

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: October 1, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (DuVal) *SMC*
Division of Accounting and Finance (Mouring) *ALM*
Division of Economics (Coston) *JGH*

RE: Docket No. 20200219-EI – Petition to initiate emergency rulemaking to prevent electric utility shutoffs, by League of United Latin American Citizens, Zoraida Santana, and Jesse Moody.

AGENDA: 10/06/20 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: 10/22/20 (Pursuant to Section 120.54(7), F.S., the Commission must initiate rulemaking or deny the petition with a written statement of its reasons for denial by this date)

SPECIAL INSTRUCTIONS: None

Case Background

On September 22, 2020, the League of United Latin American Citizens of Florida, also known as LULAC Florida Educational Fund, Inc. (LULAC), Zoraida Santana, and Jesse Moody (collectively referred to herein as “Petitioners”) filed a petition to initiate emergency rulemaking (Petition). Petitioners request that the Commission initiate emergency rulemaking to amend Rule 25-6.105, Florida Administrative Code (F.A.C.), to prevent discontinuance of electric service to certain customers by public utilities for at least 90 days due to the COVID-19 pandemic.

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Pursuant to Section 120.54(7)(a), Florida Statutes (F.S.), any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. The section requires the Commission to either initiate rulemaking proceedings or deny the petition, with a written statement of its reasons for the denial, no later than 30 calendar days following the date of the filing of the petition.

The Commission has received a number of customer correspondences in this docket. On September 29, 2020, Representative Anna V. Eskamani submitted a letter to the Commission.

On September 29, 2020, Duke Energy Florida, LLC (DEF) and Tampa Electric Company (TECO) filed comments on the Petition. On the same day, Florida Power & Light Company (FPL) and Gulf Power Company (Gulf) filed joint comments on the Petition.

This recommendation addresses whether the Commission should grant the Petition. The Commission has jurisdiction pursuant to Sections 120.54(7), 350.127(2), F.S., and Chapter 366, F.S.

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Discussion of Issues

Issue 1: Should the Commission grant the Petition to initiate emergency rulemaking?

Recommendation: No, the Petition should be denied because it is unnecessary at this time to initiate emergency rulemaking. (DuVal, Coston, Mouring)

Staff Analysis: Petitioners request that the Commission initiate emergency rulemaking to amend Rule 25-6.105, F.A.C. The rule addresses refusal or discontinuance of service by investor-owned electric utilities. Petitioners allege that emergency rulemaking is needed to prohibit utilities from refusing or discontinuing electric service to certain customers for at least 90 days due to the COVID-19 pandemic.

Applicable Law

Petitions to Initiate Rulemaking

Section 120.54(7)(a), F.S., states that “[a]ny person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule.” The petitioner is required to specify the proposed rule and action requested. Petitioners’ proposed amendments to Rule 25-6.105, F.A.C., are attached to this recommendation as Attachment A.

Emergency Rulemaking

Section 120.54(4), F.S., sets forth the requirements for emergency rulemaking. The pertinent parts of subsection (4) state:

(4) EMERGENCY RULES. –

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.
2. The agency takes only that action necessary to protect the public interest under the emergency procedure.
3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Register and provided to the [Joint Administrative Procedures Committee] along with any material incorporated by reference in the rules. The agency’s findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

* * *

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(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:

1. A challenge to the proposed rules has been filed and remains pending; or
2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).

Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

To adopt an emergency rule, the Commission must first find, pursuant to Section 120.54(4)(a), F.S., that an immediate danger to the public health, safety, or welfare requires emergency action. “In order to utilize emergency rulemaking procedures, rather than employing standard rulemaking, an agency must express reasons at the time of promulgation of the rule for finding a genuine emergency.” *Florida Health Care Association v. Agency for Health Care Administration*, 734 So. 2d 1052, 1053 (Fla. 1st DCA 1998). The agency’s reasons must be “factually explicit and persuasive.” *Florida Home Builders Association v. Florida Department of Commerce*, 355 So. 2d 1245, 1246 (Fla. 1st DCA 1978). In this regard, the agency must show how particular members of the public are actually faced with an immediate danger to their health, safety, or welfare. *Hartman-Tyner, Inc. v. Department of Business and Professional Regulation*, 923 So. 2d 559, 562 (Fla. 1st DCA 2006).

