

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-**

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**DATE:** October 27, 2023

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of the General Counsel (Imig, Marquez) *AEH*  
Division of Engineering (Buys, King, Ramos) *TB*

**RE:** Docket No. 20230107-TL – Initiation of show cause proceeding against Consolidated Communications of Florida Company for apparent violation of Rule 25-18.020(6), Florida Administrative Code (F.A.C.).

**AGENDA:** 11/09/23 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:**

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Section 366.04(9)(a), Florida Statutes (F.S.), Jurisdiction of Commission, requires that the Commission regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for communications services providers' poles that have public utility (i.e., investor-owned electric utility) attachments. Rule 25-18.020, Florida Administrative Code (F.A.C.), Pole Safety, Inspection, Maintenance, and Vegetation Management, became effective and applies to communications services providers that own poles, as defined in Section 366.02(5), F.S., with attached public utility electrical overhead facilities. This rule applies to all communications services providers as defined in Section 366.02(3), F.S. This rule does not apply to poles used solely to support wireless communications service facilities or poles with no public utility electrical overhead facilities attached.

Pursuant to Rule 25-18.020(6), F.A.C., a communications services provider that falls under the rule must file an Annual Report detailing the pole inspections and vegetation management activities for the prior year is required to be filed by June 1 of each year. In addition, the Annual Report should contain activities that the communications services provider has planned for the upcoming year. Rule 25-18.020 (7), F.A.C., also requires the Commission to impose upon a non-compliant utility a penalty of \$500 for the first violation, and up to \$5,000 for the fifth violation of the Rule pursuant to Section 366.095, F.S.

Consolidated Communications of Florida Company (Consolidated Communications) is subject to Rule 25-18.020(6), F.A.C., because it is a communications services provider that owns poles as defined in Section 366.02(5), F.S. Florida Power & Light (FPL) and Duke Energy Florida (DEF) have pole attachments to Consolidated Communications' poles. However, Consolidated Communications did not file an Annual Report on June 1, 2023, and thus, is not in compliance with the rule.

To achieve compliance, Commission staff contacted Consolidated Communications by email on June 5, 2023, and June 12, 2023, but Consolidated Communications did not respond (Attachment A). On July 13, 2023, Commission staff sent a letter, by certified mail, to Consolidated Communications requesting the Annual Report be submitted by August 3, 2023 (Attachment B). The certified letter was received on July 25, 2023, and signed for by James Warta (Attachment C). Consolidated Communications did not respond. As a result, Consolidated Communications is not in compliance with Rule 25-18.020(6), F.A.C. at this time.

The Commission have jurisdiction pursuant to 366.04(9), F.S.

## Discussion of Issues

**Issue 1:** Should the Commission order Consolidated Communications to show cause, in writing, within 21 days from the issuance of the order for apparent violation of Rule 25-18.020(6), F.A.C., why it failed to produce the Annual Report by June 1, 2023, as required by the rule, and why it should not be fined \$500 for failure to comply with Rule 25-18.020(6), F.A.C.?

**Recommendation:** Yes. Consolidated Communications should be ordered to show cause, in writing, within 21 days from the issuance of the order for apparent violation of Rule 25-18.020(6), F.A.C., why it failed to produce the Annual Report by June 1, 2023, as required by the rule, and why it should not be fined \$500 for failure to comply with Rule 25-18.020(6), F.A.C. Alternatively, Consolidated Communications may file its Annual Report and include its \$500 payment for the late filing with the Commission Clerk within the 21 day period. If the Commission is in receipt of both the Annual Report and the \$500 payment within the 21 day period, staff recommends that the Commission no longer pursue its Show Cause proceedings. (Imig, Marquez, Buys)

### Staff Analysis:

#### Law

Section 366.04(9)(a), F.S., requires the Commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for communications services providers' poles. Rule 25-18.020(6), F.A.C., requires communication services providers that own poles with attached public utility electrical overhead facilities to file an annual report each year by June 1. The Rule requires the Commission to impose upon a non-compliant utility a penalty of \$500 for the first violation, and up to \$5,000 for the fifth violation of the Rule.

#### Analysis

Consolidated Communications is a communications services provider as defined by Section 366.02(3), F.S. Consolidated Communications owns poles as defined by Section 366.02(5), F.S. Public utilities, FPL and DEF, have pole attachments, as defined by Section 366.02(6), F.S., on Consolidated Communications owned poles. Rule 25-18.020, F.A.C. applies to all communications services providers that own poles. Consolidated Communications meets the requirements of Rule 25-18.020, F.A.C.

Rule 25-18.020(6) F.A.C., requires each communications services provider to file an Annual Report with the Commission Clerk by June 1 of each year. Consolidated Communications failed to file the report by June 1, 2023. To achieve compliance, Commission staff subsequently contacted Consolidated Communications three times and received no response, and the company never filed its Annual Report with the Commission. Consolidated Communications has failed to comply with the requirements of 25-18.020(6), F.A.C.

