

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-17.0021, F.A.C., Goals for Electric Utilities

DOCKET NO.: 20200181-EU
FILED: April 5, 2023

**THE CLEO INSTITUTE INC.'S REQUEST FOR HEARING
ON PROPOSED AMENDMENTS TO RULE 25-17.0021, F.A.C.,
GOALS FOR ELECTRIC UTILITIES**

Pursuant to Section 120.54(3)(c), Florida Statutes, The CLEO Institute Inc. (the “CLEO Institute” or “CLEO”), by and through its undersigned counsel, respectfully submits this request for a hearing on proposed amendments to Rule 25-17.0021, F.A.C, as set forth in Order PSC-2023-0104-NOR-EU, issued March 15, 2023, and in support thereof, states as follows:

1. On March 7, 2023, at its regularly scheduled Agenda Conference, the Florida Public Service Commission (“Commission”) considered and voted 3-2 to propose revisions to Rule 25-17.0021, F.A.C., as recommended by the Commission’s staff in the above-captioned docket.

2. At the Agenda Conference, CLEO and aligned stakeholders were permitted to each make a 3-minute statement. Thereafter, two Commissioners interacted with staff and utility representatives, with no further participation from CLEO or its aligned stakeholders, who were unable to comment or respond to remarks made by either the Commissioners, the technical staff, or the utility representatives.

3. On March 15, 2023, contemporaneously with its issuance of Order PSC-2023-0104-NOR-EU, the Commission published its Notice of Proposed Rule.¹

¹ Publication in the Florida Administrative Register, Volume 49, Number 51, March 15, 2023, at p. 895

4. Pursuant to Section 120.54(3)(c), Florida Statutes, the Commission “shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration.”

5. Said Section 120.54(3)(c) further provides that the Commission “may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. When a public hearing is held, the agency must ensure that staff are available to explain the agency’s proposal and to respond to questions or comments regarding the rule.”

6. The CLEO Institute has been involved in this proceeding from its beginning, participating in multiple rule development workshops, filing post-hearing written comments, and providing comment at the opening of the Commission’s March 7, 2023, Agenda Conference.² Additionally, The CLEO Institute has been active in encouraging investor-owned utilities to modify and improve their Demand-Side Management practices and programs, resulting in memoranda of understanding with both Duke Energy Florida and Florida Power and Light Company.³ The CLEO Institute’s education and advocacy programs are undertaken on behalf of numerous members throughout the state who are interested in and affected by utility energy efficiency and conservation programs that impact the potential use of carbon emitting resources and the costs of electricity. Thus, CLEO, on behalf of itself and its members, is a person affected by the proposed rule.

² See Document Nos. 02223-2021 (filed 2/16/2021), 12095-2022 (filed 12/16/2022).

³ The CLEO Institute is a signatory to Memoranda of Understanding attached to settlement agreements in both Docket Nos. 20210016 and 20210015. In each instance, the memorandum of understanding requires the utility to undertake some action regarding energy efficiency and conservation programs or to undertake some enhancement of demand-side management capabilities.

7. In accordance with its rights as an “affected person,”⁴ the CLEO Institute, having filed this request within the time required by law,⁵ requests a hearing where it will have an opportunity to present pertinent evidence and argument to the Commissioners.

8. While CLEO appreciates the Commission affording stakeholders an opportunity to provide comment in three informal staff-lead rule development workshops,⁶ it notes that in the multi-year rule development process in which staff have rejected all proposals from non-utility stakeholders, those stakeholders have had no public interaction with the Commissioners, and the Commissioners have had no opportunities other than the March 7, 2023, Agenda Conference to discuss the proposals among one another.

9. Although CLEO and other stakeholders were permitted to make 3-minute opening statements to Commissioners at the March 7, 2023, Agenda Conference, none were afforded an opportunity to interact with Commissioners, to address questions posed by Commissioners, or to respond to statements made by technical staff and by utility representatives.

WHEREFORE, CLEO requests a hearing be held wherein it and other “affected persons” may provide evidence and/or argument relating to the proposed rule, and be allowed to interact with staff, the Commission, and other participating stakeholders.

⁴ Because rule making is a quasi-legislative undertaking, a party seeking a hearing on a proposed rule need only be an “affected person” as opposed to a “substantially affected person” whose rights are being adjudicated. Thus, in rule making proceedings, a party requesting a hearing may be required to prove that its own substantial interests will be affected only when requesting a “draw-out” hearing under Section 120.54(3)(c)2., Florida Statutes, or when protesting a rule. See e.g., Balino v. Dep’t of Health & Rehabilitative Servs., 362 So. 2d 21 (Fla. 1st DCA, 1978); Cortes v. School Board, 425 So. 2d 554, 556 (Fla. 4th DCA, 1982).

⁵ The Commission having published its Notice of Proposed Rule on March 15, 2023, the deadline to request a hearing is April 5, 2023 (within 21 days after the date of publication of the notice of intended agency action).

⁶ A Notice of Rule Development for Rule 25-17.0021, F.A.C., appeared in the November 24, 2020, edition of the Florida Administrative Register, Vol. 46, No. 229. Staff rule development workshops were held on January 14, 2021, May 18, 2021, and on November 30, 2022.

RESPECTFULLY SUBMITTED this 5th day of April, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been furnished by electronic mail on this 5th day of April, 2023, to the following:

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