

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: June 28, 2019

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Kathryn G.W. Cowdery, Senior Attorney, Office of the General Counsel *KW*

RE: Docket No. 20190000-OT

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

Thank you.

Attachment

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KENNETH J. PLANTE
COORDINATOR
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399-1400
Telephone (850) 488-9110
Fax (850) 922-6934
www.japc.state.fl.us
joint.admin.procedures@leg.state.fl.us

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

March 12, 2019



Ms. Samantha Cibula
Attorney Supervisor
Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Existing Rule Review, Public Service Commission

Rules 25-6.047, .048, .054, .061, .062, .074, .075, .076, .080, .081, .082, .094, .095, .101, .102, and .104

Dear Ms. Cibula:

Pursuant to this Committee's authority in Joint Rule 4.6 of the Florida Legislature to review administrative rules and to advise the agency of its findings, I have reviewed the above-referenced rules and offer the following comments for your consideration and response:

- 25-6.047:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.
- 25-6.048:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.
- 25-6.054:** Law Implemented
Please review and advise whether section 366.05(3), Florida Statutes, should be cited as a law implemented by this rule.
- 25-6.054(4):** It is unclear from the rule text if there is a specific period in which the historical performance records referenced in this subsection must be maintained. Please advise if there is another relevant record retention rule applicable in this scenario. If not, it appears that this information should be included in the rule to ensure comprehension and compliance.

- 25-6.061:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.
- 25-6.062:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.
- 25-6.074:** Please review and advise as to the necessity of this rule entitled, “Applicability,” in light of the definition of a rule pursuant to section 120.52(16), Florida Statutes.
- 25-6.075:** It is unclear how this rule’s language specifically implements section 366.03, Florida Statutes, which is cited as the sole law implemented by its content. Please review and revise as necessary.
- 25-6.076:** Please provide the Commission’s authority and specific law implemented for the content of this rule. Subsection (1) appears to set forth general principles. It is unclear under what authority the Commission is setting forth the requirements in subsection (2), which are applied to a party requesting the utility’s services.
- 25-6.080:** Please review and advise whether updates are needed to this rule, which has not been amended since 1980.
- 25-6.081:** Please review and advise as to the necessity of this rule entitled, “Construction Practices,” in light of the definition of a rule pursuant to section 120.52(16), Florida Statutes. It is unclear how this rule’s language specifically implements the cited statute, as it appears to contain undefined goals without setting forth definitions, standards, or how compliance is to be determined. *See* § 120.52(8)(d), Fla. Stat. (2018).
- 25-6.082:** It is unclear from the rule text if there is a specific period in which the records referenced in subsections (1) and (2) of this rule must be maintained. Please advise if there is another relevant record retention rule applicable in this scenario. If not, it appears that this information should be included in the rule to ensure comprehension and compliance.
- 25-6.094:** Law Implemented
Please review and advise whether section 366.04(2)(d), Florida Statutes, is properly cited as a law implemented by this rule.
- 25-6.095:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Ms. Samantha Cibula
March 12, 2019
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- 25-6.101:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1976.
- 25-6.102:** Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.
- 25-6.104:** It is unclear from this rule how the Commission would determine whether an estimated charge is “reasonable” for the situation set forth in this rule. *See* § 120.52(8)(d), Fla. Stat. (2018). Please review and advise.

Should you have any questions, please do not hesitate to contact me. Otherwise, I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Jamie L. Jackson". The signature is written in a cursive, flowing style.

Jamie L. Jackson
Chief Attorney

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STATE OF FLORIDA



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

Public Service Commission

June 28, 2019

Jaimie Jackson
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

via e-mail

Re: Existing Rule Review, Public Service Commission Rules 25-6.047, .048, .054, .061, .062, .074, .075, .076, .080, .081, .082, .094, .095, .101, .102, and .104

Dear Ms. Jackson:

This letter responds to your March 12, 2019, letter concerning the above-referenced rules. Your comments for each of these rules are shown, followed by Commission staff's response.

