks an exception for the provisions in 25-22.028(1) that require the larger regulated entities and parties to provide computer diskette files for documents larger than five pages. The PSC also seeks an exception so that it can continue to require multiple copies of filings as set forth in PSC Rules 25-22.028(1) and 25-22.0375(3). Finally, the PSC seeks an exception so that it can continue to require the filing of notices of service of

interrogatories or production of documents. These additional requirements enable the PSC to maintain its computerized Case Management System in which information concerning document filings and some on-line documents are stored for easy public access. This system also reduces paper consumption. The additional copies enable the PSC to distribute copies of filings to all PSC employees involved in the case without PSC staff having to make the copies. The filing of discovery notices enables all parties and interested persons to be informed of discovery being conducted in a case.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.106, Who May Appear; Criteria for Qualified Representatives.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception so that it can continue to follow its Rule 25-22.008. The PSC Rule allows attorneys who are not admitted to the Florida Bar to practice before the PSC and thus recognizes that the practice of utility law is a very specialized field, that there are a limited number of such practitioners in Florida, and that the PSC regulates Florida operations of large corporations with headquarters and counsel out-of-state. Under the Uniform Rule, the client of the qualified representative must seek permission from the presiding officer for the qualified representative to represent the client in each proceeding. On the other hand, the PSC Rule allows a non-attorney to obtain a Class B certificate that is renewable every two years. This practice negates the

need for non-attorneys to seek and obtain permission each time they are to represent a client before the PSC. The PSC Rule has more stringent requirements for non-attorney representatives to practice before the PSC. The PSC Rule authorizes the Office of General Counsel to grant Class B applications so that applications can be processed expeditiously; recommendations for denial must be heard by the full Commission. Finally, the PSC Rule allows practitioners to appear as witnesses in PSC proceedings in the limited circumstances spelled out in subsection (6).

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.109, Notice to Interested Parties.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep the additional provisions in subsections (3) and (4) of PSC Rule 25-22.026 that delineate the role of PSC staff in evidentiary proceedings. These provisions make staff's role clear and avoid any confusion and controversy concerning staff's participation in proceedings.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.111(2)-(4), Point of Entry into Proceedings and Mediation.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to subsections (2) through (4) of Uniform Rule 28-106.111 that require a hearing to be requested within 21 days of receipt of notice of the decision and that provide that a right to hearing will be waived if not requested within 21 days. The Uniform Rule

ties the time period within which a request for hearing can be made to receipt of the notice; whereas, PSC Rule 25-22.029 ties the time period to issuance of the notice. Under the PSC procedure, the PSC and affected persons are able to track the time certain when proposed agency action becomes final. In addition, PSC Rule 25-22.029(2) provides that the PSC may shorten the time to request a hearing to 14 days from issuance of the order for good cause shown. This shortened time period is needed to meet certain statutory deadlines. Finally, the PSC Rule ties the waiver of hearing rights to "the expiration of the time within which to request a hearing." This provision recognizes that there may be different time periods for requesting a hearing depending on the notice given.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.201,
Initiation of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings so that it can continue to follow PSC Rule 25-22.036(1)-(7) and (9)-(10). Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action. The PSC Rule defines the different types of pleadings listed in the rule, states what each pleading must contain, lists any special service requirements, and states what action the PSC will initially take depending on how the proceeding was initiated.

The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.202, Amendment of Petitions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule concerning the amendment of petitions so that it can continue to follow PSC Rule 25-22.036(8). The Uniform Rule contemplates only petitions may be amended, whereas the PSC Rule contemplates petitions, applications, and complaints may be amended. The PSC amendment provision recognizes that proceedings determining substantial interests may also be initiated at the PSC by complaint and application.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.203, Answer.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule concerning Answers so that it can continue to follow PSC Rule 25-22.037(1). The Uniform Rule does not state the time by which an answer must be filed as does the PSC Rule, which requires an answer to be served within 20 days of service of the petition. In addition, the PSC Rule clarifies that an answer to a PSC order or notice must be filed within 20 days unless a different time period is specified by the order or notice. By specifying a time period, the PSC Rule avoids confusion and abuse. The PSC Rule promotes the orderly disposition of matters brought before the agency.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.204(1)-(2),