Adoption of any emergency rule does not relieve an agency from the requirement that the rule be a valid exercise of delegated legislative authority as set forth in Section 120.52(8), F.S. Thus, any rule adopted by the Commission must be based on an explicit power or duty identified in the enabling statute, or the rule is not a valid exercise of delegated legislative authority. *See Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594, 599 (Fla. 1st DCA 2000).

Rule 25-6.105, F.A.C., Refusal or Discontinuance of Service by Utility

Chapter 366, F.S., vests the Commission with the authority to require utilities to furnish reliable, reasonably sufficient, adequate, and efficient service within a coordinated electric power grid. The Commission also has authority to fix rates and charges that are just, reasonable, compensatory, and not unduly or unreasonably discriminatory.

Section 366.03, F.S., General duties of public utility, states, in pertinent part:

Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for

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resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

Section 366.04(2), F.S., states, in pertinent part:

In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

Further, Section 366.05(1)(d), F.S., states, in pertinent part:

The customer is responsible for charges for service provided under the selected rate.

Rule 25-6.105, F.A.C., sets forth the conditions under which utilities may refuse or discontinue electric service and the process the utilities must follow when refusing or discontinuing electric service. With regard to non-payment of bills, Rule 25-6.105(5), F.A.C., states, in pertinent part:

If the utility refuses service for any reason specified in this subsection, the utility shall notify the applicant for service as soon as practicable, pursuant to subsection (7), of the reason for refusal of service. If the utility will discontinue service, the utility shall notify the customer at least 5 working days prior to discontinuance, that service will cease unless the deficiency is corrected in compliance with the utility's regulations, resolved through mutual agreement, or successfully disputed by the customer. The 5-day notice provision does not apply to paragraph (h), (i) or (j). In all instances involving refusal or discontinuance of service the utility shall advise in its notice that persons dissatisfied with the utility's decision to refuse or discontinue service may register their complaint with the utility's customer relations personnel and to the Florida Public Service Commission at 1(800)342-3552, which is a toll free number. As applicable, each utility may refuse or discontinue service under the following conditions:

(g) For non-payment of bills or non-compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for service, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice. For purposes of this subsection,

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“working day” means any day on which the utility’s business office is open and the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the utility.

The Petition

Petitioners request that the Commission initiate emergency rulemaking to adopt their proposed language, appended as Attachment A, in order to prohibit utilities from refusing or discontinuing electric service to certain customers for at least 90 days due to the COVID-19 pandemic. Petitioners aver that, after a period of voluntary moratoriums on electric service disconnections, DEF, TECO, and FPL have resumed discontinuing Floridians’ electric service due to non-payment.

Petitioners argue that discontinuation of electric service for non-payment is equivalent to eviction and should be construed as subject to the moratoriums on residential evictions issued by Governor DeSantis and the Centers for Disease Control and Prevention. Petitioners allege that their proposed language mirrors the Centers for Disease Control and Prevention’s certification required to avoid eviction and clarifies that people who have the funds to pay their electric bill will not be relieved of their burden to do so and could still face disconnection. Petitioners further argue that other states have enacted moratoriums on utility and electricity disconnections and that other large utilities nationwide have announced voluntary refrainment from disconnections until 2021.

The proposed language submitted by the Petitioners requires that the utilities may not disconnect a customer or applicant for failure to pay if the customer or applicant certifies that they meet seven specific conditions. These seven conditions are more fully set out in Attachment A, but include criteria such as attempts to obtain government assistance, expectations of certain income caps or actual receipt of CARES Act stimulus payments, loss of income or extraordinary medical expenses, and an assertion that the customer’s or applicant’s only alternative access to electricity is through a homeless shelter or a residence shared by other people living in close quarters.

