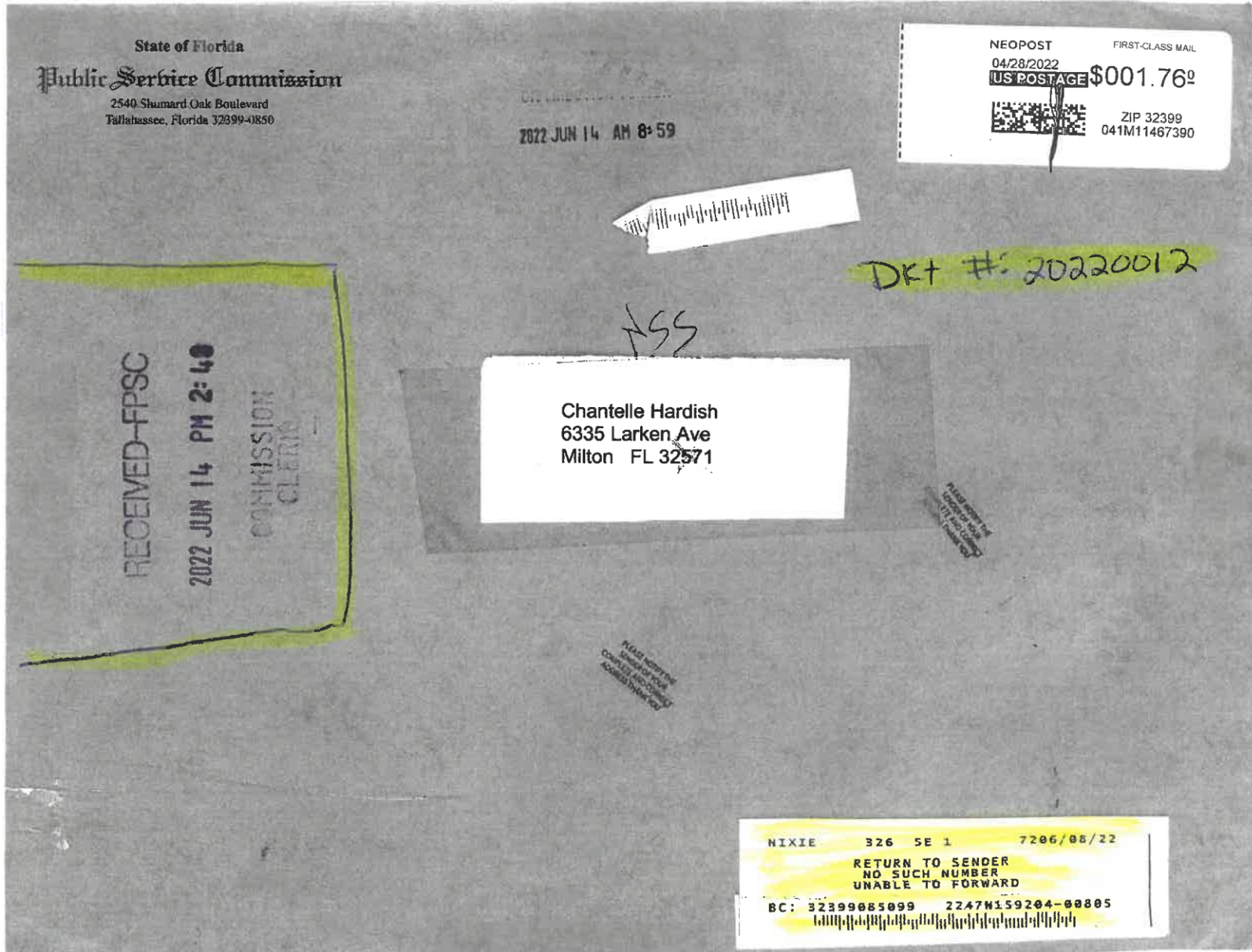


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State of Florida



Public Service Commission

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

DATE: April 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Rubottom, DuVal) *SMC*
Division of Economics (Coston, Draper) *JGH*

RE: Docket No. 20220012-EI – Petition for temporary waiver of Rule 25-6.078(3), F.A.C. by Florida Power & Light Company.

AGENDA: 05/03/22 – Regular Agenda – Motion to Dismiss – Oral Argument Not Requested; Participation is at the Commission’s Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 7, 2022, Florida Power & Light Company (FPL) filed a petition for a temporary waiver of Rule 25-6.078(3), Florida Administrative Code (F.A.C.).¹ FPL’s requested waiver would allow deferred filing of certain information related to installation of underground facilities in new subdivisions due to be filed by April 1, 2022.

On February 17, 2022, the Commission issued a Notice of Proposed Agency Action, Order Granting Petition for Temporary Rule Waiver² (PAA Order) that would become final upon issuance of a Consummating Order unless, within 21 days of issuance of the PAA Order, a

¹ Document No. 00115-2022.

² Order No. PSC-2022-0062-PAA-EI, issued Feb. 17, 2022, in Docket No. 20220012-EI, *In re: Petition for temporary waiver of Rule 25-6.078(3), F.A.C. by Florida Power & Light Company.*

Docket No. 20220012-EI

Date: April 21, 2022

person whose interests would be substantially affected filed a petition for a formal proceeding in conformity with the requirements of Rule 28-106.201, F.A.C.

In its PAA Order, the Commission granted FPL's Petition for a Temporary Waiver of Rule 25-6.078(3), F.A.C., to allow FPL to defer filing its written policy, along with supporting data and analyses, for installation of underground facilities in new subdivisions until April 1, 2023, effectively resetting FPL's three-year filing cycle such that its next filing would be due by April 1, 2026, instead of by April 1, 2025.³ The Commission found that granting the temporary waiver would serve to achieve the purpose of the underlying statutes⁴ and determined that "strict application of Rule 25-6.078(3), F.A.C., would create a substantial hardship for FPL based on the expenditure of resources needed to determine the supporting underlying costs for a time period prior to the consolidation of FPL and Gulf for cost and ratemaking purposes." Additionally, because FPL would still be required to file Form PSC 1031 (08/20)⁵ to report its cost differential on underground facilities by October 15, 2022, the Commission found that "there should be no adverse impacts to FPL's customers by granting the request[ed]" waiver.

During the 21-day protest period that expired on March 10, 2022, the Commission received 103 Letters of Protest (Protest Petitions) purporting to challenge the PAA Order and requesting a formal hearing pursuant to Rule 28-106.201, F.A.C.

On March 11, 2022, FPL filed a Motion to Dismiss Petitions (FPL Motion to Dismiss), requesting that the Commission dismiss all 103 Protest Petitions.⁶ No responses were filed to FPL's motion, and the deadline for filing a response has passed.

This recommendation addresses whether FPL's Motion to Dismiss should be granted. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 120.542, Florida Statutes (F.S.).

³ Rule 25-6.078(1), (4)-(5), F.A.C., prescribes the written policy and supporting data and analyses to be reported, and Rule 25-6.078(3), F.A.C., requires each utility to file such information "at least once every 3 years."

⁴ Sections 366.03, 366.04, and 366.06, Florida Statutes, were identified as the underlying statutes for Rule 25-6.078(3), F.A.C.

⁵ Rule 25-6.078(3), F.A.C., requires each utility to file Form PSC 1031 (08/20), entitled "Overhead/Underground Residential Differential Cost Data," by October 15 of each year.

⁶ Document No. 01806-2022.

FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION CONFERENCE AGENDA

CONFERENCE DATE AND TIME: Tuesday, May 3, 2022, 9:30 a.m.

LOCATION: Betty Easley Conference Center, Joseph P. Cresse Hearing Room 148

DATE ISSUED: April 21, 2022

NOTICE

Persons affected by Commission action on certain items on this agenda may be allowed to address the Commission, either informally or by oral argument, when those items are taken up for discussion at this conference. These items are designated by double asterisks (***) next to the item number.

To participate informally, affected persons need only appear at the conference and request the opportunity to address the Commission on an item listed on the agenda. Informal participation is not permitted: (1) on dispositive motions and motions for reconsideration; (2) when a recommended order is taken up by the Commission; (3) in a rulemaking proceeding after the record has been closed; or (4) when the Commission considers a post-hearing recommendation on the merits of a case after the close of the record. The Commission allows informal participation at its discretion in certain types of cases (such as declaratory statements and interim rate orders) in which an order is issued based on a given set of facts without hearing. See Florida Administrative Code Rules 25-22.0021 (agenda conference participation) and 25-22.0022 (oral argument).

Conference agendas, staff recommendations, vote sheets, and transcripts are available online at <http://www.floridapsc.com>, by selecting *Conferences & Meeting Agendas* and *Commission Conferences of the FPSC*. An official vote of "move staff" denotes that the Item's recommendations were approved.

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate at this proceeding should contact the Office of Commission Clerk no later than five days prior to the conference at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 or 850-413-6770 (Florida Relay Service, 1-800-955-8770 Voice or 1-800-955-8771 TDD). Assistive Listening Devices are available upon request from the Office of Commission Clerk, Gerald L. Gunter Building, Room 152.

The Commission Conference has a live video broadcast the day of the conference, which is available from the FPSC website. Upon completion of the conference, the archived video will be available from the website by selecting *Conferences & Meeting Agendas*, then *Audio and Video Event Coverage*.

EMERGENCY CANCELLATION OF CONFERENCE: If a named storm or other disaster requires cancellation of the Conference, Commission staff will attempt to give timely notice. Notice of cancellation will be provided on the Commission's website (<http://www.floridapsc.com>) under the Hot Topics link on the home page. Cancellation can also be confirmed by calling the Office of Commission Clerk at 850-413-6770.

If you have any questions, contact the Office of Commission Clerk at 850-413-6770 or Clerk@psc.state.fl.us.