Motions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to subsections (1)-(2) of the Uniform Rule on motions so that it can continue to follow PSC Rules 25-22.037(2) and 25-22.038(1). PSC Rule 25-22.037(2) (a) requires motions to dismiss, motions to strike, and motions for a more definite statement to be filed within the time for filing an answer, whereas Uniform Rule 28-106.204(2) requires only motions to dismiss to be filed no later than 20 days after service of the petition on the party. PSC Rule 25-22.037(2) (a) also has the additional provision that if any of these motions in opposition are denied, "an answer or other responsive pleading may be filed within 10-days [sic] after issuance of an order denying the motion." The PSC seeks to keep these additional provisions because they prevent delay and may reduce workload if it can be discerned early on that part of an initial pleading is inadequate. In addition, PSC Rule 25-22.037(2) (b) requires motions not made during the course of a hearing to be filed with the Division of Records and Reporting (the Division) instead of the presiding officer as required by the Uniform Rule. The Division has a complex computerized Case Management System that tracks and stores documents filed with the PSC that could be contravened if motions were required to be filed with the presiding officer. The Uniform Rule requirement would add additional layers of bureaucracy to the internal document controls followed by the PSC. Finally, Uniform Rule 28-

106.204(1) authorizes the presiding officer to conduct proceedings and enter orders to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer. UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.205, Intervention.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the Uniform Rule on intervention so that it can continue to follow PSC Rule 25-22.039. Under the PSC rule, petitions to intervene can be filed five days before the commencement of a hearing. The PSC is concerned that the 20-day period in the Uniform Rule could limit customer participation in hearings. Allowing the PSC to keep its five-day rule would probably reduce the number of instances where the PSC would have to determine whether good cause was shown to intervene after the expiration of the intervention period in the Uniform Rule. Also, the PSC Rule makes it clear that "[i]ntervenors take the case as they find it," and, thus eliminates confusion over the impact an intervenor can have on an ongoing proceeding.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.208, Notice of Hearing.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the requirement in the Uniform Rule that the presiding officer is responsible for serving written notice on all parties, and also seeks an exception to keep subsections (2) and (4) of

PSC Rule 25-22.0405 that provide the PSC will give notice to local government representatives and may require utilities to publish notice in local newspapers. At the PSC, the ministerial function of serving written notice on parties is already efficiently performed by the Division of Records and Reporting (the Division). If the Uniform Rule were to control, the PSC's streamlined procedure would become more cumbersome because additional divisions would have to be included in the process. The PSC notice requirements in subsections (2) and (4) concerning local government notification and newspaper publication are designed to ensure that all persons potentially affected by PSC action will have notice of PSC proceedings.

UNIFORM RULES FROM WHICH EXCEPTION IS SOUGHT: 28-106.209, Prehearing Conferences; and 28-106.211, Conduct of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rules 28-106.109 and 28-106.211 so that the agency can continue to follow PSC Rule 25-22.038. Under the Uniform Rules, the presiding officer is responsible for prehearing matters.

However, under PSC practice, the governance of prehearing matters is handled by the prehearing officer. In addition, the PSC Rule explains in detail the prehearing procedures followed by the PSC. The specifics set forth in PSC Rule 25-22.038 provide all hearing participants with knowledge of PSC prehearing procedures and allow the PSC to conduct prehearing matters in a consistent, orderly, and efficient fashion.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.212(1) and (3), Subpoenas.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions to subsections (1) and (3) of the Uniform Rule so that it can continue to follow subsections (1), (2), (3), and (5) of PSC Rule 25-22.045. Under the Uniform Rule, only the presiding officer can issue subpoenas. Under the PSC Rule, either the presiding officer or the Division of Records and Reporting (the Division) can issue subpoenas. Since subpoenas must be timely issued, this is the more practical approach for the PSC since the travel and hearing schedules of presiding officers often prevent quick responses. In addition, pursuant to the Uniform Rule, motions to quash are to be filed with the presiding officer. The PSC seeks an exception to this requirement so that motions to quash will continue to be filed with the Division. This will ensure that the motion is tracked and logged in the Division's computerized Case Management System. The PSC Rule also provides that subpoenas may be issued for the inspection of documents without deposing anyone. This additional procedure effectuates discovery in PSC proceedings. Finally, the PSC Rule allows subpoenas to be served by certified mail. This type of service cuts down on costs for hearing participants.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.213, Evidence.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks exceptions