Commission Workshop and Data Gathering on Impacts of COVID-19 Pandemic

On July 29, 2020, the Commission held a workshop on the impacts of the COVID-19 pandemic on utility customers. The purpose of the workshop was to give electric, natural gas, and water and wastewater utilities an opportunity to provide information about the effect that the COVID-19 pandemic has had on utility customers. Specifically, the utilities were asked in the workshop notice to provide an overview of the following:

- Number of residential and commercial accounts in late or nonpayment status from April 1, 2020, through June 30, 2020, and the related incremental bad debt expense from unpaid balances.
- Utility policies and financial assistance available to directly assist customers impacted by COVID-19.
- Utility efforts to receive loans, grants, assistance, or benefits in connection with the COVID-19 pandemic, regardless of form or source, that could offset any COVID-19 related expenses.

FPL, Gulf, DEF, TECO, and Florida Public Utilities Company (each of Florida's five investor-owned electric utilities) provided presentations at the workshop, in addition to companies from the natural gas and water and wastewater industries. The Office of Public Counsel made a presentation at the workshop, and the Connected in Crisis Coalition and Vote Solar provided written comments prior to the workshop.

At the workshop, the utilities stated that, beginning in March 2020, they suspended disconnections for non-payment, waived late payment charges, and implemented payment extension plans. They also provided information about their various efforts to provide customers with financial assistance information and payment plan options. Some of the customer outreach methods referenced by the utilities included phone calls, text messages, emails, letters, advertisements, and social media communications. Moreover, the utilities stated that they contacted customers whose usage increased significantly to offer energy conservation tips.¹

Specifically in regard to customer disconnections for non-payment of bills, all the utilities stated that they are committed to meeting the unique challenge caused by the COVID-19 pandemic and understand the hardships faced by some of their customers due to the pandemic. They overwhelmingly expressed a willingness to help their customers and assured the Commission that disconnection of service for non-payment of bills always has been and always will be a last resort.

The utilities further stated that they are currently taking customers at their word that they are having a hard time financially and have been very liberal in granting payment extensions and offering other assistance. They stated that they have stepped up their efforts to inform customers of programs that may assist them with paying their electric bills.

They stated that one of their biggest challenges is getting customers who have outstanding bills to engage with the utility. The utilities stated that customer engagement is needed in order for the utility to assist the customer with payment extensions or payment plans and to put the customer in contact with the resources that are available to assist with paying their bill.

At the September 1, 2020, Internal Affairs meeting, staff presented the Commission with a summary of the workshop. Additionally, staff proposed certain monthly data and information to be collected from the investor-owned utilities, with the first reports submitted on September 30, 2020, to include data for the month August 2020. This data and information will allow the Commission the opportunity to monitor and better understand the impact of the pandemic on customers' ability to maintain a positive payment history with their utility or utilities.

The investor-owned utilities have informed the Commission that their intent is to continue their customer outreach efforts and actively work to avoid discontinuation of electric service. Furthermore, the Commission began collecting and analyzing monthly data and information to

¹See Document No. 04364-2020, Transcript of July 29, 2020 Commission Workshop, filed August 12, 2020, in Docket No. 20200000-OT.

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monitor these efforts, along with any changes to the utilities' policies related to past-due accounts, payment arrangements, late payment waivers, disconnection, or reconnection.

Comments on the Petition

The Commission has received a number of customer correspondences in this docket, in which the customers state that they oppose electric power disconnections during the pandemic. The primary reason given by these customers for their opposition to disconnections is customer unemployment.

Representative Eskamani submitted a letter in support of the Petition, stating that the options and programs offered by the utilities are insufficient. She offers eight additional recommendations for the Commission's consideration.

FPL, Gulf, TECO, and DEF filed comments on the Petition. Their comments are summarized below.

FPL and Gulf's Joint Comments

FPL and Gulf state that the relief requested in the Petition is not necessary and "falls far short of meeting the criteria for an emergency rule under Section 120.54(4)(a), [F.S.]" Consistent with their presentation at the July 29 workshop, they list the proactive measures they have taken to assist their customers in response to the COVID-19 pandemic, including suspending all disconnections, increasing customer outreach, making available longer and more flexible payment plans, waiving late payment fees for customers who reach out and express hardship, and offering energy conservation tips and education. In addition, the companies state that they have filed for a mid-course correction to accelerate refunding fuel savings.

They state that they have donated more than \$4.5 million to non-profits and other organizations working to help Floridians affected by the pandemic. FPL points to a recently announced program to provide bill relief to certain qualifying customers experiencing hardship.

FPL and Gulf also detail their outreach campaigns to educate customers on the availability of assistance in their area. They further state, however, that "[i]n order for customers to take advantage of the assistance funds and the utilities' support measures, customers must contact FPL and Gulf to request the assistance and relief." They assert that despite all of the outreach efforts detailed in their comments, "approximately 85 percent of customers who are more than 30 days behind on their electric bills have not contacted the utilities to make payment arrangements for their accounts."

They state that it has been their experience that most customers experiencing hardship do not engage the utility or seek assistance until the customer receives a final notice in advance of disconnection. They note that 90 percent of customers who are disconnected for nonpayment are reconnected within one day. Additionally, the companies state that they "remain mindful of the need to calibrate and, to the extent possible, mitigate arrearages and bad debt." FPL states that it has resumed sending final notices for non-payment, while Gulf states that it has not begun issuing final notices. They both state that they remain committed to working with and assisting

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their customers, but they further state that “it is critical for customers to contact their respective company to request that help.”

In regard to the Petitioners’ proposed emergency rule, they state that “even if the Commission were to approve the emergency rule that the Petitioners have requested, customers would still have to contact their utility to begin the complex certification process that the proposed rule contemplates, and the unfortunate fact remains that the threat of disconnection is the only way to prompt most customers who are behind on their bills to take action to get help.”

They also point out that they “already do the two most important things the Petitioners’ proposed emergency rule calls for: (1) the Companies work to get those customers in contact with assistance agencies; and (2) the Companies work to get them on payment arrangements so that the customers can avoid disconnection.” They state that “[t]hese efforts are undertaken with the related goal of preventing past due balances from growing to the point of becoming unmanageable.”

FPL and Gulf provide a table in their comments, showing how Petitioners’ proposed emergency rule compares to the processes the companies have already implemented to address the situation. They state that the table shows that “the proposed emergency rule would actually make it much harder and burdensome for customers to deal with the Companies by requiring a complex certification process that simply is not needed.”

TECO’s Comments

TECO states that emergency rulemaking to modify Rule 25-6.105, F.A.C., is not necessary at this time. In its comments, TECO reiterates and expounds on its presentation from the July 29 workshop.

TECO provides an extensive explanation of its efforts to work with its customers, including placing a moratorium on disconnections from March until September 14; modifying payment arrangements to assist customers with past due balances; increasing the frequency of customer communications; and expanding its outreach efforts. It also states that it obtained a mid-course correction to its fuel and capacity cost recovery factors, which resulted in bill credits in June, July, and August and lower fuel charges through December of 2020. In addition to putting customers in contact with government agencies and non-profit organizations that offer bill payment assistance, TECO states that it has partnered with nonprofit organizations, governments, and local businesses to provide aid and donated, with its sister company Peoples Gas, \$1 million to local organizations providing pandemic relief.

It further states that despite its response efforts, the number of customers with past-due balances increased over the period of March through July 2020. TECO states that its incremental bad debt expense for 2020 is estimated to result in write-offs of \$3 to \$4 million.

Pointing to paragraph (5)(g) of Rule 25-6.105, F.A.C., which requires the utility to (1) make a diligent attempt to have customers comply and (2) provide at least 5 working days’ notice prior to disconnecting service for non-payment, TECO provides examples of the ways it “went above and beyond” the minimum notice requirement of Rule 25-6.105, F.A.C. TECO states that

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“[d]espite all of these attempts at communication, many past due customers did not contact [TECO] to resolve their past due balances until they received a final notice of disconnection or were actually disconnected.” TECO states that it has been their experience that “final notices of disconnection and actual disconnections are effective at prompting customers to address their past due balances, and that the vast majority of customers are ultimately reconnected.”