25-6.047: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Response: Commission staff has reviewed this rule and determined that this rule may be repealed. Staff anticipates that rulemaking will be initiated sometime in 2019 or early 2020.

25-6.048: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Response: Commission staff has reviewed this rule and determined that no amendments are needed.

25-6.054: Law implemented- Please review and advise whether section 366.05(3), Florida Statutes, should be cited as a law implemented by this rule.

Response: Commission staff has reviewed this rule and determined that section 366.05(3), Florida Statutes, should be cited as an implementing law. In addition, Section 350.127(2), F.S., should be added to the Rulemaking Authority section of this rule. Staff plans to request that the Department of State make these technical changes.

Ms. Jamie Jackson
June 28, 2019

25-6.054(4): It is unclear from the rule text if there is a specific period in which the historical performance records referenced in this subsection must be maintained. Please advise if there is another relevant record retention rule applicable in this scenario. If not, it appears that this information should be included in the rule to ensure comprehension and compliance.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended to address the issue raised in your comments. Staff anticipates that rulemaking will be initiated sometime in 2019 or early 2020.

25-6.061: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Response: In the 2019 Legislative Session, the Legislature enacted section 366.96, F.S., which, if signed by the Governor, will require the Commission to propose new storm protection rules by October 31, 2019. In order to meet the October 31, 2019 date, a notice of development of rulemaking was published in the June 7, 2019, edition of the Florida Administrative Register, setting a rule development workshop for June 25, 2019 concerning the creation of new storm protection rules. The notice of development of rulemaking included Rule 25-6.061 because it might be need to be amended or repealed if new storm protection rules are adopted.

25-6.062: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended. Staff anticipates that rulemaking will be initiated sometime in 2019 or early 2020.

25-6.074: Please review and advise as to the necessity of this rule entitled, "Applicability," in light of the definition of a rule pursuant to section 120.52(16), Florida Statutes.

Response: Commission staff has reviewed this rule and determined that this rule needs to be repealed or amended to delete unnecessary language and to clarify the rule requirements. Staff anticipates that rulemaking will be initiated sometime in 2019 or early 2020.

25-6.075: It is unclear how this rule's language specifically implements section 366.03, Florida Statutes, which is cited as the sole law implemented by its content. Please review and revise as necessary.

Response: Commission staff has reviewed Rule 25-6.075 and determined that this rule needs to be amended to specify the rules to which these definitions apply. In addition, sections 366.04(6); 366.041(1) and (4); 366.04(1), (2)(f), (4); 366.05(1); and 366.06(1), F.S., should be added to the Law Implemented section, and section 350.127(2), F.S., should be added to the Rulemaking Authority section of Rule 25-6.075. Staff anticipates that rulemaking will be initiated sometime in 2019 or 2020.

Ms. Jamie Jackson
June 28, 2019

25-6.076: Please provide the Commission's authority and specific law implemented for the content of this rule. Subsection (1) appears to set forth general principles. It is unclear under what authority the Commission is setting forth the requirements in subsection (2), which are applied to a party requesting the utility's services.

Response:

Section 366.03, F.S., is the implementing statute that provides that each public utility shall furnish to each person applying for service, reasonably sufficient, adequate, and efficient service upon terms as required by the Commission. Section 366.041(1), F.S., gives the Commission the authority to consider the cost of providing service and the value of such service to the public in setting just, reasonable, and compensatory rates and charges. Section 366.05, F.S., gives the Commission the power to prescribe fair and reasonable rates and charges.

Rules 25-6.074 - .082 are the rules for residential electric underground extensions. Section (1) of Rule 25-6.076 contains the specific requirement that when an applicant applies for residential electric underground electric utilities, the utility must use rights of way and easements "that may be obtained without cost or condemnation by the utility." Section (2) requires the applicant for residential electric underground electric utilities to be responsible for furnishing rights of way and easements that are properly prepared for construction "all at no charge to the utility."