to keep the additional requirements in subsection (3) concerning the exclusion of irrelevant and repetitious evidence and subsection (4) concerning prefiled testimony for its Rule 25-22.048. The exclusion of irrelevant and repetitious evidence helps keep hearings manageable and may shorten the time spent in hearing. The requirement for prefiled direct testimony, and rebuttal testimony if any, acknowledges the technical subject matter of most issues, and expedites the hearing process. Moreover, the formatting requirements for prefiled testimony ensure that the PSC can comply with the transcript requirements in Rules 9.190 and 9.200, Florida Rules of Appellate Procedure, if an order is appealed.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.215,
Post-Hearing Submittals.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to keep its Rule 25-22.056(1)-(3) that sets forth the requirements for post-hearing filings that are tailored to the post-hearing procedure followed by the PSC. Because either a single commissioner or a panel may hear a case, subsection (1) specifies the types of post-hearing filings available to parties in either circumstance. PSC Rule 25-22.056(1)(d) also limits proposed findings of fact, conclusions of law, statements of issues and positions, and briefs to no more than 60 pages total. Past PSC experience has shown that more than 40 pages is consistently needed because of the number and complexity of

issues in many PSC proceedings. Subsection (2) of the PSC Rule sets out requirements for proposed findings of fact to curb the filing of inappropriate proposed findings of fact. Finally, subsection (3) of the PSC Rule sets out the requirements for the statement of issues and positions. The rule is clear that "[a]ny issue or position not included in a post-hearing statement shall be considered waived."

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.216(1),
Entry of Recommended Order.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception for PSC Rule 25-22.056(4) (a) concerning recommended or proposed orders when a hearing is conducted by a single PSC commissioner. The Uniform Rule is tailored to proceedings referred to the (Division of Administrative Hearings) DOAH, after which an Administrative Law Judge (ALJ) submits a recommended order to an agency head. The Uniform Rule does not address proceedings where a single commissioner acts as the hearing officer, and then submits his recommended order to the full commission to decide final agency action, which may be the case at the PSC and is contemplated under the PSC rule.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.217(1) and (2), Exceptions and Responses.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the requirements of subsections (1) and (2) of Uniform Rule 28-106.217 so that the agency can continue to apply the

requirements of PSC Rule 25-22.056(4) (b). The PSC would not be able to meet the 90-day statutory deadline for rendering orders in Section 120.569(2)(j)1., Florida Statutes, if the agency followed the Uniform Rule because it holds public meetings to do so only twice every month and recommended orders must be voted on by the full Commission.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.301,
Initiation of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception from the Uniform Rule on the initiation of proceedings not involving disputed issues of material fact so that it can continue to follow PSC Rule 25-22.036(1)-(7) and (9)-(10). Under the Uniform Rule, only petitions can initiate an agency proceeding; whereas, under the PSC Rule, an application, petition, complaint, order, or notice can initiate agency action. The PSC Rule enables persons to tailor their initial pleadings to the relief requested.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.302(1),
Notice of Proceeding.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rule 28-106.302(1) so that it can continue to follow PSC Rule 25-22.038. Under PSC practice, the governance of such prehearing matters is handled by the prehearing officer assigned to the case. The prehearing officer issues a procedural order which contains the specific details of what should be filed and

on what date, and identifies the issues in dispute.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.303(1),
Motions.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to the requirements in Uniform Rule 28-106.303(1) concerning the presiding officer's responsibilities over motions filed in informal proceedings so that it can continue to follow PSC Rules 25-22.037(2) (b) and 25-22.038(1). The PSC rules require motions to be filed with the Division of Records and Reporting (the Division) instead of with the presiding officer. The Division's document management controls may be contravened if motions were required to be filed with the presiding officer, and would add additional layers of bureaucracy to the internal document controls followed by the PSC. In addition, Uniform Rule 28-106.303 provides the presiding officer shall take action to dispose of motions. This requirement conflicts with current Commission practice because PSC prehearing matters are handled by the prehearing officer.

UNIFORM RULE FROM WHICH EXCEPTION IS SOUGHT: 28-106.305(1),
Conduct of Proceedings.

