

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 23, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Cowdery) *S.M.C. 10*
Division of Economics (Doherty, Draper) *AD ESD JSH*

RE: Docket No. 20180188-EI – Petition for a temporary waiver of application of Rule 25-6.100, F.A.C., by Duke Energy Florida, LLC.

AGENDA: 10/30/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: Pursuant to Section 120.542, Florida Statutes, the Commission must grant or deny the petition by January 14, 2019.

SPECIAL INSTRUCTIONS: None

Case 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, Florida Administrative Code (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.

Docket No. 20180188-EI

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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. As of the date of the filing of this recommendation, no comments have been submitted on the petition.

Staff's recommendation addresses whether DEF's petition should be granted. The Commission has jurisdiction pursuant to Sections 120.542, 366.03, 366.04, 366.05, 366.051, 366.06, and 366.8260, F.S.

Discussion of Issues

Issue 1: Should the Commission grant DEF's petition for a temporary waiver of Rule 25-6.100, F.A.C., Customer Billings?

Recommendation: Yes, the Commission should 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. (Cowdery, Doherty, Draper)

Staff Analysis: 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.

Legal Standard for Rule Waivers

Section 120.542(2), F.S., authorizes the Commission to grant waivers from its 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."

DEF's Petition

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 scrutiny and possible imposition of penalties by the Commission. It further asserts that the literal application of the rule will violate the principles of fairness because the present circumstances caused by Hurricane Michael affects 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 Commission staff when it resumes its normal billing operations in the affected counties.

Conclusion

Staff believes 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, staff recommends that the Commission 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.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed. (Cowdery)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed.