

STATE OF FLORIDA

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



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

Public Service Commission

June 10, 2020

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

VIA E-MAIL

2020 JUN 10 AM 11:11
RECEIVED-FPSC
COMMISSION

Re: Docket No. 20200094-EU; Rules 25-6.0440, Territorial Agreements for Electric Utilities, and 25-6.0441, Territorial Disputes for Electric Utilities, F.A.C.

Dear Mr. Plante:

Enclosed are the following materials concerning the above referenced proposed rules:

1. A copy of the proposed rules.
2. There are no materials incorporated by reference into these rules.
3. A copy of the F.A.R. notice.
4. A statement of facts and circumstances justifying the proposed rules.
5. A federal standards statement.
6. Statement of Estimated Regulatory Costs for the rules.

Mr. Kenneth J. Plante
June 10, 2020
Page 2

If there are any questions with respect to these rules, please do not hesitate to contact me at 413-6216 or at kcowdery@psc.state.fl.us.

Sincerely,

/s/ Kathryn G.W. Cowdery
Kathryn G.W. Cowdery
Senior Attorney

Enclosures
cc: Office of Commission Clerk

1 **25-6.0440 Territorial Agreements for Electric Utilities.**

2 (1) All territorial agreements between electric utilities must ~~shall~~ be submitted to the
3 Commission for approval. Each territorial agreement must ~~shall~~ clearly identify the
4 geographical area to be served by each utility. The submission must ~~shall~~ include:

- 5 (a) A map and a written description of the area,
- 6 (b) The terms and conditions pertaining to implementation of the agreement, and any other
7 terms and conditions pertaining to the agreement,
- 8 (c) The number and class of customers to be transferred,
- 9 (d) Assurance that the affected customers have been contacted and the difference in rates
10 explained,
- 11 (e) Information with respect to the degree of acceptance by affected customers, i.e., the
12 number in favor of and those opposed to the transfer, and
- 13 (f) An official Florida Department of Transportation (DOT) General Highway County map
14 for each affected county depicting boundary lines established by the territorial agreement.

15 Upon approval of the agreement, any modification, changes, or corrections to this agreement
16 must be approved by this Commission.

17 (2) Standards for Approval. In approving territorial agreements, the Commission may
18 consider, ~~but not be limited to consideration of:~~

- 19 (a) The reasonableness of the purchase price of any facilities being transferred;
- 20 (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease
21 in the reliability of electrical service to the existing or future ratepayers of any utility party to
22 the agreement; ~~and~~
- 23 (c) The reasonable likelihood that the agreement will eliminate existing or potential
24 uneconomic duplication of facilities; and
- 25 (d) Any other factor the Commission finds relevant in reaching a determination that the

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1 territorial agreement is in the public interest.

2 (3) The Commission may require additional relevant information from the parties of the
3 agreement, if so warranted.

4 *Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2), (4), (5),*
5 *366.05(7) FS. History—New 3-4-90, Amended 2-13-96, _____.*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1 **25-6.0441 Territorial Disputes for Electric Utilities.**

2 (1) A territorial dispute proceeding may be initiated by a petition from an electric utility
3 requesting the Commission to resolve the dispute. Additionally the Commission may, on its
4 own motion, identify the existence of a dispute and order the affected parties to participate in a
5 proceeding to resolve it. Each utility ~~that which~~ is a party to a territorial dispute must shall
6 provide a map and a written description of the disputed area along with the conditions that
7 caused the dispute. Each utility party must shall also provide a description of the existing and
8 planned load to be served in the area of dispute and a description of the type, additional cost,
9 and reliability of electrical facilities and other utility services to be provided within the
10 disputed area.

11 (2) In resolving territorial disputes, the Commission may consider, in addition to the
12 factors listed in section 366.04(2)(e), F.S.: ~~but not be limited to consideration of:~~

13 (a) The capability of each utility to provide reliable electric service within the disputed
14 area with its existing facilities and the extent to which additional facilities are needed;

15 (b) The nature of the disputed area, including population and the type of utilities seeking to
16 serve it, the and degree of urbanization of the area and its proximity to other urban areas, and
17 the present and reasonably foreseeable future requirements of the area for other utility
18 services;

19 (c) The cost of each utility to provide distribution and subtransmission facilities to the
20 disputed area presently and in the future; ~~and~~

21 (d) Any other factor the Commission finds relevant in reaching a determination that the
22 resolution of the territorial dispute is in the public interest; and

23 (e) (d) If all other factors are substantially equal, customer ~~Customer~~ preference ~~if all other~~
24 ~~factors are substantially equal.~~

25 (3) The Commission may require additional relevant information from the parties of the

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 | dispute, if so warranted.

