

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: December 3, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Cowdery, Cibula)
Division of Economic Regulation (Kummer, Thompson)

vc SMC. [Signature] [Signature] [Signature]

RE: Docket No. 090512-EI – Petition to initiate rulemaking by Stephen B. Goldenberg to amend Rule 25-6.105, F.A.C., Refusal or Discontinuance of Service by Utility.

AGENDA: 12/15/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Klement

CRITICAL DATES: 12/16/09 (30 day statutory deadline)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090512.RCM.DOC

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09 DEC -3 AM 11:13
COMMISSION
CLERK

Case Background

On November 16, 2009, Mr. Stephen B. Goldenberg (Petitioner) filed a Petition to Initiate Rulemaking with the Commission. Petitioner seeks to have the Commission amend Rule 25-6.105, Florida Administrative Code, such that notice of discontinuance of service is delivered to not only the electric customer but also to the premises where service is to be discontinued.

Pursuant to section 120.54(7), Florida Statutes, the Commission has 30 days following the date of filing the petition to initiate rulemaking proceedings, otherwise comply with the requested action, or deny the petition with a statement of its reasons for the denial. The 30 day period ends on December 16, 2009.

DOCUMENT NUMBER-DATE

11722 DEC-3 09

FPSC-COMMISSION CLERK

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This recommendation addresses whether the Commission should grant Petitioner's rulemaking petition. The Commission has jurisdiction pursuant to sections 120.54 and 366.05(1), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant the petition to initiate rulemaking to amend Rule 25-6.105, Florida Administrative Code?

Recommendation: Yes, the Commission should grant the petition to initiate rulemaking. (Cowdery, Kummer, Thompson)

Staff Analysis: Mr. Goldberg requests that the Commission initiate rulemaking to amend Rule 25-6.105. Rule 25-6.105 is appended to this recommendation as Attachment A.

Rule 25-6.105(5) states that, with certain listed exceptions, if the utility will discontinue service, the utility shall notify the customer at least 5 working days prior to discontinuance that service will cease unless the deficiency is corrected in compliance with the utility's regulations, resolved through mutual agreement, or successfully disputed by the customer. Rule 25-6.105(5)(g) provides that each utility may refuse or discontinue service for non-payment of bills or non-compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for services, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice.

Petitioner requests a revision of Rule 25-6.105(5) and (5)(g) to add that notice must be delivered not only to "the customer" but also to the premises where such discontinuance of service is to happen. Petitioner's rationale is that the customer may not live at the service premises and it is imperative that the parties actually occupying the premises where the service is being provided be given some notice prior to having service discontinued. Petitioner states that no one should find that his/her/their electric service is discontinued without being given any notice thereof.

Pursuant to section 366.05(1), Florida Statutes, the Commission has authority to implement the rule amendment proposed by Petitioner. In addition, the Commission does not currently have a rule which specifically addresses the concerns raised by Petitioner. Therefore, staff recommends that the Commission grant the petition to initiate rulemaking.

Staff notes that a Commission decision to grant the petition to initiate rulemaking merely begins the rulemaking process. It does not mean that the Commission has proposed or adopted any rule amendment. If the Commission follows staff's recommendation, then a Notice of Rule Development will be issued and a staff workshop will be held. This will allow all interested persons to participate and discuss the potential rule amendment and will give staff an opportunity to collect information that is needed to evaluate the proposed changes. Staff will return at a later date with a recommendation for the Commission on whether or not to propose adoption of an amendment to Rule 25-6.105.

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Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open to proceed with the rulemaking process. (Cowdery)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should remain open to proceed with the rulemaking process.

1 **25-6.105 Refusal or Discontinuance of Service by Utility.**

2 (1) Until adequate facilities can be provided, each utility may refuse to serve an
3 applicant if, in the best judgment of the utility, it does not have adequate facilities to render the
4 service applied for.

5 (2) Each utility may refuse to serve any person whose service requirements or
6 equipment is of a character that is likely to affect unfavorably service to other customers.

7 (3) Each utility may refuse to render any service other than that character of service
8 which is normally furnished, unless such service is readily available.

9 (4) Each utility shall not be required to furnish service under conditions requiring
10 operation in parallel with generating equipment connected to the customer's system if, in the
11 opinion of the utility, such operation is hazardous or may interfere with its own operations or
12 service to other customers or with service furnished by others. Each utility may specify
13 requirements as to connection and operation as a condition of rendering service under such
14 circumstances.