The requirements in Sections (1) and (2) implement the Commission's duties under sections 366.03, 366.041(1) and 366.05(1) F.S., to see that rates and charges are fair and reasonable and do not give undue or unreasonable preference or prejudice to any person or locality, by requiring that the extra cost of installing underground utilities does not impose extraordinary charges on the general body of ratepayers who are not obtaining the benefit of underground utilities. This embodies the long-standing Commission policy applied in various contexts that a customer who causes an incremental cost should bear that cost rather than the cost being borne by the entire body of customers. *See* Order No. PSC-15-0363-PAA-EU, issued September 8, 2015, in Docket No. 150142-EU, *In re: Petition by Wiscan, LLC for waiver of Rule 25-6.049(5), F.A.C.*, 2015 WL 5307585 (2015 Fla.P.S.C.).

Staff will request that the Department of State make technical changes to the rule by adding section 350.127(2), F.S., to the Rulemaking Authority section of the rule and by adding sections 366.041(1) and 366.05(1), F.S., to the Implementing Law section of the rule.

25-6.080: Please review and advise whether updates are needed to this rule, which has not been amended since 1980.

Response: Commission staff has reviewed this rule and determined that this rule does not need to be amended.

Ms. Jamie Jackson
June 28, 2019

25-6.081: Please review and advise as to the necessity of this rule entitled, “Construction Practices,” in light of the definition of a rule pursuant to section 120.52(16), Florida Statutes. It is unclear how this rule’s language specifically implements the cited statute, as it appears to contain undefined goals without setting forth definitions, standards, or how compliance is to be determined. See § 120.52(8)(d), Fla. Stat. (2018).

Response: In the 2019 Legislative Session, the Legislature enacted section 366.96, F.S., which, if signed by the Governor, will require the Commission to propose new storm protection rules by October 31, 2019. In order to meet the October 31, 2019 date, a notice of development of rulemaking was published in the June 7, 2019, edition of the Florida Administrative Register, setting a rule development workshop for June 25, 2019 concerning the creation of new storm protection rules. The notice of development of rulemaking included Rule 25-6.081 because it might be need to be amended or repealed if new storm protection rules are adopted. As part of this rulemaking, the issues raised in your comments will be addressed.

25-6.082: It is unclear from the rule text if there is a specific period in which the records referenced in subsections (1) and (2) of this rule must be maintained. Please advise if there is another relevant record retention rule applicable in this scenario. If not, it appears that this information should be included in the rule to ensure comprehension and compliance.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended to address your comments. Staff anticipates that rulemaking will be initiated sometime in 2019 or early 2020.

25-6.094: Law implemented- Please review and advise whether section 366.04(2)(d), Florida Statutes, should be cited as a law implemented by this rule.

Response: Commission staff has reviewed this rule and determined that section 366.04(2)(d), Florida Statutes, should not be cited as an implementing law, and should be deleted. In addition, Section 350.127(2), F.S., should be added to the Rulemaking Authority section of this rule. Staff will submit a letter to the Department of State to make these technical changes to the rule.

25-6.095: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Response: Commission staff has reviewed this rule and determined that no amendments are needed.

25-6.101: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1976.

Response: Commission staff has reviewed this rule and determined that no amendments are needed.

Ms. Jamie Jackson
June 28, 2019

25-6.102: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

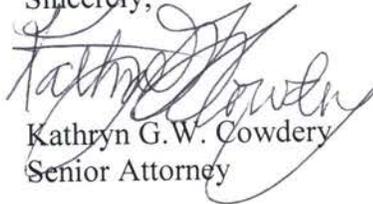
Response: Commission staff has reviewed this rule and determined that no amendments are needed.

25-6.104: It is unclear from the rule how the Commission would determine whether an estimated charge is “reasonable” for the situation set forth in this rule. *See* § 120.52(8)(d), Fla. Stat. (2018). Please review and advise.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended to address your comments. Staff anticipates that rulemaking will be initiated sometime in 2019 or early 2020.

Please contact me at 850-413-6216 if you have any questions or concerns. Thank you.

Sincerely,



Kathryn G. W. Cowdery
Senior Attorney

KGWC
Cc: Commission Clerk