2 | (4) Upon resolution of each territorial dispute, the parties to the dispute must ~~shall~~ submit
3 | to the Commission an official Florida Department of Transportation (DOT) General Highway
4 | County map for each affected county depicting boundary lines established by the resolution of
5 | the territorial dispute.

6 | *Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2), (4), (5),*
7 | *366.05(7) FS. History—New 3-4-90, Amended 2-13-96, _____.*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NOS: RULE TITLES:

25-6.0440 Territorial Agreements for Electric Utilities

25-6.0441 Territorial Disputes for Electric Utilities

PURPOSE AND EFFECT: The purpose and effect of the rule amends is to identify the specific factors to be considered by the Commission in approving territorial agreements and resolving territorial disputes. The rule amendments also update and clarify the rules.

Docket No.20200094-EU

SUMMARY: These rules list factors the Commission may consider in ruling on territorial agreements and territorial disputes. Rule language in both rules that allowed the Commission to consider factors "not limited to" the listed factors has been deleted and replaced with language allowing the Commission to consider any other factor relevant in reaching a determination that the resolution of the territorial dispute or the approval of the territorial agreement is in the public interest. Amendments were also made to update and clarify the rules.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency. The SERC examined the factors required by Section 120.541(2), FS, and concluded that the rule amendments will not have an adverse impact on economic growth, business competitiveness, or small business and that there would likely be minimal transactional costs to the individual and entities, including government entities, required to comply with the rule.

The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), 366.05(1) FS.

LAW IMPLEMENTED: 366.04(2), (4), (5), 366.05(7) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, kcowdery@psc.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS: [TYPE AND STRIKE VERSION]

25-6.0440 Territorial Agreements for Electric Utilities.

(1) All territorial agreements between electric utilities ~~must shall~~ be submitted to the Commission for approval. Each territorial agreement ~~must shall~~ clearly identify the geographical area to be served by each utility. The submission ~~must shall~~ include:

(a) through (f) No change.

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, ~~but not be limited to consideration of:~~

(a) No change.

(b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; ~~and~~

(c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic

duplication of facilities; and.

(d) Any other factor the Commission finds relevant in reaching a determination that the territorial agreement is in the public interest.

(3) No change.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2), (4), (5), 366.05(7) FS. History—New 3-4-90, Amended 2-13-96, _____.

25-6.0441 Territorial Disputes for Electric Utilities.

(1) A territorial dispute proceeding may be initiated by a petition from an electric utility requesting the Commission to resolve the dispute. Additionally, the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. Each utility that which is a party to a territorial dispute must shall provide a map and a written description of the disputed area along with the conditions that caused the dispute. Each utility party must shall also provide a description of the existing and planned load to be served in the area of dispute and a description of the type, additional cost, and reliability of electrical facilities and other utility services to be provided within the disputed area.

(2) In resolving territorial disputes, the Commission may consider, in addition to the factors listed in section 366.04(2)(e), F.S.: ~~but not be limited to consideration of:~~

(a) No change.

(b) The nature of the disputed area, including population and the type of utilities seeking to serve it, the ~~and~~ degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;

(c) The cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; ~~and~~

(d) Any other factor the Commission finds relevant in reaching a determination that the resolution of the territorial dispute is in the public interest; and

~~(e)(d) If all other factors are substantially equal, customer~~ Customer preference ~~if all other factors are substantially equal.~~

(3) No change.

(4) Upon resolution of each territorial dispute, the parties to the dispute must shall submit to the Commission an official Florida Department of Transportation (DOT) General Highway County map for each affected county depicting boundary lines established by the resolution of the territorial dispute.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2), (4), (5), 366.05(7) FS. History—New 3-4-90, Amended 2-13-96, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathryn G. W. Cowdery

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 9, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 45, Number 224, November 18, 2019.

Rules 25-6.0440 and 25-6.0441,
F.A.C.
Docket No. 20200094-EU

STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE

Rules 25-6.0440 and 25-6.0441, F.A.C., implement the Commission's authority under section 366.04(2), Fla. Stat., to approve territorial agreements and resolve territorial disputes for electric utilities. In response to a concern raised by staff of the Joint Administrative Procedures Committee, the Commission has eliminated rule language stating that the Commission's review in these matters was "not limited to" a listing of certain factors. The rules were amended to provide that the Commission may consider any other factor the Commission finds relevant in reaching a determination that the resolution of the territorial dispute or the approval of the territorial agreement is in the public interest. The rules were also amended to update and clarify the rules.

