

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

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COMMISSION
CLERK

November 18, 2010

HAND DELIVERED

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Ms. Ann Cole, Director
Division of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: UNDOCKETED – October 14, 2010 Workshop Regarding Rule 25-22/033,
Florida Administrative Code, Communications between Commission Employees
and Parties

Dear Ms. Cole:

Enclosed for filing in the above-styled matter are the original and five (5) copies of
Comments by Tampa Electric Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this
letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp
Enclosure

- COM _____
- APA _____
- ECR _____
- GCL _____
- RAD _____
- SSC _____
- ADM _____
- OPC _____
- CLK _____

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: October 14, 2010 Workshop)
Regarding Rule 25-22.033, Florida)
Administrative Code, Communications)
Between Commission Employees and)
Parties)
_____)

UNDOCKETED
Filed: November 18, 2010

COMMENTS BY TAMPA ELECTRIC COMPANY

Tampa Electric Company (Tampa Electric or the Company) submits these comments in response to the rule development workshop held October 14, 2010, regarding Rule 25-22.033, Florida Administrative Code, Communications Between Commission Employees and Parties.

Introduction

Tampa Electric submitted comments to the Commission on December 15, 2009, in response to the November 24, 2009, workshop and on April 20, 2010, in response to the March 23, 2010, workshop. Since the Commission began to consider changing Rule 25-22.033, Florida Administrative Code, Tampa Electric has encouraged the Commission to adhere to three guiding principles:

- The benefits to be gained from extending the requirements of the rule, or applying similar requirements, to the proceedings and activities that are currently exempt should be weighed against the impact on the costs and efficiency of the regulatory process;
- New requirements regarding communications between Staff and parties should take into account similar processes employed by other agencies of the State of Florida; and
- Application of the rule should be symmetrical in all respects.

Tampa Electric continues to believe that these principles are appropriate. In addition, Tampa Electric believes the regulatory process will be best served by a rule that is clear and practicable. To the extent the rule is difficult to understand or exposes stakeholders to risks that they may

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FPSC-COMMISSION CLERK

inadvertently violate the rule, the information needed by the Commission to regulate the industry may not be communicated effectively.

Tampa Electric appreciates the Commission staff's efforts to arrive at a workable rule that accommodates the various comments and concerns expressed by the stakeholders. The August 26, 2010, draft rule (hereafter referred to as "the draft") reflects staff's attempt to strike a balance between the competing interests and serves as a reasonable platform for further dialogue; however, Tampa Electric has concerns about certain aspects of the draft and offers the following comments for consideration.

Applicability of the Rule and Exemptions

Being able to understand when Rule 25-22.033, FAC applies is vitally important so that parties or interested persons communicating with staff do not inadvertently violate the rule. Currently, the provisions relating to the scope of proceedings covered by the rule are included in one place in the rule and are relatively straightforward and understandable. The proposed amendments to the rule make it more difficult to understand when the rule applies. Subsection (1) contains provisions detailing matters to which the rule does not apply; subsection (3) includes matters governed by the rule as well as matters that are exempt; and subsection (9) provides notice requirements for communications that are previously exempted in subsection (3). Furthermore, subsection (3) states that the rule governs docketed matters, then proceeds to include some undocketed matters among the list of matters that are exempt from the rule, implying that there may be other undocketed matters that are covered by the rule.

Similarly, subsection (1) states that the rule does not apply to internal agency communications, yet subsection (10) deals with prohibited communications between Commissioners and Commission employees and subsection (11) states that the rule applies to all

Commission employees unless specifically exempted by the rule. Finally, the exemption in subsection (7) for communications between employees and parties to investigate and assist in the resolution of informal consumer complaints appears to duplicate the same exemption included in subsection (3).

