

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 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Cibula)
Division of Competitive Markets & Enforcement (Kennedy)
Division of Economic Regulation (Hewitt)

RE: Docket No. 050591-TP – Proposed amendment of Rule 25-4.036, F.A.C., Design and Construction of Plant, and Rule 25-24.515, F.A.C., Pay Telephone Service.

AGENDA: 10/18/05 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050591.RCM.DOC

Case Background

As currently adopted, Rule 25-4.036, Florida Administrative Code (F.A.C.), Design and Construction of Plant, and Rule 25-24.515, F.A.C., Pay Telephone Service, require incumbent local exchange telecommunications companies (LECs) and pay telephone service companies (PATS), to design, construct, install, maintain, and operate their plants and facilities in accordance with the requirements of the National Electrical Code (NFPA 70-2002). Shared tenant service providers (STS), alternative access vendors (AAV), and competitive local exchange telecommunications companies (CLEC) must also comply with the requirements of the National Electrical Code (NFPA 70-2002) as Rule 25-4.036 is incorporated into Rule 25-24.585, F.A.C., Rules Incorporated; Rule 25-24.740, F.A.C., AAV Service Provider Operations; Rules Incorporated; and Rule 25-24.835, F.A.C., Rules Incorporated.

Docket No. 050591-TP

Date: October 6, 2005

Approximately every three years, the National Fire Protection Association (NFPA) revises the National Electrical Code and issues a new edition. As indicated above, Rules 25-4.036 and 25-24.515 currently reference the 2002 edition of the National Electrical Code. The most current version of the National Electrical Code, however, is the 2005 edition.

This rulemaking was initiated to amend Rules 25-4.036 and 25-24.515 to reflect the 2005 edition of the National Electrical Code (NFPA 70-2005). A Notice of Rule Development appeared in the May 20, 2005, edition of the Florida Administrative Weekly. The notice gave interested persons an opportunity to request a workshop to discuss the rule amendments. No workshop was requested, and none was held.

This recommendation addresses whether the Commission should amend the rules to reflect the most current edition of the National Electrical Code (NFPA 70-2005). The Commission has rulemaking authority pursuant to Sections 120.54, 350.127, 364.01, 364.03, 364.337, 364.3375, and 364.339, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-4.036, Florida Administrative Code, Design and Construction of Plant, and Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, to reflect the most current edition of the National Electrical Code, NFPA 70-2005?

Recommendation: Yes. Rule 25-4.036 and Rule 25-24.515 should be amended as set forth in Attachment A of this recommendation. (Cibula, Kennedy, Hewitt)

Staff Analysis: Pursuant to Sections 364.01, 364.03, 364.337, 364.3375, and 364.339, Florida Statutes, the Commission has the authority to ensure that the plants and facilities of telecommunications companies are designed and constructed in accordance with certain national standards. Currently, Rule 25-4.036 and Rule 25-24.515 require that the plant and facilities of LECs and PATS must be designed, constructed, installed, maintained, and operated in accordance with the provisions of the 2002 edition of the National Electrical Code. The most current edition of the National Electrical Code, however, is the 2005 edition. Staff is recommending that Rule 25-4.036 and Rule 25-24.515 be amended to reflect the 2005 edition of the National Electrical Code.

As stated in the case background, CLECs, STS, and AAVs will also be affected by the proposed rule amendments as Rule 25-4.036 is incorporated by reference into the rules governing these entities. Thus, the proposed amendments will benefit all Commission regulated telecommunications companies, and ultimately the public, by ensuring that the companies' systems are designed, constructed, installed, maintained, and operated in accordance with standards that minimize the chances of harm to persons and damage to properties.

It appears to staff that there are no monumental changes in the National Electrical Code that would have a dramatic impact on the companies. To illustrate, staff notes that the type of wire used for some installations has changed from the 2002 version due to different fire-rating requirements. Another example of a change from the 2002 version is that criteria have been added addressing communications cabling passing through air ducts. Staff received very few inquiries regarding the Notice of Rule Development and, as stated in the case background, no workshop on the proposed amendment to the rules was requested or held.

STATEMENT OF ESTIMATED REGULATORY COSTS

The Florida Administrative Procedure Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). The SERC prepared by staff, found at Attachment B, states that there should be no significant impact on the Commission, the industry, or small businesses, cities, or counties as a result of the rule amendments. The SERC also states that the Commission would benefit from the rule amendments as the rules will reflect the most current version of the National Electrical Code.

Based on the foregoing, staff recommends that the Commission propose the amendment of Rule 25-4.036 and Rule 25-24.515 as set forth in Attachment A of this recommendation.

Docket No. 050591-TP

Date: October 6, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Cibula)

Staff Analysis: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.