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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200186-EU

Proposed repeal of Rule 25-6.047,  
FAC, Constant Current Standards;  
Rule 25-6.081, FAC, Construction  
Practices; and Rule 25-6.082, FAC,  
Records and Reports, and amendment  
of Rule 25-6.054, FAC, Laboratory  
Standards; Rule 25-6.074, FAC,  
Applicability; and Rule 25-6.104,  
FAC, Unauthorized Use of Energy.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 2

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

DATE: Tuesday, September 1, 2020

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
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## 1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. Item No. 2. Ms.  
3 Helton, would you please introduce the item?

4 MS. HELTON: Yes, sir.

5 Good morning, Mr. Chairman and Commissioners.

6 Item No. 2 concerns six electric utility rules  
7 that staff reviewed in response to comments from  
8 the Joint Administrative Procedures Committee. As  
9 a result of this review, staff is recommending that  
10 three rules that relate to constant current  
11 standards, construction practices and records and  
12 reports pertaining to residential electric  
13 underground extensions be repealed as obsolete and  
14 unnecessary.

15 In addition, staff is recommending that three  
16 rules relating to laboratory standards,  
17 requirements for extensions of electric  
18 distribution lines and unauthorized use of energy  
19 be amended to add specificity to requirements, and  
20 to delete obsolete and unnecessary language.

21 Staff recommends that the Commission certify  
22 the three draft amended rules as minor violation  
23 rules.

24 We have some folks available on the line to  
25 answer questions. Beth Keating with Florida Public

1 Utilities Company, Malcolm Means with TECO, Ken  
2 Rubin with Florida Power & Light and Gulf Power,  
3 Matt Bernier with Duke, and staff is also available  
4 to answer questions on the line.

5 CHAIRMAN CLARK: Thank you, Ms. Helton.  
6 Commissioners, do you have any questions?

7 Commissioner Brown, you are recognized.

8 COMMISSIONER BROWN: Thank you, Mr. Chairman.  
9 So I just want to focus on the construction  
10 practices rule and rule 25-6.081 on page four of  
11 the recommendation.

12 Staff is recommending the repealing of this,  
13 but there is some important language in here in  
14 this rule, and keeping cost of construction  
15 undergrounding facilities as low as possible, as  
16 well as encouraging the joint use of trenches by  
17 utilities to the extent possible.

18 Ms. Cowdery, I think you are on the phone,  
19 could you clarify whether that particular language  
20 is in any of our other rules.

21 MS. COWDERY: Yes, Commissioner. This is  
22 Kathryn Cowdery.

23 The language that is being recommended for  
24 repeal is not specifically in other rules as it is  
25 stated there. The problem with the language that

1 we've got in that 1971 construction practices rule  
2 is they sort of were aspirational goals. So the  
3 problem with that is that there is undefined goals,  
4 and they don't set forth definition standards or  
5 how compliance is to be met, and that is -- that is  
6 why we are recommending that to be repealed.

7 However, what we believe is that this rule is sort  
8 of superseded by other rules that we rely on that  
9 require specific cost information, that the --  
10 excuse me -- that the -- that staff reviews, and  
11 for this reason, it's obsolete and does not really  
12 meet the definition of a rule under the current 120  
13 standards.

14 COMMISSIONER BROWN: I appreciate the  
15 explanation. And, you know, we did just pass the  
16 storm protection rule last year, and I know there  
17 is not language in there, but I do want to make  
18 sure that utilities are encouraged to continue to  
19 strive for getting the lowest cost possible when  
20 they -- when that rule -- when that rule develops  
21 and as they pursue more undergrounding facilities,  
22 is there a way that we can struck the language to  
23 achieve that policy?

24 MS. COWDERY: I would say generally, you know,  
25 a policy statement is not what you have in a rule.

1 The rule is supposed to have -- it, you know,  
2 includes any form which specifically -- where you  
3 have information that is specifically required, or  
4 imposes requirements.

5 The problem with a policy is it's not specific  
6 enough for the Commission to say whether or not you  
7 have met that policy. Policies of the Commission  
8 can be, you know, expressed as -- as part of  
9 reviewing applications or in orders; but as far as  
10 putting that specific language in a rule form,  
11 it -- it needs to have a specific requirement. For  
12 instance, you know, we've got rules that address  
13 rights-of-ways and easements. We've got a rule  
14 that addresses installation of underground  
15 distribution systems within new under -- new  
16 subdivisions, and those rules require specific  
17 information. And then the review of that  
18 language -- of that information is what is used to  
19 effectuate the policy of having the lowest cost.

20 So I guess the answer is, no, you can't put  
21 specific -- at least the policy language that shows  
22 up in 25-6.081, the way that is written is not --  
23 is not something that we can translate into a rule  
24 form. It's more of the, you know, the good  
25 management of the utility and the -- the policies

1 we like to see.

2 COMMISSIONER BROWN: So really, from what I  
3 understand then, because JAPC needs specific  
4 criteria, and that language is more policy driven,  
5 the Commission needs to develop that policy through  
6 probably case law as we review these -- these  
7 dockets.

8 MS. COWDERY: Yes, Commissioner.

9 COMMISSIONER BROWN: Okay. Thank you.

10 CHAIRMAN CLARK: Thank you, Commissioner  
11 Brown.

12 Any other Commissioner have any questions?  
13 Commissioner Fay.

14 COMMISSIONER FAY: Thank you, Mr. Chairman.

15 And my question is specific to rule 25-6.104,  
16 unauthorized use. It's probably a question for  
17 staff.

18 So the -- the language that we are changing  
19 there speaks to the time period at issue for the  
20 calculation of what that -- that amount would be.  
21 I -- I know we see occasionally cases where  
22 somebody -- the meter has been tampered with, and  
23 depending on how far back it goes, it could be a  
24 very long time period that they are assessed that  
25 difference in what the meter should have been

1 running at and not running at.

2 I am assuming because of smart meters, we  
3 are -- we are going to probably see less and less  
4 of that, and the data will show when there is  
5 deviation. But I think when I -- when I look at  
6 the rule, it's clear that if this is for a time  
7 period issue, it's only applying to the individual  
8 that is at that unit at the time of -- of the  
9 deviated charge. So if somebody moves into a unit  
10 where a meter has been tampered with, that they  
11 would only then be held responsible for the time  
12 period that they live at that unit and not for the  
13 difference that applied before they entered in --  
14 they moved in and activated an account with the  
15 utility. And if that's something that staff can't  
16 answer, maybe a utility could.

17 MS. COWDERY: Commissioner, this is Kathryn  
18 Cowdery. That is my understanding.

19 CHAIRMAN CLARK: Any other staff member have  
20 any --

21 COMMISSIONER FAY: Anybody from the utility  
22 that could clarify that that -- that it would be  
23 limited to that new account?

24 MR. RUBIN: Yes, Commissioner Fay, this is Ken  
25 Rubin for FPL and Gulf.

1           With the exception of the situation where two  
2           people are living in the same apartment, let's say,  
3           and they change the account from one name to the  
4           other, you know, we would look at that as a meter  
5           theft situation. But certainly, if a new, you  
6           know, a new customer unrelated to the customer who  
7           theoretically had tampered with the meter moves  
8           into the unit, we would not go back, you know, in  
9           time to when the prior occupant had tampered with  
10          the meter and try and charge somebody who is  
11          completely unrelated to that prior resident for  
12          that electricity theft.

13                 We obviously have a zero, you know, zero  
14                 tolerance policy for meter theft, for electricity  
15                 theft, but we certainly would not attempt to  
16                 collect from somebody who is completely unrelated.

17                 COMMISSIONER FAY: Perfect. Yeah.

18                 And -- and obviously that there should be zero  
19                 tolerance for theft as it impacts all -- all the  
20                 ratepayers.

21                 Just, I guess, one -- one quick follow-up  
22                 really, and I -- I think there is separations. So  
23                 if somebody has moved in and there is an issue of  
24                 that -- that amount, or that difference, other than  
25                 the -- the roommate example that you were given,



1           they would -- there is essentially the civil  
2           component where -- or I should say the regulatory  
3           component, where they with pay that difference, but  
4           there is also a potential, if there is evidence  
5           that they have hacked the meter, that there is  
6           other enforcement provisions available against  
7           them. And I apologize, Mr. Rubin, I think no good  
8           deed goes unpunished. So -- so you volunteered  
9           that first answer, so I will redirect my follow-up  
10          at you.

11                   MR. RUBIN: Yes, Commissioner Fay.

12           Absolutely, in a situation where meter tampering  
13           and electricity theft is identified and confirmed,  
14           there can certainly be criminal prosecution, as  
15           well as civil actions against that individual.

16                   COMMISSIONER FAY: Okay. Great. Thank you.

17           That's all I needed, Mr. Chair. I am glad  
18           that, you know, JAPC pointed these out to us. I  
19           think they are good cleanup, and hopefully we can  
20           get them out without any changes.

21                   CHAIRMAN CLARK: Thank you, Commissioner Fay.

22           Any other questions?

23           I will entertain a motion.

24                   COMMISSIONER FAY: Mr. Chairman, with that, I  
25           will move staff recommendation on all issues.

1 COMMISSIONER BROWN: Second.

2 CHAIRMAN CLARK: I have a motion and a second.

3 Any discussion?

4 All in favor, say aye.

5 (Chorus of ayes.)

6 CHAIRMAN CLARK: Opposed?

7 COMMISSIONER POLMANN: Aye.

8 CHAIRMAN CLARK: Was that a -- Commissioner

9 Polmann, are you in favor?

10 COMMISSIONER POLMANN: Yes.

11 CHAIRMAN CLARK: Okay. Thank you.

12 COMMISSIONER POLMANN: I said aye.

13 CHAIRMAN CLARK: It was a little bit of a  
14 delay there. I was already take going the no vote  
15 when your yay came through, so I just wanted to  
16 make absolutely certain.

17 All right. Item is approved unanimously.

18 COMMISSIONER POLMANN: Yeah, I think I -- I  
19 spoke at the same time someone else did.

20 CHAIRMAN CLARK: All right. We are all good.

21 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
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same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,  
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attorney or counsel connected with the action, nor am I  
financially interested in the action.

DATED this 11th day of September, 2020.



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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #HH31926  
EXPIRES AUGUST 13, 2024