Tampa Electric believes the numerous provisions dealing with the scope and applicability of the rule and exemptions to the rule could be simplified and made more understandable by consolidating the provisions relating to the scope of proceedings covered by the rule. The rule should clearly state in subsection (3) that it applies only to communications between Commission staff and parties or interested persons regarding docketed matters and should list, in the same subsection, the docketed matters or activities that are exempt from the rule. If the rule is written so that it clearly applies only to communications between staff and parties or interested persons regarding docketed proceedings, it is unnecessary to exempt wholly undocketed matters such as internal agency communications and internal affairs meetings. Following this approach, the list of exemptions included in subsection (3) should include, proceedings under Sections 120.54, 120.565, 367.0814, F.S.; proposed agency action (PAA) proceedings in which there has not been a notice of an interested person, a request to intervene or a request for a hearing filed in the docket; communications regarding procedure; communications with the Office of the Commission Clerk; workshops; audits; field service evaluations; informal consumer complaints; electric and gas safety inspections; and cases pending in a tribunal other than the Commission.

As indicated above, Tampa Electric believes the rule should govern only docketed matters. The notice requirement pertaining to "meetings and conference calls pertaining to changes in rates which occur outside of a docketed proceeding or during a proposed agency action proceeding exempt under subsection (3)" creates yet another exemption to the general rule

(an exception to an exemption), making compliance more difficult. Moreover, the term "changes is rates" in subsection (8) is vague and unclear.

If the Commission believes a notice provision is necessary for undocketed matters, Tampa Electric believes the requirements should apply symmetrically. As is stands, the draft rule appears to only address situations where the staff has a meeting or conference call with a regulated utility. The rule should also apply to situations where the staff meets with any intervenor group or interested person and notice should be provided to the affected utility as well as OPC.

Scope of Communications

Subsection (3) of the draft rule states that the rule shall "govern Commission employee communications with parties and interested persons to docketed proceedings before the Commission." Taken literally, this statement would result in the rule applying to any communication between a Commission employee and an individual who either is or works for a party or an interested person listed in any Commission proceeding. Tampa Electric believes the scope of communications covered by the rule is overly broad. It would be more reasonable and practicable for the rule to apply to communications regarding matters at issue in the proceeding.

PAA Notification

Tampa Electric supports the exemption of PAA proceedings before they become contested proceedings. Establishing the date a notice of interested person or a request for intervention is filed as the point at which a PAA proceeding is no longer exempt from the notice requirements may be a reasonable compromise among the positions discussed by the stakeholders. However, the company is concerned that there presently is no clear mechanism to readily determine with certainty whether a particular docket is or will become a PAA

proceeding. To make this provision more workable, Tampa Electric suggests that the Commission consider providing an indication within the electronic docket file as to whether the matter is a PAA proceeding or not. Such an indication in the docket file would help to minimize inadvertent violations of the rule.

Definition of "Impermissible Communications"

Subsection (2) of the draft rule includes a definition of "impermissible communication" as "any communication with a party or interested person, if written, is not served on all parties, or, if oral, is made without notice to all parties or interested persons." This term is only used once in the rule where subsection (4) states that "Commission employees shall not engage in impermissible communications." Tampa Electric believes the inclusion of the definition and the prohibition in subsection (4) is redundant of provisions contained in other sections of the draft rule and is, therefore, unnecessary. Other provisions of the rule effectively specify the notice provisions for allowable communications and when certain communications are prohibited.

Applicability to Interested Persons

The draft rule acknowledges the fairness associated with increasing transparency with respect to communications between staff and interested persons. Interested persons, by definition, are interested in a proceeding, but are either not inclined or are unable to intervene as a party. Tampa Electric supports the application of the rule to interested persons; however, the rule does not include interested persons to the extent that it should. The draft rule requires that interested persons receive notice for meetings and telephone calls between Commission employees and parties, as well as for meetings and telephone calls between Commission employees and interested persons. The requirements relating to written communications between Commission employees and parties is not extended to interested persons, however.

Tampa Electric believes extending the notice provisions for written communications to interested persons is a logical extension of the rationale for making the notice provisions for meetings and telephone calls applicable to interested persons. Similarly, to the extent there is a ban on communications between the conclusion of the hearing and issuance of the final order, the ban should apply to interested persons as well as parties.

Conclusion

Tampa Electric thanks the Commission for the opportunity to submit these comments. We look forward to continued dialogue with the Commission and other stakeholders to achieve a workable process that maintains the flow of information necessary for the Commission to effectively regulate the industry.

Respectfully submitted this 18th day of
November, 2010



JAMES D. BEASLEY
J. JEFFRY WAHLEN
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
850-224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY