

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Proposed adoption of Rule 25-6.030, FAC, Storm Protection Plan and Rule 25-6.031, FAC, Storm Protection Plan Cost Recovery Clause etc.

DOCKET No. 20190131

FILED: October 29, 2019

**MOTION FOR CONTINUANCE AND  
TO ESTABLISH A REASONABLE SCHEDULE FOR RULE HEARING**

Pursuant to section 120.54(3)(c), Florida Statutes (2019), and Rule 28-106.210, Florida Administrative Code (“F.A.C.”), the Citizens of the State of Florida (“Citizens”), through the Office of Public Counsel (“OPC”), file this request to continue the hearing scheduled for November 5, 2019. In support of this request, the Citizens state as follows:

The hearing proposed on November 5, 2019, the notice of which was not published in the Florida Administrative Register (FAR) until October 29, 2019, will not allow the OPC an adequate opportunity to protect the interests of the customers of the utilities.

On October 3, 2019, at its regularly scheduled agenda meeting, the Florida Public Service Commission (“Commission”) considered and proposed the above-styled rules.

On October 7, 2019, by Order No. PSC-2019-0403-NOR-EU, the Commission issued its Notice of Rulemaking related to Rules 25-60.030 and 25-60.031 in accordance with Section 120.54(3)(a), Florida Statutes (2019). The Notice of Proposed Rule was published in the FAR on the same day.

On October 25, 2019, OPC filed a petition for a hearing, providing objection to these rules to the extent they exceed the statutory authority granted by the Legislature in section 366.96, Florida Statutes (2019), or are otherwise contrary to the public interests.

On October 29, 2019, the Commission published a notice of meeting in the Florida Administrative Register (FAR). The notice showed the requested public hearing on “November 5, 2019, at the Agenda Conference that is scheduled to begin at 10:00 am.

This notice was published with inadequate information. The notice, referencing only the rule numbers and titles, contains information showing that the rule hearing will commence at an uncertain time after the conclusion of the unrelated and previously scheduled Commission meeting. The notice further states that:

This is a rule hearing at which the Commissioners of the Florida Public Service Commission will decide whether to make changes to the proposed rules as requested by the Office of Public Counsel or any other affected persons requesting a hearing.

There is nothing in the notice to inform the public as to what statutes are being implemented, what versions of the rules will be considered, or what changes are proposed. Further, no notice is given as to what witness(es) the Commission intends to provide pursuant to Section 120.54(3)(c)1., Fla. Stat. The notice provides no information about what is expected from participants in the hearing including members of the public who may want to travel to Tallahassee to participate in the rule hearing.

More important, the notice was published within the bare minimum amount of time required by Rules 25-22.001 and 28-102.001, F.A.C., which in a proceeding as complicated and far-reaching as the present one does not provide an adequate opportunity to protect the interests of the approximately 9 million customers of the Investor Owned Utilities (IOUs) in Florida.

This minimum timeframe for noticing a rule hearing is presumably intended for use in the most non-objectionable and non-controversial proceedings. The rules under consideration here are most definitely *not* non-objectionable and non-controversial. FPL's customers alone, could see \$3 billion dollars in higher annual rates over the next ten years.<sup>1</sup> In a proceeding like the present one such a time frame is unreasonable and very well may present a lack of due process.

In Section 366.96(11), Fla. Stat., the Legislature directed the Commission to "propose" rules implementing the statute by October 31, 2019. As noted above, the Commission proposed the rules on October 7, 2019, thereby satisfying the statutory mandate. The urgency of taking this action at the last scheduled agenda conference before the statutory deadline was reasonable. However, rushing to hold a rule hearing on what is effectively 4 business days' notice will be inadequate to protect the interests of the customers who will experience the massive bill impacts the rules will allow. The OPC requests that the Commission establish a time frame that allows affected persons a real opportunity to present all of their objections and concerns to the Commissioners, including essential facts required to adequately protect the customers' interests. The continuance requested herein will also facilitate the consideration of a separate proceeding under the provisions of Section 120.569 and 120.57, Fla Stat. and will allow discovery, testimony and cross-examination and fact finding essential to establishing the storm protection planSPP minimum requirements.

At the October 3, 2019 Agenda Conference where this rule proposal was first considered and voted on by the Commission, the OPC raised a very select number of the most severe

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<sup>1</sup> FPL has publicly stated that it intends to funnel between \$30 – 35 billion dollars in costs through the clause to be established in Rule 25-6.031, which would yield an increased annual bill impact on a levelized basis approaching \$3 billion by year 10 with a cumulative outlay by customers over that same 10 year period of approximately \$16 billion.

objections and errors in the proposed Storm Protection Plan (SPP) rules especially for the Commission to consider. This list was not exhaustive by any means and does not represent the full scope of customer-adverse hostile provisions that the Commission adopted in the rule. All of these concerns will need to be addressed in a hearing just from the OPC's standpoint. The OPC issues do not cover concerns raised by that other customer representatives have raised or which various affected governmental entities.

By way of example, one of many elements of the OPC's objections to the rules (especially proposed Rule 25-6.030) is the group of connected fact-dependent issues related to the process for developing and executing undergrounding plans in terms of the discrete nature of the projects to be included in the SPP filings, the interrelationship of those projects to existing projects contained in legally binding commitments to the Commission through the Storm Hardening Plans (SHP) filed with and approved by the Commission in July 2019 and the accrual of Allowance for Funds Used During Construction (AFUDC) on such projects. To this end, the OPC is serving an initial round of discovery (including corporate representative depositions and interrogatories and Requests for Production of Documents). For this reason, the OPC also requests that the Commission continue the hearing.

WHEREFORE, pursuant to Rule 28-106.210, Florida Administrative Code, the OPC requests that the Commission continue the hearing currently scheduled for November 5, 2019, and further requests that the Commission establish a hearing schedule that will accommodate the conduct of discovery to establish facts essential to the final adoption of rules and adequately protect the interests of the 9 million IOU customers who will be forced to pay under the proposed rules. The Commission is required to lawfully implement the letter and intent of Section 366.96, Fla. Stat., and which protect the interests of the 9 million IOU customers who should not be subjected

to overpaying for what will amount to billions of dollars for essential storm protection measures. The Commission cannot meet its obligation with a rushed hearing that provides no opportunity for fact development.

Respectfully submitted,

s/J.R. Kelly  
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**CERTIFICATE OF SERVICE**  
**Docket No. 20190131**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 29<sup>th</sup> day of October, 2019, to the following:

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*s/J.R. Kelly* \_\_\_\_\_

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