SUMMARY OF THE GROUNDS FOR EXCEPTION: The PSC seeks an exception to Uniform Rule 28-106.305(1) so that the agency can continue to follow PSC Rule 25-22.038(1). Under the Uniform Rules, the presiding officer issues orders necessary to effect discovery and addresses other procedural matters in the case. Under PSC

practice, the governance of prehearing matters is handled by the prehearing officer. The prehearing officer may or may not be the presiding officer at the informal hearing.

The PSC seeks to keep the following procedural rules that would be in addition to the Uniform Rules of Procedure for the most efficient operation of the agency.

AGENCY PROCEDURE: 25-21.004, Disqualification.

REASON FOR PROCEDURE: This rule clearly announces the reasons why a commissioner may be disqualified from hearing a case, states the procedure to follow when filing a petition for disqualification, and states how a petition will be disposed of by the PSC. The rule removes doubt or controversy concerning the procedures on disqualification.

AGENCY PROCEDURE: 25-22.0021, Agenda Conference Participation.

REASON FOR PROCEDURE: The PSC votes on agency action at public meetings called agenda conferences. The purpose of PSC Rule 25-22.0021 is to clearly set forth the PSC's policy on accepting public comments during the course of these meetings. It gives notice to all regulated entities, parties, and interested persons concerning their right to participate in the agenda conference.

AGENCY PROCEDURE: 25-22.006, Confidential Information.

REASON FOR PROCEDURE: PSC Rule 25-22.006 sets out the procedures to follow when requesting that certain information filed with the PSC be considered confidential and exempt from Section 119.07(1), Florida Statutes.

AGENCY PROCEDURE: 25-22.017(1) and (2), Rulemaking Proceeding -- Adoption.

REASON FOR PROCEDURE: Subsections (1) and (2) of PSC Rule 25-22.017 prescribe the procedures the PSC will follow when voting to adopt changes to a proposed rule at an agenda conference.

This rule puts the public on notice as to the procedure used by the PSC, and avoids doubt or controversy.

AGENCY PROCEDURE: 25-22.035(3), Miscellaneous Matters.

REASON FOR PROCEDURE: Subsection (3) of PSC Rule 25-22.035 provides that the Florida Rules of Civil Procedure will govern formal proceedings except where they are superseded by or in conflict with a PSC Rule. If a procedural matter is not governed by a Uniform Rule or a PSC Rule, it will often be addressed in the Florida Rules of Civil Procedure.

AGENCY PROCEDURE: 25-22.0355, Assignment of Formal Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.0355 puts all affected persons on notice as to the procedure that will be followed when assigning a commissioner or DOAH ALJ to formal proceedings. The rule also prescribes the procedure to follow when requesting to have a case assigned to the full Commission. The rule avoids doubt or controversy concerning the assignment of proceedings.

AGENCY PROCEDURE: 25-22.037(3) and (4), Answers and Motions.

REASON FOR PROCEDURE: Subsections (3) and (4) of PSC Rule 25-22.037 prescribes the PSC's policy on default and waiver. The rule puts all interested persons on notice as to when waiver or

default is considered to have occurred, and thus avoids any doubt or controversy concerning such issues.

AGENCY PROCEDURE: 25-22.0376, Reconsideration of Non-Final Orders.

REASON FOR PROCEDURE: PSC Rule 25-22.0376 provides a means for adversely affected parties to seek reconsideration of a non-final order issued by a single commissioner, usually acting as a prehearing officer. The rule provides the procedure the party must follow to seek reconsideration by the panel assigned to hear the case. The rule avoids doubt or controversy concerning reconsideration of non-final orders.

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

REASON FOR PROCEDURE: PSC Rule 25-22.0406 prescribes the procedure for noticing customers of electric and gas utilities and telecommunications companies that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of service hearings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing.

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

REASON FOR PROCEDURE: PSC Rule 25-22.0407 prescribes the procedure for noticing customers of water and wastewater utilities that the regulated entity has requested a general rate increase. The rule ensures individual customers have adequate notice of customer meetings and the hearing dates of the formal hearing. The rule also ensures that all customers have access to detailed information concerning the rate filing.

AGENCY PROCEDURE: 25-22.042, Dismissal.

REASON FOR PROCEDURE: PSC Rule 25-24.042 puts all parties on notice that failure or refusal to comply with a PSC order subjects the party to dismissal from the action, and if the offending party carries the burden of proof, the proceeding itself may be dismissed. The rule enables the PSC to take affirmative action when a party demonstrates a "persistent inability to comply with Commission orders and rules." In re: Application for certificate to provide interexchange telecommunications service by Health Liability Management Corporation, 97 F.P.S.C. 11:451, 454 (1997).