15 (5) If the utility refuses service for any reason specified in this subsection, the utility
16 shall notify the applicant for service as soon as practicable, pursuant to subsection (7), of the
17 reason for refusal of service. If the utility will discontinue service, the utility shall notify the
18 customer at least 5 working days prior to discontinuance, that service will cease unless the
19 deficiency is corrected in compliance with the utility's regulations, resolved through mutual
20 agreement, or successfully disputed by the customer. The 5-day notice provision does not
21 apply to paragraph (h), (i), or (j). In all instances involving refusal or discontinuance of service
22 the utility shall advise in its notice that persons dissatisfied with the utility's decision to refuse
23 or discontinue service may register their complaint with the utility's customer relations
24 personnel and to the Florida Public Service Commission at 1(800) 342-3552, which is a toll
25 free number. As applicable, each utility may refuse or discontinue service under the following

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 conditions:

2 (a) For non-compliance with or violation of any state or municipal law or regulation
3 governing electric service.

4 (b) For failure or refusal of the customer to correct any deficiencies or defects in his
5 wiring or equipment which are reported to him by the utility.

6 (c) For the use of energy for any other property or purpose than that described in the
7 application.

8 (d) For failure or refusal to provide adequate space for the meter and service
9 equipment of the utility.

10 (e) For failure or refusal to provide the utility with a deposit to insure payment of bills
11 in accordance with the utility's regulation, provided that written notice, separate and apart
12 from any bill for service, be given the customer.

13 (f) For neglect or refusal to provide safe and reasonable access to the utility for the
14 purpose of reading meters or inspection and maintenance of equipment owned by the utility,
15 provided that written notice, separate and apart from any bill for service, be given the
16 customer.

17 (g) For non-payment of bills or non-compliance with the utility's rules and regulations,
18 and only after there has been a diligent attempt to have the customer comply, including at least
19 5 working days' written notice to the customer, such notice being separate and apart from any
20 bill for service, provided that those customers who so desire may designate a third party in the
21 company's service area to receive a copy of such delinquent notice. For purposes of this
22 subsection, "working day" means any day on which the utility's business office is open and
23 the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for

24 (h) Without notice in the event of a condition known to the utility to be hazardous.

25 (i) Without notice in the event of tampering with meters or other facilities furnished

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1 and owned by the utility.

2 (j) Without notice in the event of unauthorized or fraudulent use of service. Whenever
3 service is discontinued for fraudulent use of service, the utility may, before restoring service,
4 require the customer to make at his own expense all changes in facilities or equipment
5 necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in
6 revenue resulting from such fraudulent use.

7 (6) Service shall be restored when cause for discontinuance has been satisfactorily
8 adjusted.

9 (7) In case of refusal to establish service, or whenever service is intentionally
10 discontinued by the utility for other than routine maintenance, the utility shall notify the
11 applicant or customer in writing of the reason for such refusal or discontinuance.

12 (8) The following shall not constitute sufficient cause for refusal or discontinuance of
13 service to an applicant or customer:

14 (a) Delinquency in payment for service by a previous occupant of the premises unless
15 the current applicant or customer occupied the premises at the time the delinquency occurred
16 and the previous customer continues to occupy the premises and such previous customer shall
17 benefit from such service.

18 (b) Failure to pay for merchandise purchased from the utility.

19 (c) Failure to pay for a service rendered by the utility which is non-regulated.

20 (d) Failure to pay for a different type of utility service, such as gas or water.

21 (e) Failure to pay for a different class of service.

22 (f) Failure to pay the bill of another customer as guarantor thereof.

23 (g) Failure to pay a dishonored check service charge imposed by the utility.

24 (9) When service has been discontinued for proper cause, each utility may charge a
25 reasonable fee to defray the cost of restoring service, provided such fee is included in its filed

1 tariff.

2 (10) No utility shall discontinue service to any non-commercial customer between
3 12:00 noon on a Friday and 8:00 a.m. the following Monday or between 12:00 noon on the
4 day preceding a holiday and 8:00 a.m. the next working day. Provided, however, this
5 prohibition shall not apply when:

6 (a) Discontinuance is requested by or agreed to by the customer; or

7 (b) A hazardous condition exists; or

8 (c) Meters or other utility owned facilities have been tampered with or

9 (d) Service is being obtained fraudulently or is being used for unlawful purposes.

10 Holiday as used in this subsection shall mean New Year's Day, Memorial Day, July 4, Labor
11 Day, Thanksgiving Day and Christmas Day.

12 (11) Each utility shall submit, as a tariff item, a procedure for discontinuance of
13 service when that service is medically essential.

14 Specific Authority 366.05 FS. Law Implemented 366.03, 366.04(2)(c), (5), 366.041(1),
15 366.05(1), 366.06(1) FS. History—New 2-25-76, Amended 2-3-77, 2-6-79, 4-13-80, 11-26-80,
16 1-1-91, 1-7-93.

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18 Rule 6-105.kc.doc

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