Compliance with Rule 25-18.020 F.A.C. is not optional. Moreover, staff believes compliance with the rule is important because it involves the safety of communications services providers' poles. Consolidated Communications' failure to comply will result in a penalty assessed by the

Commission of \$500 under Section 366.095, F.S., and Rule 25-18.020(7), F.A.C., as this is its first violation of Rule 25-18.020(6), F.A.C. Alternatively, Consolidated Communications may late file its Annual Report with a \$500 penalty with the Commission Clerk. If the Commission is in receipt of both the Annual Report and the \$500 payment within the 21 day period, staff recommends that the Commission no longer pursue its Show Cause proceedings.

### **Conclusion**

Staff recommends that the Commission order Consolidated Communications to show cause, in writing, within 21 days from the issuance of the order, why it did not file its Annual Report by June 1, 2023, in violation of Rule 25-18.020(6), F.A.C., and why it should not have be fined \$500 for failure to comply with Rule 25-18.020(6) F.A.C. Alternatively, Consolidated Communications may late file its Annual Report with a \$500 penalty with the Commission Clerk. If the Commission is in receipt of both the Annual Report and the \$500 payment within the 21 day period, staff recommends that the Commission no longer pursue its Show Cause proceedings.

Staff recommends that the order incorporate the following conditions:

1. This Show Cause Order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Consolidated Communications of Florida Company, as respondent.
2. Consolidated Communications shall respond to the Show Cause Order within 21 days of service on the Company, and the response shall reference Docket No. 20230107-TL, Initiation of show cause proceeding against Consolidated Communications of Florida Company for apparent violation of Rule 25-18.020(6), F.A.C.
3. Consolidated Communications has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. Consolidated Communications' response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Consolidated Communications files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the Show Cause Order will constitute an admission of the facts alleged herein, and a waiver of the right to a hearing on this issue.

In the event that Consolidated Communications fails to file a timely response to the Show Cause Order, or fails to provide its Annual Report and \$500 fine, the Company's will be fined \$500, and a final order would be issued.

**Issue 2:** Should this docket be closed?

**Recommendation:** If the Commission orders Consolidated Communications to show cause as to Issue 1, and Consolidated Communications timely responds in writing to the Show Cause Order, this docket should remain open to allow for the appropriate processing of the response. If the Commission orders Consolidated Communications to show cause as to Issue 1, and Consolidated Communications does not timely respond to the Show Cause Order, then the Commission should issue a Final Order, and this docket should remain open until the fine is collected. (Imig, Marquez)

**Staff Analysis:** If the Commission orders Consolidated Communications to show cause as to Issue 1, and Consolidated Communications timely responds in writing to the Show Cause Order, this docket should remain open to allow for the appropriate processing of the response. If the Commission orders Consolidated Communications to show cause as to Issue 1, and Consolidated Communications does not timely respond to the Show Cause Order, then the Commission should issue a Final Order, and this docket should remain open until the fine is collected.

**From:** [Penny Buys](#)  
**To:** "[James.Warta@consolidated.com](#)"; "[Bardsley, Susanne M](#)"; "[ccuster@townes.net](#)"  
**Cc:** [Marissa Ramos](#)  
**Subject:** "Annual Pole Reports" per Rule 25-18.020, FAC  
**Date:** Monday, June 05, 2023 12:00:55 PM

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Good afternoon,

This is a friendly reminder that per Rule 25-18.020(6), F.A.C., each communications service provider, who own poles with public utility electrical overhead facilities attached, is required to file with the Commission an Annual Pole report by June 1. Please file your company's report with the Commission Clerk, <https://secure.floridapsc.com/ClerkOffice/EfilingPublic>. In addition, please email me a copy of your company's report and let me know if you have any questions.

Thank you,

*Penelope Buys*  
*Engineering Specialist*  
*Division of Engineering*  
*Florida Public Service Commission*  
*(850) 413-6518*  
[pbuys@psc.state.fl.us](mailto:pbuys@psc.state.fl.us)

**From:** Penny Buys  
**To:** "James.Warta@consolidated.com"; "Bardsley, Susanne M"; "ccuster@townes.net"  
**Cc:** Marissa Ramos  
**Subject:** RE: "Annual Pole Reports" per Rule 25-18.020, FAC  
**Date:** Monday, June 12, 2023 10:02:36 AM

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Good morning,

This is a second reminder that per Rule 25-18.020(6), F.A.C., each communications service provider, who own poles with public utility electrical overhead facilities attached, is required to file with the Commission an Annual Pole report by June 1. Please file your company's report with the Commission Clerk, <https://secure.floridapsc.com/ClerkOffice/EfilingPublic> and email me a copy as well. If your company does not have IOU's attached to their poles, please let me know.