TECO states that under Petitioners’ proposed rule language, utilities would be required to contact all customers that are scheduled for disconnection and provide them “an opportunity” to make the certification under the rule. Because the proposed rule language does not specify the length of this “opportunity,” TECO states that the time period could presumably last as long as the rule remains in effect. TECO points out that “all final notices of disconnection and actual disconnections could be suspended for up to 90 days.”

TECO states that it can almost always work with customers to avoid disconnection when past-due customers contact the company. While it acknowledges that disconnections may be seen as punitive to some, it states that “resumption of disconnections has substantially increased the number of customers who are contacting the company, thereby enabling the company to work with customers to manage or eliminate past due balances.” It further states that it is concerned that the Petitioners’ proposed emergency rule will result in fewer customers calling for and receiving assistance and “would actually result in more disconnections in the long run, not fewer,” as customers unnecessarily fall further behind in their bills in the absence of readily available assistance. TECO is also concerned that the Petitioners’ proposed emergency rule may limit its flexibility to assist customers with past due balances in both the short and long term.

TECO states that it does not believe emergency rulemaking to modify Rule 25-6.105, F.A.C., is necessary at this time. It states that the company’s data illustrates that final disconnection notices and actual disconnections are effective at prompting customers to contact the company, with the vast majority of customers reconnecting the same or next day through the payment of past due balances, alternative payment arrangements, or assistance from third-parties.

TECO further states that it is concerned that the Petitioners’ proposed emergency rule may result in more disconnections than under the current rule. It raises concerns about third party billing assistance funds being exhausted and government programs expiring by the time past-due bills come due under the proposed emergency rule. It also points out that as past due balances continue to grow for an additional 90 days, these past due balances may ultimately become unmanageable for customers. It concludes that “[w]hile the proposed Rule amendment would expire after 90 days, [TECO] will continue its assistance efforts as long as the pandemic persists and even beyond.”

DEF’s Comments

DEF states that it has already voluntarily put into practice a number of the suggested provisions in the Petitioners’ proposed emergency rule and that the Petitioners’ other suggested provisions would provide less flexibility than what the company is already offering to customers in need.

Updating the Commission on its experience since the July 29 workshop, DEF provides a number of efforts it has engaged in to assist customers in response to the pandemic, including voluntarily

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suspending disconnections for non-payment on March 13, 2020; obtaining approval from the Commission for emergency authority to waive late-payment and returned check fees; and waiving discretionary fees. It also states that it applied for and was granted a mid-course correction to flow back the fuel cost over-recovery as a one-month reduction in bills, despite DEF's over-recovery not being great enough to trigger the mandatory mid-course correction filing. In addition, it states that it has contributed \$450,000 in COVID-19-related grants to address immediate social service and hunger relief needs resulting from the pandemic.

DEF also highlights its extensive efforts to communicate with its customers, including providing customers with content on ways to manage cost through energy efficiency. It states that it has further increased its efforts to communicate with its customers based on feedback from the July workshop.

DEF emphasizes that its goal has always been to make disconnections for non-payment a last resort for its customers. DEF states that it resumed its standard billing practices on July 14, 2020, and provides examples of its customer outreach efforts since that time.

It states that its first customers were subject to disconnection on September 2, 2020. It further states that its experience thus far is that a vast majority of its customers are paying their past due bills, with many paying in full.

DEF states that its recent data indicates that the majority of its residential customers who were subject to disconnection have acted on opportunities to avoid a service disruption and that "the Petitioners claim that 'over 1 million people' may have their electricity shut-off vastly over-estimates the current situation." It further states that DEF continues to encourage customers to engage with the company to prevent service disruptions by establishing payment arrangements and offering extended payment plans to allow customers to catch up on any balance that built up during the suspension of disconnections.

In regard to Petitioners Mr. Moody and Ms. Santana, DEF sets forth a timeline and explanation of its efforts to assist these customers. These efforts included an offer to Mr. Moody of a restructured payment arrangement, which he accepted, and putting Mr. Moody in contact with Mid-Florida Community Action in Pasco County to assist him with paying his bill.

DEF states that it has been its experience that the greater the amount a customer is in arrears, the harder it will be for the customer to pay off the debt. DEF further states:

By being proactive with our customers by helping them come up with flexible payment arrangements, connecting them with agencies that can help, but starting to resume our standard billing and payment practices, we are focused on balancing customer accommodations and financial stewardship – getting those customers who can pay to pay, stopping the accumulation of more debt, and connecting customers with agencies who can help before CARES Act funding may in fact start running out.

DEF asserts that Petitioners' requested relief would put customers in a worse situation than DEF's current flexible approach. As an example of this, DEF states that it is giving customers up

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to 12 months to pay off their past due amounts; whereas, the Petitioners' proposed rule requires full payment when the 90-day halt is lifted.

Conclusion

Both the Commission and the investor-owned electric utilities have been actively engaged in meeting the unique challenges caused by the COVID-19 pandemic, including the issue of disconnection of customers for non-payment of bills. Staff believes that Petitioners' proposed emergency rule is unnecessary and could result in unintended, detrimental consequences to customers.

First, staff believes that the certification required by the Petitioners' proposed emergency rule is too onerous. The utilities do not currently require detailed customer certifications to avoid disconnection of service for non-payment of bills, and the utilities are very liberally applying their disconnection policies. Staff agrees with the utilities that the Petitioners' proposed emergency rule may place an additional burden on customers by requiring them to certify that they meet seven specific conditions in order to avoid discontinuation of electric service. Moreover, such a requirement may hinder customers' ability or desire to discuss with the utility the potential options available to them with regard to their electric service. Further, a strict reading of the certification required under the Petitioners' proposed rule may compel otherwise avoidable disconnections for those customers who may not meet the criteria.

Second, the Petitioners' proposed emergency rule may remove any incentive for customers in need to contact the utility. The issue that runs parallel to customer disconnections for non-payment of electric service is past-due balances continuing to grow for some customers while disconnections are halted. Under the Petitioners' proposed emergency rule, past-due balances could continue to grow for an additional 90 days. After the 90-day period expires, the utility may require payment in full, and failure to pay outstanding bills will make the customer subject to disconnection. As the utilities commented, this could potentially put customers in a worse position than the flexible approaches currently being used by the utilities to assist customers with handling outstanding bill amounts.

One of the overwhelming themes of the utilities' comments is that customers who are struggling to pay their electric bills need to reach out to the utility. This customer contact is critical for the utility to work with the customer to avoid disconnection and to manage and eliminate past-due balances. The disconnection notice currently required by Rule 25-6.105(5)(g), F.A.C., appears to be a useful tool to spur customer contact with the utility. As TECO points out, Rule 25-6.105(5)(g), F.A.C., currently states that the utility may only disconnect service after the utility provides at least 5 working days' notice and has made a diligent attempt to have the customer comply. It appears from their comments at the July 29 workshop and their written comments filed on September 29 that all the utilities are committed to dealing with their customers fairly, and each utility has tailored procedures to address their customers' needs. Moreover, all utilities have emphasized that disconnection for non-payment of electric service is a last resort.

Staff also notes that the conditions under which utilities may refuse or discontinue electric service and the process the utilities must follow when refusing or discontinuing electric service set forth in Rule 25-6.105, F.A.C., are applicable to both residential and non-residential

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customers. Staff believes the Petitioners' proposed emergency rule is unclear as to whether it should be applicable to both residential and non-residential customers. Further, if the Petitioners' proposed rule is intended to apply only to residential customers, staff believes that its adoption, as proposed, could possibly lead to inconsistent application of Rule 25-6.105, F.A.C., and create an internal conflict in the rule.