AGENCY PROCEDURE: 25-22.046, Witnesses and Witness Fees.

REASON FOR PROCEDURE: PSC Rule 25-22.046 sets out the requirements for witness fees, and states that members of the general public may appear as witnesses in PSC proceedings without being a party. The rule avoids doubt or controversy concerning witness fees, and the ability of the general public to participate in proceedings.

AGENCY PROCEDURE: 25-22.058, Oral Argument.

REASON FOR PROCEDURE: PSC Rule 25-22.058 puts all parties to a formal proceeding on notice as to when the PSC may grant requests for oral argument. The Florida Supreme Court has recognized that this rule may aid the PSC in determining what agency action to take. U.S. Sprint Communications Co. v. Nichols, 534 So. 2d 698, 700 (Fla. 1988).

AGENCY PROCEDURE: 25-22.060, Motion for Reconsideration.

REASON FOR PROCEDURE: PSC Rule 25-22.060 provides a means for adversely affected parties to seek reconsideration of final orders issued by the PSC. The rule provides the procedure the party must follow to seek reconsideration. The Florida Supreme Court has recognized the value of this rule. See Sentinel Star Express Company v. Florida Public Service Commission, 322 So. 2d 503, 505 (Fla. 1975).

AGENCY PROCEDURE: 25-22.075, Transmission Line Permitting Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.075 sets out the procedure to initiate a transmission line permitting proceeding, including special noticing requirements. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.537, F.S.

AGENCY PROCEDURE: 25-22.080, Electrical Power Plant Permitting Proceedings.

REASON FOR PROCEDURE: PSC Rule 25-22.080 sets out the procedure to initiate an electrical power plant permitting proceeding, including special noticing requirements and decisional time lines. In addition, the rule specifies that a motion for reconsideration must be filed within five days of the Commission decision. This rule enables the PSC to meet the statutory deadlines set forth in Section 403.519, F.S.

THE ADMINISTRATION COMMISSION IS EXPECTED TO HEAR THE PSC'S PETITION FOR EXCEPTIONS AT THE MAY 12, 1998, CABINET MEETING.

State of Florida

Commissioners:

SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA



DIVISION OF APPEALS
DAVID E. SMITH
DIRECTOR
(904) 413-6245

Public Service Commission

December 18, 1996

Ms. Deborah Kearney
Deputy General Counsel
Office of the Governor
Room 209, The Capitol
Tallahassee, FL 32399-0001

Re: Proposed Uniform Rules of Procedure

Dear Ms. Kearney:

Enclosed for your consideration are the comments of the Florida Public Service Commission on the Proposed Uniform Rules. You will note that in several instances the Commission is uncertain whether the rules are intended to be permissive or mandatory. The Commission is also uncertain in some instances whether the functions of a presiding officer are broad enough in concept to encompass the actions of the Commission acting as a collegial body with its own clerk and administrative procedures. It would be helpful if the Administration Commission could clarify some of the uncertainties embodied in the Commission's comments. The Commission has also suggested alternatives which it believes may be more practical and less costly.

If you have any questions regarding these comments, please call me at the number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Smith".

David E. Smith
Director of Appeals

DES
Enclosure

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

RULE: 28-101.001(f) ; 28-106.104(7) , (8) , (9) -Electronic Filing of Documents

Effect on Process: If these rules purport to require agencies to offer electronic filing and mandate the specific procedures listed, they will significantly burden document management. The PSC requires the filing of multiple copies of documents for distribution to commissioners and staff. This is not a luxury but an essential process to get information to persons who must maintain and work with information in complex files. Allowing a party to simply file an electronic copy of a document would put the burden on the agency to make hard copies for distribution and maintenance of the central docket file. It is not realistic to assume that files running into the thousands of pages can be maintained and used without ever being reduced to hard copy. Nor is it realistic to assume that agencies, certainly not the PSC, has the electronic capability of carry out such a program. Staff time spent in dealing with electronic filing as described in the rule would go up. More time would be spent copying, tending faxing equipment, telephone lines and computer equipment as well as dealing with crises created by last minute attempts to transmit electronic filings to the agency. Preparation of an appellate record, which must be hard copy, would likely become a nightmare, if the agency had to rely on parties to timely produce their myriad filings on demand. The Florida Supreme Court recently rejected amendments to the Rules of Judicial Administration which would have required expanded electronic filing. Amendments to the Rules of Judicial Administration - Rule 2.090 - Electronic Transmission and Filing of Documents, 21 Fla. L. Weekly 5403 (Fla. September 26, 1996). The court noted problems associated with provisions eliminating hard copy filing of original documents and retained the requirement that hard copies follow the electronic document filing. In 1995, the Commission's Director of Records and Reporting also did a study of the possibility of accepting fax filings. She concluded that there would be no efficiencies or cost benefits to the Commission or those persons it serves.

Associated Costs: The PSC would incur significant costs to upgrade its telephone, faxing and computer equipment to handle electronic filing as contemplated by the rules. Not only would the agency have to procure more lines, faxes, computer software and storage capacity and personnel to deal with the expanded activity, but it would also have to find some way to accomplish

this while maintaining security of its LAN. While the commission currently requires longer documents to be filed on diskette and puts them on its computer network, that is a far cry from providing direct outside access to the system to anyone wishing to use electronic filing. The PSC cannot give a dollar estimate of such costs, but common sense dictates that it would be a great deal of money--money which would ultimately come from utility ratepayers through regulatory assessment fees. Costs for use of the administrative process should remain first with those persons who use it, just as court litigants bear the cost of presenting their case, not the court or the taxpayers.

Alternatives: Adopt no rule or an optional rule. The Uniform Rules should not require or dictate methods of electronic filing. Neither the technology nor the concept has matured to the point where it can be made reality by simply adopting a rule. If a rule is adopted, it should be entirely optional with the agencies. Agencies already have incentives to make use of electronic record management where cost effective, practical and technologically feasible. Considerable progress in this area has been made by agencies like the PSC, which has a sophisticated computer system. Other agencies are not so fortunate and likely would have to invent the wheel to deal with an electronic filing mandate. It is by no means clear that this rule would really address an existing problem. The decision to implement the rule should not be simply the result of a perception that electronic filing is good and paper is bad. Any rule adopted in this area should require that a hard copy (or required number of copies) be filed to support the electronic filing.

RULE: 28-102.001(3) Notice of Special Accommodations Under the ADA

Effect on Process: The PSC constantly schedules hearings at its Tallahassee headquarters and at out-of-town locations. It is likely that 48 hours to arrange special accommodations under the ADA will be inadequate in many instances. This is especially true for out-of-town hearings where the facilities used may lack equipment for special accommodations. In such cases, the Commission may have to make arrangements locally to insure special accommodations. Obtaining the services of a qualified professional, such as sign translator at a given locale may be difficult on a 48 hour basis. The limitation of a 48 hour notice of special accommodations could lead to delays in the hearing process or even rescheduling. The Commission currently utilizes a 5-day notice, which has worked well.

Associated Costs: If the Commission has to make arrangements on short notice or engage the services of professionals to insure adequate special accommodations, it may be put in the position of paying a premium to meet its obligations under the ADA. If hearings were delayed or rescheduled, there would be an associated cost for equipment and facilities as well as for the staff's and the parties' time and accommodations.

Alternatives: Adopt a rule which asks for 5-days notice before a workshop or meeting to make special accommodations under the ADA. This provision has worked well for the PSC and should work well for other agencies which must schedule frequent hearings in a variety of locations. With adequate time there should be no need to pay a premium for services or equipment necessary to meet special needs.

RULE 28-104.003 Variances and Waivers.

Effect on Process: The 30-day comment period under the proposed rule, coupled with the 15-day notice and FAW publication, would expend 55 days of the 90 days allowed to act on a petition for variance or waiver. If a hearing were held, it would have to be completed and a decision rendered within that remaining 35-day period. This would be difficult for most agencies and virtually impossible for the PSC. The PSC typically schedules hearings months in advance and has few free dates to hear cases on short notice. Moreover, since the decisions are typically made at agenda conferences scheduled every two weeks, a considerable amount of lead time is required for the Commission staff to analyze the results of hearing and prepare a recommendation for the Commission's vote. Additionally, the Commission must process many filings on a statutory time schedule which may come into conflict with the lengthy comment period provided by the proposed rule. As an example, the PSC often receives requests for rule waivers in conjunction with tariff filings which must be processed in 60 days. Obviously if 55 days are to be used up by the comment period there is no way that the Commission could rule on the tariff in the remaining five days. The only other option would be for the Commission to suspend every tariff of this type and unnecessarily delay implementation of a tariff that might otherwise be entirely unobjectionable.