STATEMENT ON FEDERAL STANDARDS

There are no federal standards for these rules.

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: February 27, 2020

TO: Andrew King, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst II, Division of Economics *S.K.G.*

RE: **Statement of Estimated Regulatory Costs** for Recommended Rule 25-6.0440, Florida Administrative Code (F.A.C.), Territorial Agreements for Electric Utilities and Rule 25-6.0441, F.A.C., Territorial Disputes for Electric Utilities.

Commission staff is recommending revisions to Rule 25-6.0440, F.A.C., Territorial Agreements for Electric Utilities and Rule 25-6.0441, F.A.C., Territorial Disputes for Electric Utilities. The purpose of the recommended rule revisions is to address concerns presented by the Joint Administrative Procedures Committee (JAPC) which stated that subsection (2) of Rule 25-6.0440, F.A.C., and subsection (2) of Rule 25-6.0441, F.A.C., as currently written, 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.

The recommended modifications to Rule 25-6.0440, F.A.C., and Rule 25-6.0441, F.A.C., addresses JAPC's concerns regarding subsection (2) of each rule. The modification replaces this language and incorporates a new subsection (2)(d) to each rule that clarifies that the Commission may consider other relevant factors in determining if the territorial agreement is in the public interest or if the resolution to the territorial dispute is in the public interest. This clarifying language will not require any additional incremental costs to individuals or entities.

The attached Statement of Estimated Regulatory Costs (SERC) addresses the economic impacts and considerations required pursuant to Section 120.541, Florida Statutes (F.S.). The SERC analysis indicates that the recommended rule revisions will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. The recommended rule revisions would not potentially have adverse impacts on small businesses, would have no implementation cost to the Commission or other state and local government entities, and would have no impact on small cities or counties.

No regulatory alternatives were submitted pursuant to Section 120.541(1)(g), F.S. The SERC concludes that none of the impacts/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e), F.S., will be exceeded as a result of the recommended rule revisions.

cc: SERC File

**FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-6.0440 and 25-6.0441, F.A.C.**

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes No

Productivity Yes No

Innovation Yes No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: Chapter 366.04(2)(d) and (e) gives the Commission authority to approve and to resolve territorial agreements and territorial disputes between rural electric cooperatives, municipal electric utilities and other electric utilities under its jurisdiction. The recommended modifications to Rule 25-6.0440, F.A.C., and Rule 25-6.0441, F.A.C., addresses JAPC's concerns in subsection (2) of each rule that currently state the Commission may consider, "but not be limited to consideration of:". The modification replaces this language and incorporates a new subsection (2)(d) to each rule that clarifies that the Commission may consider other relevant factors in determining if the territorial agreement is in the public interest or if the resolution to the territorial dispute is in the public interest. This clarifying language will not require any additional incremental costs to individuals or entities.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

The number of entities required to comply with this rule would be the five investor-owned electric utilities, 34 municipal electric providers, and 17 cooperative providers.

(2) A general description of the types of individuals likely to be affected by the rule.

Types of individuals to be affected by the rule would be the customers of the five investor-owned electric utilities, 34 municipal electric providers, and 17 cooperative providers. Customers may be affected when service territories are amended and customers get transferred from one utility to another.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule.

[120.541(2)(d), F.S.]

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation. The recommended rule revision clarifies the standards for approval which states that the Commission may consider any other relevant factor provided to the Commission by the utility when reaching a determination about the territorial agreement or dispute.
- Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities:
[120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5

million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
 - Adopted in its entirety.
 - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

Julie Phillips

From: Jackson, Jamie <JACKSON.JAMIE@leg.state.fl.us>
Sent: Wednesday, June 10, 2020 10:09 AM
To: Kathryn Cowdery
Cc: Julie Phillips
Subject: Re: Proposed Rules 25-6.0440 and 25-6.0441F.A.C.

Hello Kathryn,

I am in receipt of the proposed rule materials for these 25-6 rules published in today's FAR. Thank you.

Sincerely,
Jamie

From: Kathryn Cowdery <kcowdery@PSC.STATE.FL.US>
Sent: Wednesday, June 10, 2020 10:05 AM
To: Jackson, Jamie
Cc: Julie Phillips
Subject: Proposed Rules 25-6.0440 and 25-6.0441F.A.C.

Dear Ms. Jackson:

Please confirm by Reply All e-mail your receipt of the attached information required by Section 120.54(3)(a)4, F.S., for proposed Rules 25-6.0440 and 25-6.0441, F.A.C.

Thank you.

Kathryn Cowdery
Senior Attorney
Florida Public Service Commission