For the reasons discussed above and based upon the information contained in this docket, staff believes that the Petitioners' proposed emergency rule is neither necessary nor the best course of action at this time. Moreover, staff believes that the Petitioners' proposed emergency rule not only fails to meet the high standard for the promulgation of an emergency rule under Section 120.54(4)(a), F.S., but also would be counter-productive to the best interest of customers as compared to what appear to be effective and ongoing proactive measures currently being undertaken by utilities to avoid permanent disconnections. Instead, each utility should retain the flexibility to address the individual circumstances of their customers. Thus, staff recommends that the Petition be denied.

Nonetheless, staff acknowledges that the impacts of the COVID-19 pandemic on utility customers are still evolving. Staff wants to make clear that denial of the Petition does not foreclose the Commission from initiating rulemaking at any time on its own motion, either through the emergency rulemaking procedures, if warranted, or the normal rulemaking process, as this situation progresses and more data is gathered and monitored by the Commission.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. (DuVal)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

1 **25-6.105 Refusal or Discontinuance of Service by Utility.**

2 (1) Until adequate facilities can be provided, each utility may refuse to serve an applicant
3 if, in the best judgment of the utility, it does not have adequate facilities to render the service
4 applied for.

5 (2) Each utility may refuse to serve any person whose service requirements or equipment
6 is of a character that is likely to affect unfavorably service to other customers.

7 (3) Each utility may refuse to render any service other than that character of service which
8 is normally furnished, unless such service is readily available.

9 (4) Each utility shall not be required to furnish service under conditions requiring
10 operation in parallel with generating equipment connected to the customer's system if, in the
11 opinion of the utility, such operation is hazardous or may interfere with its own operations or
12 service to other customers or with service furnished by others. Each utility may specify
13 requirements as to connection and operation as a condition of rendering service under such
14 circumstances.

15 (5) If the utility refuses service for any reason specified in this subsection, the utility shall
16 notify the applicant for service as soon as practicable, pursuant to subsection (7), of the reason
17 for refusal of service. If the utility will discontinue service, the utility shall notify the customer
18 at least 5 working days prior to discontinuance, that service will cease unless the deficiency is
19 corrected in compliance with the utility's regulations, resolved through mutual agreement, or
20 successfully disputed by the customer. The 5-day notice provision does not apply to paragraph
21 (h), (i) or (j). In all instances involving refusal or discontinuance of service the utility shall
22 advise in its notice that persons dissatisfied with the utility's decision to refuse or discontinue
23 service may register their complaint with the utility's customer relations personnel and to the
24 Florida Public Service Commission at 1(800) 342-3552, which is a toll free number. As
25 applicable, each utility may refuse or discontinue service under the following conditions:

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 (a) For non-compliance with or violation of any state or municipal law or regulation
2 governing electric service.

3 (b) For failure or refusal of the customer to correct any deficiencies or defects in his wiring
4 or equipment which are reported to him by the utility.

5 (c) For the use of energy for any other property or purpose than that described in the
6 application.

7 (d) For failure or refusal to provide adequate space for the meter and service equipment of
8 the utility.

9 (e) For failure or refusal to provide the utility with a deposit to insure payment of bills in
10 accordance with the utility's regulation, provided that written notice, separate and apart from
11 any bill for service, be given the customer.

12 (f) For neglect or refusal to provide safe and reasonable access to the utility for the
13 purpose of reading meters or inspection and maintenance of equipment owned by the utility,
14 provided that written notice, separate and apart from any bill for service, be given the
15 customer.

16 (g) For non-payment of bills or non-compliance with the utility's rules and regulations,
17 and only after there has been a diligent attempt to have the customer comply, including at least
18 5 working days' written notice to the customer, such notice being separate and apart from any
19 bill for service, provided that those customers who so desire may designate a third party in the
20 company's service area to receive a copy of such delinquent notice. For purposes of this
21 subsection, "working day" means any day on which the utility's business office is open and
22 the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for
23 nonpayment of a dishonored check service charge imposed by the utility.

24 (h) Without notice in the event of a condition known to the utility to be hazardous.

25 (i) Without notice in the event of tampering with meters or other facilities furnished and
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existing law.

1 | owned by the utility.

