

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a temporary waiver of application of Rule 25-6.100, F.A.C., by Duke Energy Florida, LLC.

DOCKET NO. 20180188-EI  
ORDER NO. PSC-2018-0530-PAA-EI  
ISSUED: November 8, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD J. POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION ORDER  
GRANTING DUKE ENERGY FLORIDA, LLC's  
PETITION FOR A TEMPORARY WAIVER OF RULE 25-6.100, F.A.C.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

I. Background

On October 16, 2018, Duke Energy Florida, LLC (DEF) filed a petition pursuant to Section 120.542, Florida Statutes (F.S.), requesting a temporary waiver of Rule 25-6.100, F.A.C., which sets forth customer billing requirements. Pursuant to the rule, utilities are required to render monthly bills. DEF is requesting that it be granted a temporary waiver from the requirement of Rule 25-6.100, F.A.C., that DEF render monthly bills to its customers in Bay, Gulf, Franklin, and Wakulla Counties until completion of its restoration efforts in response to Hurricane Michael.

Pursuant to Section 120.542(6), F.S., notice of the petition was published in the October 18, 2018 edition of the Florida Administrative Register, Volume 44, Number 204. No comments were received on the petition. We have jurisdiction pursuant to Sections 120.542, 366.03, 366.04, 366.05, 366.051, 366.06, and 366.8260, F.S.

II. DEF's Petition for Rule Waiver

DEF is requesting that it be granted a temporary waiver from the requirement of Rule 25-6.100, F.A.C., that DEF render monthly bills to its customers in Bay, Gulf, Franklin, and Wakulla Counties until completion of restoration efforts in response to Hurricane Michael. DEF states that compliance with Rule 25-6.100, F.A.C., necessitates good physical access to the residences of DEF customers. DEF states that the residual effects of Hurricane Michael have made roads in Bay, Gulf, Franklin, and Wakulla Counties impassible due to flooding and large quantities of debris. DEF states that as a consequence, the U.S. Postal Service does not have safe physical access to customer residences in these counties and, thus, cannot deliver bills to these customers. In addition, DEF states that even those residences accessible by normal means are not serviceable by mail because many mailboxes were either destroyed or made non-functional by the hurricane. DEF asserts that due to circumstances beyond its control, it is unable to satisfy the requirements of Rule 25-6.100, F.A.C.

DEF states that unless it is granted a temporary waiver from Rule 25-6.100, F.A.C., it will suffer a substantial hardship because DEF will be subject to our scrutiny and possible imposition of penalties. It further asserts that the literal application of the rule will violate the principles of fairness because the present circumstances caused by Hurricane Michael affect DEF in a significantly different manner than other utilities not impacted by the hurricane.

DEF states that the overall purpose of the statutory provisions implemented by Rule 25-6.100, F.A.C., is to ensure fair, reasonable, and timely charges are made by utilities to their customers. DEF asserts that a temporary waiver of the rule will serve this purpose because “[d]uring the short period of time that DEF suspends bill rendering, DEF will not impose any interest or penalty on customer bills” and “will provide necessary payment arrangement plans to any of its customers that need additional time to pay their bills.” As soon as restoration is complete in their county, DEF will provide the suspended bill information to customers, so customers will receive all information related to usage. Thus, DEF states that customers will not suffer any negative effect from the waiver.

DEF further states that there will be no adverse impact on service to DEF customers and that the temporary rule waiver will enable these DEF customers “to focus the limited resources they would otherwise have to dedicate to resolving their utility bills to more pressing issues, such as returning to work and school and to making repairs to their homes.” The company states that it will notify the affected areas of the temporary suspensions of customer bills via text messages and updates to its website, and it will issue a news release.

As mentioned above, DEF will resume rendering bills to these customers when DEF's restoration efforts within the county are complete. It states that it is unable to give a firm date at when it plans to resume billing due to the nature of the extensive damage to these counties, but it will inform our staff when it resumes its normal billing operations in the affected counties.

III. Legal Standard for Rule Waivers

Section 120.542(2), F.S., authorizes us to grant waivers from our rules “when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate the principles of fairness.” “Substantial hardship” is defined as “a demonstrated economic, technological, legal, or other type of hardship” to the person requesting the variance. A violation of the “principles of fairness” occurs when “the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.”

IV. Conclusion

We find that DEF has met the requirements of Section 120.542, F.S. DEF has demonstrated that the purpose of the underlying statutes will be achieved by other means and that application of Rule 25-6.100, F.A.C., would place a substantial hardship on DEF and violate the principles of fairness. Therefore, we grant DEF’s petition for a temporary waiver of the requirement in Rule 25-6.100, F.A.C., that DEF render monthly bills to its customers in Bay, Gulf, Franklin, and Wakulla Counties until DEF completes its restoration efforts in response to Hurricane Michael.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Duke Energy Florida, LLC’s request for temporary waiver of Rule 25-6.100, Florida Administrative Code, is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is received to the proposed agency action, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of November, 2018.



CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KGWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 29, 2018.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.