

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: September 25, 2017
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel *KW*
RE: Docket No. 20170163-OT

Attached are comments submitted in this rulemaking docket by Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, and Gulf Power Company. Please place these documents into the above-named docket. Thank you.

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2017 SEP 25 PM 2:52
COMMISSION
CLERK



John T. Butler
Assistant General Counsel - Regulatory
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 304-5639
(561) 691-7135 (Facsimile)
John.butler@fpl.com

July 12, 2017

Kathryn G.W. Cowdery
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Proposed Repeal of Rule 25-22.039, F.A.C.

Dear Kathryn:

On June 28, 2017, the Commission issued a notice of proposed rule development that, *inter alia*, proposes to repeal Rule 25-22.039, F.A.C., concerning intervention in Commission proceedings (the "Notice"). The Notice states that you are the contact person for this proposed rule development. I am writing on behalf of Florida Power & Light Company ("FPL") to provide you its preliminary comments on the proposed repeal of Rule 25-22.039. While the Notice offers the opportunity to request a rule development workshop, FPL does not believe that one is necessary to address the limited scope of its preliminary comments. Of course, if others request such a workshop, FPL would want to be notified and given the opportunity to participate.

The Notice states that the Commission is proposing to repeal Rule 25-22.039 "in order for the uniform filing rule, Rule 28-106.205, F.A.C., to take its place." For the most part, FPL concurs that the procedure for intervening in administrative proceedings is adequately covered by Rule 28-106.205, F.A.C., and FPL has no objection to that procedure controlling intervention in Commission proceedings. However, there is an important element of Rule 25-22.039 that has no counterpart in Rule 28-106.205: the affirmative declaration that "intervenors take the case as they find it." FPL considers this to be essential for the expeditious and efficient prosecution of complex matters before the Commission. Without such a limitation, Commission proceedings could be unnecessarily convoluted and delayed by intervenors seeking to interject last-minute changes to the substantive issues and/or agreed procedures for their resolution.

FPL is concerned that repealing Rule 25-22.039 in its entirety would make it unclear whether or not future intervenors would be required to take cases as they find them. At a minimum, there would be no simple, clear-cut point of reference for this principle: parties would need to argue Commission precedent from prior decisions where the "take the case as they find it" principle had been invoked, and then argue further over whether or not that precedent remains viable once the rule upon which it was based had been repealed.

Kathryn G.W. Cowdery
July 12, 2017
Page 2

FPL offers two possible solutions address this concern:

- FPL's first choice would be to simplify Rule 25-22.039 as follows, rather than repealing it in its entirety: "Intervention in pending proceedings shall be governed by Rule 28-106.205, F.A.C. Intervenors take the case as they find it." This would be a short, straightforward way to defer to the uniform rule on all elements of intervention that the uniform rule covers, while explicitly preserving the "take the case as they find it" principle.
- Alternatively, if the Commission feels that it must repeal Rule 25-22.039 in its entirety, then the final order approving the repeal should state clearly that future intervenors will continue to take cases as they find them. This approach would provide the necessary guidance on intervenors' status in a case, but the rule-repeal order would not be quite as easy for parties in future proceedings to identify and cite as an appropriately indexed and straightforward rule.

Thank you for this opportunity to comment on the proposed repeal of Rule 25-22.039. Please feel free to contact me if you have any questions or need further information about FPL's position and concerns.

Sincerely,

/s/ John T. Butler
John T. Butler



Matthew R. Bernier
Senior Counsel

July 12, 2017

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Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
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Dear Kathryn:

On June 28, 2017, the Commission issued a notice of proposed rule development that proposes to repeal Rule 25-22.039, F.A.C., concerning intervention in Commission proceedings (the "Notice"). I am writing on behalf of Duke Energy Florida, LLC ("DEF"), to provide you its preliminary comments on the proposed repeal of Rule 25-22.039.

DEF has reviewed the comments prepared by Florida Power & Light and is in full agreement with FPL's concern regarding repeal of this Rule and the suggested alternatives to alleviate this concern.

If you have any questions regarding DEF's concerns, please don't hesitate to contact me. Thank you for your consideration in this matter.

Respectfully,

/s/ Matthew R. Bernier

Matthew R. Bernier
Senior Counsel

MRB/db

AUSLEY McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

July 12, 2017

VIA: ELECTRONIC TRANSMISSION

Kathryn G.W. Cowdery
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

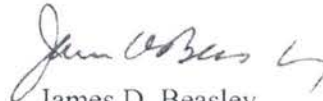
Re: Proposed Repeal of Rule 25-22.039, F.A.C.

Dear Kathryn:

We have reviewed the letter John Butler is sending you today on behalf of Florida Power & Light Company regarding the proposed repeal of Rule 25-22.039, F.A.C.. I am writing to advise that Tampa Electric Company shares the concerns expressed in John's letter and supports the proposed solutions his letter recommends.

Thank you for the opportunity to comment on the proposed repeal of Rule 25-22.039. Please let me know if you have any questions or need any further information regarding Tampa Electric's position regarding this matter.

Sincerely,



James D. Beasley

JDB/pp

cc: John Butler
Matt Bernier
Steve Griffin
Billy Stiles



STEVEN R. GRIFFIN

DIRECT DIAL
(850) 202-2354

EMAIL ADDRESS
SRG@BEGGSLANE.COM

BEGGS & LANE RLLP
ATTORNEYS and COUNSELLORS at LAW
SINCE 1883

POST OFFICE BOX 12950
PENSACOLA, FLORIDA 32591-2950
TELEPHONE (850) 432-2451
FAX (850) 469-3331

E. DIXIE BEGGS
1908 - 2001

BERT H. LANE
1917 - 1981

July 12, 2017

VIA ELECTRONIC MAIL

Kathryn G.W. Cowdery
Office of the General Counsel
Florida Public Service Commission
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Re: Proposed Repeal of Rule 25-22.039, F.A.C.

Dear Ms. Cowdery:

On June 28, 2017, the Commission issued a notice of proposed rule development that, *inter alia*, proposes to repeal Rule 25-22.039, F.A.C., concerning intervention in Commission proceedings (the "Notice"). The Notice states that you are the contact person for this proposed rule development. Earlier today, Florida Power & Light Company submitted written comments concerning this proposal. I am writing to inform you that Gulf Power Company shares the same concerns articulated by FP&L in their comments and concurs with the suggested solutions for resolving those concerns. Thank you for this opportunity to provide these comments. Please feel free to contact me if you have any questions or should you require any additional information.

Sincerely,

Steven R. Griffin