Associated Costs: The complications of a lengthy comment period could result in additional expenditures of time and money by parties appearing before the Commission as well as additional staff time. Implementation of rates and services through the

tariff filing process could be delayed which would have economic effects on the companies making the proposals.

Alternatives: Limit the comment period to ten days or allow the agency to shorten the period to accommodate other statutory deadlines. This would not cost any more and could well cost less than the proposed rule.

RULE 28-106.103 Computation of Time.

Effect on Process: By allowing only one day for response to documents served by overnight mail, the proposed rule adds a third layer to a system which is already unnecessarily complicated. The PSC is not aware that Florida courts have adopted this practice. It seems that administrative litigation should at least proceed in a manner generally consistent with court rules. Moreover, it takes a considerable leap of faith to believe that overnight mail would indeed reach its agency destination in one day. Moreover, where there are multiple parties, service could easily involve three different dates under the proposed rule. One for hand-delivery, one for overnight mail and one for service by regular mail. In reality, this process is more of a nuisance than anything else. The Florida Supreme Court, for example, routinely allows the longer response time for service by mail where briefs are served both by hand-delivery and by regular mail. Current practice, so as the PSC knows, is to allow the same period for overnight mail as regular mail.

Associated Costs: It is unlikely that the proposed one-day addition for service by overnight mail would result in costs greater than any other method of service. However, the potential for confusion, arguments and wasted time is real.

Alternatives: Do not adopt a rule allowing one additional day for service of overnight mail. It would be simpler and less confusing to simply continue the current practice of treating all mail the same. Logically, if overnight mail is afforded one additional day, then there ought to be a rule allowing for two extra days for two-day mail and three days for three-day delivery.

RULE 28-106.104(6) Filing

Effect on Process: A requirement that all original documents be "printed or type written in black ink" on 8-1/2 x 11 inch paper

may discourage some persons from addressing their legal interests before agencies. The PSC receives many customer complaints which do not meet this formality and has no difficulty in processing them.

Associated Costs: Some persons could well needlessly spend money to have documents prepared in the form required by the rule.

Alternatives: Adopt a rule which simply states that original pleadings "should" be on 8-1/2 by 11 inch paper and printed or typed in black ink.

*See comments on 28-106.104(7), (8) and (9) Electronic Filing above at page 1.

RULE 28-106.106 Determination Criteria for Qualified Representatives.

Effect on Process: The proposed rule contemplates that a presiding officer will make the determination of a non-lawyer's qualifications to represent a party at each proceeding. The PSC currently has a rule which allows a one-time determination of a non-lawyer's qualifications to appear in a representative capacity. Once the person has been certified as a so-called Class B practitioner, the representative may appear in multiple proceedings in his or her area of expertise by filing the proper notice with the Commission. This is because the PSC's regulatory activities concentrate on highly specialized technical areas for which individuals with special expertise are often repeatedly hired. It would be inefficient for the Commission to subject these individuals to repeated qualification which the proposed rule would require.

Associated Costs: Repeated qualification would subject individual representatives and the parties they represent to additional costs. The time of staff, the Commissioners and the parties would be unnecessarily expended by this process.

Alternatives: Adopt a rule which recognizes that an agency may certify qualified representatives on a one-time basis within specified areas of expertise. This would avoid the cost of going through the process in each proceeding.

RULE 28-106.203 Answer.

Effect on Process: The proposed rule fails to specify a time by which an answer to a petition must be served. To avoid confusion and abuse, the rule must specify some time period, for example, 20 days as allowed by the Florida Rules of Civil Procedure. Otherwise, a respondent could claim the right to file an answer at virtually any time and challenge the validity of any ruling made before the respondent opted to file a response. The PSC is unable to comprehend how this rule promotes the orderly disposition of matters brought before an agency.

Associated Costs: Some monetary costs would probably be associated with the confusion, legal wrangling and back-tracking associated with a rule this vague.