Additionally, please be mindful of subsection 7 of this Rule which lays out the penalties for non-compliance.

If you have any questions, please don't hesitate to reach out.

Thank you,

*Penelope Buys  
Engineering Specialist  
Division of Engineering  
Florida Public Service Commission  
(850) 413-6518  
pbuys@psc.state.fl.us*

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**From:** Penny Buys  
**Sent:** Monday, June 05, 2023 12:01 PM  
**To:** 'James.Warta@consolidated.com' <James.Warta@consolidated.com>; 'Bardsley, Susanne M' <Susanne.Bardsley@windstream.com>; 'ccuster@townes.net' <ccuster@townes.net>  
**Cc:** Marissa Ramos <mramos@psc.state.fl.us>  
**Subject:** "Annual Pole Reports" per Rule 25-18.020, FAC

Good afternoon,

This is a friendly reminder that per Rule 25-18.020(6), F.A.C., each communications service provider, who own poles with public utility electrical overhead facilities attached, is required to file with the Commission an Annual Pole report by June 1. Please file your company's report with the Commission Clerk, <https://secure.floridapsc.com/ClerkOffice/EfilingPublic>. In addition, please email me a copy of your company's report and let me know if you have any questions.

Thank you,

*Penelope Buys  
Engineering Specialist  
Division of Engineering  
Florida Public Service Commission  
(850) 413-6518  
[pbuys@psc.state.fl.us](mailto:pbuys@psc.state.fl.us)*



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ART GRAHAM  
GARY F. CLARK  
MIKE LA ROSA  
GABRIELLA PASSIDOMO

STATE OF FLORIDA



DIVISION OF ENGINEERING  
TOM BALLINGER  
DIRECTOR  
(850) 413-6910

## Public Service Commission

July 13, 2023

Mr. James Warta  
Consolidated Communications of Florida Company  
26 Yarmouth Lane, Suite 100  
Downingtown, PA 19335

**CERTIFIED MAIL**

**Re: Rule 25-18.020, Florida Administrative Code - Pole Safety, Inspection, Maintenance, and Vegetation Management: Annual Report**

Dear Mr. Warta:

On May 1, 2022, Rule 25-18.020, Florida Administrative Code (F.A.C.), became effective and applies to communication services providers that own poles with attached public utility electrical overhead facilities. Pursuant to Rule 25-18.020(6), F.A.C., an Annual Report detailing the pole inspections and vegetation management activities for the prior year is required to be filed by June 1 of each year. In addition, the report should contain activities that are planned the upcoming year. The Commission has not received a report on behalf of Consolidated Communications of Florida Company. This is our third contact attempt regarding this matter. Reminder emails were previously sent on June 5, 2023, and June 12, 2023, requesting that an annual report be filed to ensure compliance.

Compliance with Rule 25-18.020(6), F.A.C., is not optional. Please be aware that the continued failure to comply with Commission regulatory requirements may result in staff initiating a compliance proceeding pursuant to Section 366.095, Florida Statutes and Rule 25-18.020(7), F.A.C. That Rule authorizes the Commission to impose upon a non-compliant utility a penalty of \$500 for the first violation up to \$5,000 for the fifth violation of the Rule. Therefore, please submit Consolidated Communications of Florida Company's Annual Pole Inspection and Vegetation Management Report to the address below by **Thursday, August 3, 2023**.

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
<https://secure.floridapsc.com/ClerkOffice/EfilingPublic>

Should you have any questions, please contact Mrs. Penelope Buys by phone at (850) 413-6518 or email at [pbuys@psc.state.fl.us](mailto:pbuys@psc.state.fl.us).


Sincerely,

*/s/ Penelope D. Buys*

Penelope D. Buys  
Engineering Specialist

PB:pz

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>																
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">                 Mr. James Warta <b>CERTIFIED MAIL</b>                  Consolidated Communications of Florida                  26 Yarmouth Lane, Suite 100                  Downingtown, PA 19335             </div>  <p>9590 9402 6460 0346 0030 15</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                  If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>2. Article Number (Transfer from service label)</p> <p>7020 1290 0000 7279 0985</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery		<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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<p>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>	<p>Domestic Return Receipt</p>																

<p>USPS TRACKING #</p>  <p>9590 9402 6460 0346 0030 15</p>	<p>First-Class Mail                  Postage &amp; Fees Paid                  USPS                  Permit No. G-10</p>
<p>United States                  Postal Service</p>	<p>* Sender: Please print your name, address, and ZIP+4® in this box*</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;">                 FLORIDA PUBLIC SERVICE COMMISSION                  ATTN: PENELOPE BUYS                  (RE: Mr. James Warta, Consolidated)                  2540 SHUMARD OAK BLVD.                  TALLAHASSEE, FL 32399-0850             </div>
