

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: November 28, 2018, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Kathryn G. W. Cowder, *KWC* Office of the General Counsel
RE: Docket No. 20180000-OT

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2018 NOV 28 PM 3:28
COMMISSION
CLERK

COMMISSIONERS:
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ANDREW GILES FAY

STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 28, 2018

Jaimie Jackson
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

via e-mail

Re: Existing Rule Review, Public Service Commission Rules 25-6.0141, .0151, .020, .021, .033, .036, .037, .038, .039, .040, .0440, and .0441

Dear Ms. Jackson:

This letter responds to your August 17, 2018, letter concerning the above-referenced rules. Your comment for each of these rules is shown, followed by Commission staff's response.

25-6.0141(9): It appears that this subsection is no longer necessary as the date triggers have passed.

Response: Commission staff agrees that this subsection is no longer necessary. Staff anticipates that rulemaking will be initiated some time in 2019 to delete this section.

25-6.0151(7): This subsection incorporates a form dated 2/95. Please advise whether this version is the version that is currently utilized by the Commission. If subsequent revisions have been made, please amend this rule to update the version incorporated by reference.

Response: The 2/95 form referenced in the rule is the same one that is currently used by the Commission. No subsequent substantive revisions have been made to this form, and the rule therefore does not need to be amended.

25-6.020: Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.

Response: Commission staff has reviewed this rule and concludes that no updates or amendments are needed.

25-6.021: Please see the comment above for rule 25-6.020.

Response: Commission staff has reviewed this rule and concludes that no updates or amendments are needed.

25-6.033(3): This subsection requires filings to be made in conformance with a quoted order of the Commission. As this rule has not been amended since adoption in 1969, please advise whether revisions are necessary. Material that meets the definition of a rule in section 120.52(16), Florida Statutes, should be specifically incorporated by reference in rule. See § 120.54(1)(i), Fla. Stat. (2018), rule 1-1.013, F.A.C.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended to address your comments. Staff anticipates that rulemaking will be initiated sometime in 2019.

25-6.036: Law Implemented

Please review whether sections 366.055 and .08, Florida Statutes, are properly cited as laws implemented by the content of this rule.

This rule requires a utility to set its own inspection frequency based on experience and “accepted good practice.” How does the Commission define the quoted language? See § 120.52(8)(d), Fla. Stat. (2018). Additionally, as this rule has not been amended since adoption in 1969, please advise whether further revisions are necessary.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended to address the second sentence of the rule, as noted in your comments. Commission staff anticipates that rulemaking will be initiated sometime in 2019. As part of this rulemaking, Commission staff will examine the statutory sections included in the Law Implemented section of this rule to determine if any changes need to be made.

25-6.037: It is unclear how this rule’s language specifically implements the cited statutes as it appears to contain undefined goals (e.g. safety, proper condition) without setting forth definitions, standards, or how compliance is to be determined. See § 120.52(8)(d), Fla. Stat. (2018). Additionally, as this rule has not been amended since adoption in 1969, please advise whether further revisions are necessary.

Response: Commission staff has reviewed this rule and determined that this rule needs to be amended to address the issues raised in your comments. Commission staff anticipates that rulemaking will be initiated sometime in 2019. As part of this rulemaking, Commission staff will consider whether further revisions to the rule are necessary.

25-6.038: Please see the comment above for rule 25-6.020 (Please review and advise whether updates are needed to this rule, which has not been amended since adoption in 1969.)

Response: Commission staff has reviewed this rule and determined that no amendments are needed. However, staff plans to make a technical change to the rule to add section 366.04(6) to the Law Implemented section.

25-6.039: Please see the comment above for rule 25-6.020

Response: Commission staff has reviewed this rule and determined that no amendments are needed. However, staff plans to make a technical change to the rule to delete section 366.05(1) and add section 366.04(6) to the Law Implemented section.

25-6.040: Please see the comment above for rule 25-6.020

Response: Commission staff has reviewed this rule and determined that no amendments are needed. However, staff plans to make a technical change to the rule to delete section 366.05(1) and add section 366.04(6) to the Law Implemented section.

25-6.0440(2): Regarding approval for territorial agreements, this subsection sets forth that the Commission "may consider, but not be limited to" certain enumerated factors. The use of the quoted phrase implies that there are additional expectations or standards that could be enforced that are not enumerated. See § 120.52(8)(d), Fla. Stat. (2018). Please review and advise.

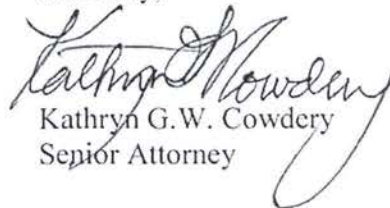
Response: Commission staff has reviewed this rule and believes that your concern may be met by amending the rule to replace the phrase "may consider, but not be limited to" with "will consider." Commission staff anticipates that rulemaking will be initiated sometime in 2019.

25-6.0441(2): Please see the comment above for rule 25-6.0440(2).

Response: Commission staff has reviewed this rule and believes that your concern may be met by amending the rule to replace the phrase "may consider, but not be limited to" with "will consider." Commission staff anticipates that rulemaking will be initiated sometime in 2019.

Please contact me at 850-413-6216 if you have any questions or concerns. Thank you.

Sincerely,


Kathryn G.W. Cowdery
Senior Attorney

KGWC
Enclosure

Cc: Commission Clerk

Julie Phillips

From: Kathryn Cowdery
Sent: Wednesday, November 28, 2018 3:04 PM
To: Jackson, Jamie (JACKSON.JAMIE@leg.state.fl.us)
Cc: Julie Phillips
Subject: Public Service Commission existing rule review (Ch. 25-6)
Attachments: 2018_11_28_14_55_13.pdf

Please see attached. Thank you.