

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:** August 17, 2018

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

**FROM:** Office of the General Counsel (Gervasi) *RG/S.M.L.*  
Division of Economics (Draper, Merryday) *ESD*  
Division of Accounting and Finance (Mouring, Smith) *SM* *ALM*

**RE:** Docket No. 20180143-EI – Petition to initiate rulemaking to revise and amend portions of Rule 25-6.0426, F.A.C., by Florida Power & Light Company, Gulf Power Company, and Tampa Electric Company.

**AGENDA:** 08/29/18 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** 09/06/18 (30-day statutory deadline waived to this date)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On July 30, 2018, Florida Power & Light Company (“FPL”), Gulf Power Company (“GPC”), and Tampa Electric Company (“TECO”) (collectively referred to herein as “Petitioners”) jointly filed a Petition to Initiate Rulemaking (“Petition”) to revise and amend portions of Rule 25-6.0426, Florida Administrative Code (“F.A.C.”), Recovery of Economic Development Expenses. The stated purpose of the Petition is for the Commission to initiate rulemaking to amend the rule to “increase the effective cap on recoverable economic development expenses on a phased basis through 2023, in order to provide a more appropriate and representative cap for larger utilities and to counter the effects of inflation since the cap was originally set.”

Pursuant to Section 120.54(7)(a), Florida Statutes (F.S.), any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a

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rule. That section requires the Commission to either initiate rulemaking proceedings or deny the petition with a written statement of its reasons for the denial not later than 30 calendar days following the date of filing the petition. This recommendation addresses whether the Commission should grant the Petition in order to collect information and evaluate whether the Commission should propose to adopt the Petitioners' suggested rule amendments at a later date. It does not address the merits of the Petitioners' suggested rule amendments. The Commission has jurisdiction pursuant to Sections 120.54(7), 288.035, and 350.127(2), F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant the Petition to Initiate Rulemaking to amend Rule 25-6.0426, F.A.C.?

**Recommendation:** Yes, the Commission should grant the Petition to Initiate Rulemaking to amend Rule 25-6.0426, F.A.C., in order to collect information and evaluate whether the Commission should propose to adopt the Petitioners' suggested rule amendments at a later date. (Gervasi, Merryday, Smith)

**Staff Analysis:** Pursuant to Section 288.035(1), F.S., the Commission "may authorize public utilities to recover reasonable economic development expenses." Section 288.035(2), F.S., limits such expenses to expenditures for: (a) operational assistance, including the participation in trade shows and prospecting missions with state and local entities; (b) assisting the state and local governments in the design of strategic plans for economic development activities; and (c) marketing and research services, including assisting local governments in marketing specific sites for business and industry development or recruitment, and assisting local governments in responding to inquiries from business and industry concerning the development of specific sites. Section 288.035(3), F.S., requires the Commission to "adopt rules for the recovery of economic development expenses by public utilities, including the sharing of expenses by shareholders."

Rule 25-6.0426(3), F.A.C., limits each utility's recoverable economic development expenses to the greater of: (a) the amount approved in each utility's last rate case escalated for customer growth; or (b) 95 percent of the expenses incurred for the reporting period not to exceed the lesser of 0.15 percent of gross annual revenues or \$3 million.

### Petition to Initiate Rulemaking

The Petitioners state that although Rule 25-6.0426, F.A.C., is intended to promote economic development in Florida, it has come to be unduly restrictive in its current form. The \$3 million expense cap set forth in Rule 25-6.0426(3), F.A.C., has not changed since 1995 and, according to the Petitioners, for a large utility such as FPL "this expense cap has had the practical consequence of limiting FPL's recoverable economic development expenses to a flat \$3.0 million per year in each and every year since the Rule's inception over 20 years ago."

The Petitioners further state that due to the flat \$3 million cap contained in the rule, FPL's economic development expenses have been limited to approximately 0.00267 percent of gross annual revenues, as opposed to 0.15 percent. The Petitioners claim that this severely limits, and will increasingly limit, FPL's ability to promote economic development in the state. The rule currently limits the recoverability of TECO's economic expenses to approximately \$2.9 million; however, the Petitioners assert that as the company grows and revenues increase, the rule in its current form will prevent the limit from keeping pace with the company's growth. For GPC, the Petitioners state that the limitation of recoverable economic development expenses contained in the rule effectively imposes a cap of approximately \$2.3 million. According to the Petitioners, recognizing the effect of inflation, the impact of their recoverable economic development expenses has been steadily eroded since the establishment of the rule, and the buying power of the effective \$3 million expense cap has decreased by approximately 65 percent.

The Petitioners suggest that Rule 25-6.0426(3)(b), F.A.C., should be revised to change the annual cap to the greater of 0.15 percent of gross annual revenues, rather than the lesser of 0.15 percent of gross annual revenues, or \$3 million. For FPL, this would immediately increase the eligible recoverable economic development expense to approximately \$16 million per year and also would allow that cap to increase over time, to the extent that annual gross revenues increase to reflect the effects of inflation. For TECO and GPC, this change would increase eligible recoverable economic expense to \$3 million.

The Petitioners further suggest that the current limitation to 0.15 percent of gross annual revenues should gradually increase to 0.175 percent in 2020; to 0.2 percent in 2021; to 0.225 percent in 2022; and to 0.25 percent in 2023 and beyond. These changes would gradually increase the level of funding for promotion of economic development by 2023 to approximately \$26.7 million for FPL, \$4.9 million for TECO, and \$3.8 million for GPC. The Petitioners assert that the rule changes would likewise increase the funding available for economic development activities of all Florida electric investor-owned utilities. The Petitioners state that expenditures for the promotion of economic development have produced substantial benefits for the state that far exceed the level of investment in the form of job creation, which contributes new direct capital investment to the Florida economy. The Petitioners state that modification of the rule will encourage utilities to intensify efforts to promote new investment, which in turn will expand Florida's economic base and foster economic growth. A copy of the Petitioners' suggested amendments to Rule 25-6.0426, F.A.C., is appended to this recommendation as Attachment A.

According to the Petitioners, the suggested rule changes are not projected to have any adverse impacts to their general body of ratepayers. The Petitioners contend that customers will see no rate increase as a result of the suggested rule changes between rate cases and that the revenue increases from new and expanding businesses will allow for long-term fixed costs to be spread over a larger customer base, thereby benefiting existing customers. The Petitioners further contend that even in the unlikely event that increased promotion of economic development fails to result in additional electric revenues, increasing economic development costs to the requested levels would result only in very small and gradual rate increases by 2023. According to the Petitioners, a typical 1,000-kWh monthly residential bill would increase by \$0.24 for FPL, by \$0.14 for GPC, and by \$0.10 for TECO.

### **Statutory Authority and Conclusion**

Pursuant to Section 120.54(7)(a), F.S., any person regulated by an agency or having a substantial interest in an agency rule may petition an agency to amend a rule. The petition is required to specify the proposed rule and action requested. The Petition to Initiate Rulemaking meets those requirements. Further, pursuant to Section 288.035, F.S., the Commission has the authority to implement the rule amendments suggested by the Petitioners, if it chooses to do so as a result of the rulemaking process. Therefore, staff recommends that the Commission grant the Petition.

Staff notes that a Commission decision to grant the Petition merely begins the rulemaking process. It does not mean that the Commission has proposed or adopted any rule amendment. If the Commission approves staff's recommendation, then a Notice of Rule Development will be issued and a staff rule development workshop will be held. This will allow all interested persons to participate and discuss the potential rule amendment. It will also 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 to propose amendments to Rule 25-6.0426, F.A.C.

**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. (Gervasi)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1 and initiates rulemaking on Rule 25-6.0426, F.A.C., this docket should remain open to proceed with the rulemaking process, which would include a staff rule development workshop.

1       **25-6.0426 Recovery of Economic Development Expenses.**

2       (1) Pursuant to Section 288.035, F.S., the Commission shall allow a public utility to  
3 recover reasonable economic development expenses subject to the limitations contained in  
4 subsections (3) and (4), provided that such expenses are prudently incurred and are consistent  
5 with the criteria established in subsection (7).

6       (2) Definitions.

7       (a) “Economic Development” means those activities designed to improve the quality of  
8 life for all Floridians by building an economy characterized by higher personal income, better  
9 employment opportunities, and improved business access to domestic and international  
10 markets.

11       (b) “Economic development organization” means a state, local, or regional public or  
12 private entity within Florida that engages in economic development activities, such as city and  
13 county economic development organizations, chambers of commerce, Enterprise Florida, the  
14 Florida Economic Development Council, and World Trade Councils.

15       (c) “Trade show” means an exhibition at which companies, organizations, communities, or  
16 states advertise or display their products or services, in which economic development  
17 organizations attend or participate to identify potential industrial prospects, to provide  
18 information about the locational advantages of Florida and its communities, or to promote the  
19 goods and services of Florida companies.

20       (d) “Prospecting mission” means a series of meetings with potential industrial prospects at  
21 their business locations with the objectives of convincing the prospect that Florida is a good  
22 place to do business and offers unique opportunities for that particular business, and  
23 encouraging the prospect to commit to a visit to Florida if a locational search is pending or in  
24 progress.

25       (e) “Strategic plan” means a long-range guide for the economic development of a  
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existing law.

1 community or state that focuses on broad priority issues, is growth-oriented, is concerned with  
2 fundamental change, and is designed to develop and capitalize on new opportunities.