Alternatives: Adopt a rule which specifies that an answer must be filed within 20 days or some other specific period of time.

RULE 28-106.204(1) Motions.

Effect on Process: The proposed rule allows a party to file a response to a written motion within seven days "when feasible". The phrase "when feasible" is open to varied interpretations and is certain to provoke confusion and argument. It is also unclear what happens if it is determined that it is not feasible for a party to file a response to a motion within seven days. Would the parties then be allowed ten days or a hundred days to respond to the motion if that meets their definition of feasible?

Associated Costs: As with Rule 28-106.203 there would probably be some costs associated with the confusion, argument and delay which would likely be occasioned by the vague requirements for responding to a written motion.

Alternatives: Adopt a rule which allows 7 days or some other reasonable period for a response to a written motion. It is always possible for a party to ask for additional time if it is not "feasible" to respond within the designated time.

RULE 28-106.208 Notice of Hearing.

Effect on Process: The proposed rule requires the presiding officer to "serve written notice" on parties specifying the time

and place for all hearings. That function is not performed by the presiding officer as such at the PSC. The Commission's clerk, the Director of Records and Reporting, issues all notices, directs their publication in the FAW and sends an individual notice to parties to proceedings. Unless the rule is interpreted broadly enough to encompass all delegated activities of the agency head, the PSC might be out of technical compliance with the rule if a specific presiding officer did not issue a notice.

Associated Costs: The only identifiable costs with strict requirement that all notices be issued by the presiding officer is probably only the inefficiency which would result. The entire operation of identifying parties to dockets, keeping track of their addresses and making sure that notice is properly given is a function of the agency's clerk. The proposed rule would require re-invention of the wheel for no particular reason.

Alternatives: Make clear in the rule that the presiding officer in a proceeding is not literally required to issue notices. This could be done by inserting some explanatory language stating that the uniform rules are not meant to preclude an agency head from delegating or carrying out its function in accordance with its existing administrative structure.

RULE 28-106.212 Subpoenas.

Effect on Process: As with notices, subpoenas are generally issued by the PSC's clerk. Compliance with the proposed rule requiring subpoenas be issued by the presiding officer could lead to arguments over the validity of the subpoenas issued by the PSC's clerk.

Associated Costs & Alternatives: Same as for Rule 28-106.208 Notice of Hearing.

RULE 28-106.217(2) Responses to Exceptions.

Effect on Process: The proposed rule allows "any other party" to file responses to its exceptions filed by "parties". It is unclear whether this means that only parties who do not file exceptions are allowed to respond to those filed by other parties, or whether any party filing exceptions may respond to the exceptions of other parties. If the latter is the case, it seems an unnecessary burden on the process of challenging the

recommended order's conclusions. Presumably, parties could go on arguing with one another forever over who is right and who is wrong about particular conclusions of law or findings of fact. It should be sufficient for the agency to have the parties' one-time criticism of the recommended order before it without the additional step of sorting out arguments made by adversarial parties on the validity of their opponents' positions. The process of allowing filing parties to comment on each other's exceptions would add additional time and effort for analysis and disposition of the recommended order.

Additional Costs: Some monetary costs would be associated with the time and effort spent on the parties preparation of responses to exceptions and the agency's analysis and ruling on the arguments presented.

Alternatives: Do not allow responses to exceptions in the rule.

RULE 28-106.404 Confidentiality in Mediation.

Effect on Process: The mediation statute, Section 120.573, Florida Statutes, states that mediation agreements, which define the fundamental relationship between the parties, will contain "the parties' understanding regarding the confidentiality of discussions and documents introduced during mediation". The proposed rule suggests that all parties are "deemed to have agreed that all mediation communications are to be treated as confidential". This does not seem to necessarily follow from the statute authorizing mediation at administrative proceedings, although it would be consistent with Chapter 44, Florida Statutes, governing mediation in Court cases. It seems that the parties in administrative mediation might or might not consider their discussions confidential. The situation is not helped by consideration of the effect of the public records law, Chapter 119, Florida Statutes, which arguably might invoked under subsection (3) of the rule as a statute requiring communications, at least those made by an agency party, to be disclosed.

Associated Costs: It will be difficult to identify specific costs associated with the rules presumption.

Alternatives: Adopt a rule which recognize the parties' understanding of confidentiality as the point of departure in mediation.