2 | (j) Without notice in the event of unauthorized or fraudulent use of service. Whenever
3 | service is discontinued for fraudulent use of service, the utility may, before restoring service,
4 | require the customer to make at his own expense all changes in facilities or equipment
5 | necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in
6 | revenue resulting from such fraudulent use.

7 | (6) Service shall be restored when cause for discontinuance has been satisfactorily
8 | adjusted.

9 | (7) In case of refusal to establish service, or whenever service is intentionally discontinued
10 | by the utility for other than routine maintenance, the utility shall notify the applicant or
11 | customer in writing of the reason for such refusal or discontinuance.

12 | (8) The following shall not constitute sufficient cause for refusal or discontinuance of
13 | service to an applicant or customer:

14 | (a) Delinquency in payment for service by a previous occupant of the premises unless the
15 | current applicant or customer occupied the premises at the time the delinquency occurred and
16 | the previous customer continues to occupy the premises and such previous customer shall
17 | benefit from such service.

18 | (b) Failure to pay for merchandise purchased from the utility.

19 | (c) Failure to pay for a service rendered by the utility which is non-regulated.

20 | (d) Failure to pay for a different type of utility service, such as gas or water.

21 | (e) Failure to pay for a different class of service.

22 | (f) Failure to pay the bill of another customer as guarantor thereof.

23 | (g) Failure to pay a dishonored check service charge imposed by the utility.

24 | (h) Failure to pay when a customer of applicant certifies that 1) they have used their best
25 | efforts to obtain all available government assistance for their utility bill; 2) that they expect to

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1 earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than
2 \$198,000 if filing a joint tax return), were not required to report any income in 2019 to the
3 U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check)
4 pursuant to Section 2201 of the CARES Act; 3) that they are unable to pay their full electric
5 bill due to substantial loss of household income, loss of compensable hours of work or wages,
6 lay-offs, or extraordinary out-of-pocket medical expenses; 4) that they are using their best
7 efforts to make timely partial payments that are as close to the full payment as the individual's
8 circumstances may permit, taking into account other nondiscretionary expenses; 5) that their
9 only alternative to have access to electricity is to move into a homeless shelter or move into a
10 new residence shared by other people who live in close quarters; 6) that they understand that
11 they must still make utility payments and that fees, penalties, or interest for not making
12 payments may still be charged or collected, and 7) that they understand that at the end of this
13 temporary halt on utility disconnections 90 days after this emergency rule goes into effect, that
14 their utility may require payment in full for all payments not made prior to and during the
15 temporary halt and that failure to pay may make them subject to utility disconnection. Before
16 refusing service to an applicant or discontinuing service to a customer, a utility must document
17 that they gave the applicant or customer an opportunity to make this certification and that the
18 applicant or customer was unable or refused to make such certification.

19 (9) When service has been discontinued for proper cause, each utility may charge a
20 reasonable fee to defray the cost of restoring service, provided such fee is included in its filed
21 tariff.

22 (10) No utility shall discontinue service to any non-commercial customer between 12:00
23 noon on a Friday and 8:00 a.m. the following Monday or between 12:00 noon on the day
24 preceding a holiday and 8:00 a.m. the next working day. Provided, however, this prohibition
25 shall not apply when:

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- 1 (a) Discontinuance is requested by or agreed to by the customer; or
 - 2 (b) A hazardous condition exists; or
 - 3 (c) Meters or other utility owned facilities have been tampered with or
 - 4 (d) Service is being obtained fraudulently or is being used for unlawful purposes.
- 5 Holiday as used in this subsection shall mean New Year's Day, Memorial Day, July 4, Labor
6 Day, Thanksgiving Day and Christmas Day.

7 (11) Each utility shall submit, as a tariff item, a procedure for discontinuance of service
8 when that service is medically essential.

9 *Rulemaking Authority 366.05 FS. Law Implemented 366.03, 366.04(2)(c), (5), 366.041(1),*
10 *366.05(1), 366.06(1) FS. History—New 2-25-76, Amended 2-3-77, 2-6-79, 4-13-80, 11-26-80,*
11 *1-1-91, 1-7-93, _____.*

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