3 (f) "Recruitment" means active efforts to encourage specific companies to expand or begin  
4 operations within Florida.

5 (3) Prior to each utility's next rate change enumerated in subsection (6), the amounts  
6 reported for surveillance reports and earnings review calculations shall be limited to the  
7 greater of:

8 (a) The amount approved in each utility's last rate case escalated for customer growth  
9 since that time, or

10 (b) 95 percent of the expenses incurred for the reporting period so long as such does not  
11 exceed the greater ~~lesser~~ of 0.15 percent of gross annual revenues or \$3 million. Beginning on  
12 January 1, 2020, the amounts reported for surveillance reports and earnings review  
13 calculations shall not exceed the greater of \$3 million or 95 percent of the following  
14 percentages of gross annual revenues: January 1, 2020 – 0.175 percent; January 1, 2021 – 0.2  
15 percent; January 1, 2022 – 0.225 percent; and January 1, 2023 and beyond – 0.25 percent.

16 (4) At the time of each utility's next rate case and for subsequent rate proceedings  
17 enumerated in subsection (6) the Commission will determine the level of sharing of prudent  
18 economic development costs and the future treatment of these expenses for surveillance  
19 purposes.

20 (5) Each utility shall report its total economic development expenses as a separate line  
21 item on its income statement schedules filed with the earnings surveillance report required by  
22 Rule 25-6.1352, F.A.C. Each utility shall make a line item adjustment on its income statement  
23 schedule to remove the appropriate percentage of economic development expenses incurred  
24 for the reported period consistent with subsections (3) and (4).

25 (6) Requests for changes relating to recovery of economic development expenses shall be  
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existing law.

1 considered only in the context of a full revenue requirements rate case or in a limited scope  
2 proceeding for the individual utility.

3 (7) All financial support for economic development activities given by public utilities to  
4 state and local governments and organizations shall be pursuant to a prior written agreement.

5 Recoverable economic development expenses shall be limited to the following:

6 (a) Expenditures for operational assistance, including:

7 1. Planning, attending, and participating in trade shows;

8 2. Planning, conducting, and participating in prospecting missions designed to encourage  
9 the location in Florida of domestic and foreign companies;

10 3. Providing financial support to economic development organizations to assist with their  
11 economic development operations;

12 4. Providing financial support to economic development programs or initiatives identified  
13 or developed by Enterprise Florida, Inc.;

14 5. Participating in joint economic development efforts, including public-private  
15 partnerships, consortia, and multi-county regional initiatives;

16 6. Participating in downtown revitalization and rural community developmental programs.

17 7. Supporting state and local efforts to promote small and minority-owned business  
18 development efforts; and

19 8. Supporting state and local efforts to promote business retention and expansion activities.

20 (b) Expenditures for assisting state and local governments in the design of strategic plans  
21 for economic development activities, including:

22 1. Making financial contributions to state and local governments to assist strategic  
23 planning efforts; and

24 2. Providing technical assistance, data, computer programming, and financial support to  
25 state and local governments in the design and maintenance of information systems used in

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1 strategic planning activities.

2 (c) Expenditures of marketing and research services, including;

3 1. Assisting state and local governments and economic development organizations in  
4 marketing specific sites for business and industry development or recruitment;

5 2. Assisting state and local governments and economic development organizations in  
6 responding to inquiries from business and industry concerning the development of specific  
7 sites within the utility's service area;

8 3. Providing technical assistance, data, computer programming, and financial support to  
9 state and local governments in the design and maintenance of geographic information systems,  
10 computer networks, and other systems used in marketing and research activities;

11 4. Providing financial support to economic development organizations to assist with their  
12 research and marketing activities;

13 5. Sponsoring publications, conducting direct mail campaigns, and providing advertising  
14 support for state and local economic development efforts;

15 6. Participating in cooperative marketing efforts with economic development  
16 organizations;

17 7. Helping state and local businesses identify suppliers, markets, and sources of financial  
18 assistance;

19 8. Helping economic development organizations identify specific industries and  
20 companies for targeting and recruitment;

21 9. Working with economic development organizations to identify businesses in need of  
22 help for expansion, going out of business, or at risk of leaving the area;

23 10. Providing site and facility selection assistance, including lists of commercial or  
24 industrial sites, computer databases, toll-free telephone numbers, maps, photographs, videos,  
25 and other activities in cooperation with economic development organizations; and

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1        11. Supporting state and local efforts to promote exports of goods and services, and other  
2 international business activities.  
3 *Rulemaking Authority 288.035(3), 350.127(2) FS. Law Implemented 288.035 FS. History–*  
4 *New 7-17-95, Amended 6-2-98, 9-25-00.*

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