

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-**

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**DATE:** January 29, 2020

**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

**FROM:** Adria Harper, Office of the General Counsel *CHL*

**RE:** Docket No. 20190131-EU, Rule 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause

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Please file the attached rule certification packet materials for Rule 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause, in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC  
2020 JAN 29 PM 1:11  
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

January 29, 2020

Mr. Ernest Reddick  
Florida Department of State  
Administrative Code and Register Section  
Room 701, the Capitol  
Tallahassee, FL 32399-0250

VIA HAND DELIVERY

**Re: Rule Certification Packet for Rule 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause**

Dear Mr. Reddick:

Enclosed for filing is a complete rule certification packet for Rules 25-6.030, F.A.C. and Rule 25-6.031, F.A.C., consisting of:

- (1) One compact disc containing the coded text of the rules;
- (2) There are no materials incorporated by reference into these rules.
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the signed designation of minor violation rule certification form required by Rule 1-1.010, F.A.C.;
- (5) One original and two copies of the coded text of the rules, including the legal citations and history notes;
- (6) One original and two copies of the summary of the rules;
- (7) One original and two copies of the detailed written statement of the facts and circumstances justifying the rules; and
- (8) One original and two copies of the summary of the hearings held on the rules.

FILED  
JAN 29 AM 11:16  
TALLAHASSEE, FLORIDA

Please let me know if you have any questions. The contact name and information for this rule is Adria Harper, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6082, aharper@psc.state.fl.us.

Sincerely,

A handwritten signature in black ink that reads "Adria E. Harper". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Adria E. Harper  
Senior Attorney

Enclosures

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

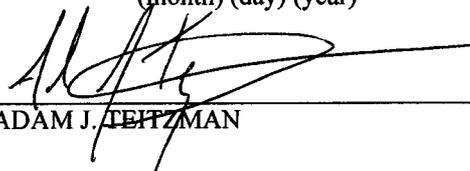
Rule Nos.

25-6.030

25-6.031

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: \_\_\_\_\_  
(month) (day) (year)

  
ADAM J. TEITZMAN

Commission Clerk

Title

Number of Pages Certified 5

**DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION  
CERTIFICATION**

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

25-6.030

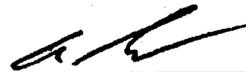
25-6.031

Rules covered by this certification:

Rule No(s).

25-6.030

25-6.031



\_\_\_\_\_  
Signature of Agency Head

Chairman, Florida Public Service Commission

Title

**25-6.030 Storm Protection Plan.**

(1) Application and Scope. Each utility as defined in Section 366.96(2)(a), F.S., must file a petition with the Commission for approval of a Transmission and Distribution Storm Protection Plan (Storm Protection Plan) that covers the utility's immediate 10-year planning period. Each utility must file, for Commission approval, an updated Storm Protection Plan at least every 3 years.

(2) For the purpose of this rule, the following definitions apply:

(a) "Storm protection program" – a category, type, or group of related storm protection projects that are undertaken to enhance the utility's existing infrastructure for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(b) "Storm protection project" – a specific activity within a storm protection program designed for the enhancement of an identified portion or area of existing electric transmission or distribution facilities for the purpose of reducing restoration costs and reducing outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) "Transmission and distribution facilities" – all utility owned poles and fixtures, towers and fixtures, overhead conductors and devices, substations and related facilities, land and land rights, roads and trails, underground conduits, and underground conductors.

(3) Contents of the Storm Protection Plan. For each Storm Protection Plan, the following information must be provided:

(a) A description of how implementation of the proposed Storm Protection Plan will strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management.

(b) A description of how implementation of the proposed Storm Protection Plan will reduce restoration costs and outage times associated with extreme weather conditions therefore improving overall service reliability.

(c) A description of the utility's service area, including areas prioritized for enhancement and any areas where the utility has determined that enhancement of the utility's existing transmission and distribution facilities would not be feasible, reasonable, or practical. Such description must include a general map, number of customers served within each area, and the utility's reasoning for prioritizing certain areas for enhanced performance and for

designating other areas of the system as not feasible, reasonable, or practical.

(d) A description of each proposed storm protection program that includes:

1. A description of how each proposed storm protection program is designed to enhance the utility's existing transmission and distribution facilities including an estimate of the resulting reduction in outage times and restoration costs due to extreme weather conditions;

2. If applicable, the actual or estimated start and completion dates of the program;

3. A cost estimate including capital and operating expenses;

4. A comparison of the costs identified in subparagraph (3)(d)3. and the benefits identified in subparagraph (3)(d)1.; and

5. A description of the criteria used to select and prioritize proposed storm protection programs.

(e) For the first three years in a utility's Storm Protection Plan, the utility must provide the following information:

1. For the first year of the plan, a description of each proposed storm protection project that includes:

a. The actual or estimated construction start and completion dates;

b. A description of the affected existing facilities, including number and type(s) of customers served, historic service reliability performance during extreme weather conditions, and how this data was used to prioritize the proposed storm protection project;

c. A cost estimate including capital and operating expenses; and

d. A description of the criteria used to select and prioritize proposed storm protection projects.

2. For the second and third years of the plan, project related information in sufficient detail, such as estimated number and costs of projects under every specific program, to allow the development of preliminary estimates of rate impacts as required by paragraph (3)(h) of this rule.

(f) For each of the first three years in a utility's Storm Protection Plan, the utility must provide a description of its proposed vegetation management activities including:

1. The projected frequency (trim cycle);

2. The projected miles of affected transmission and distribution overhead facilities;

3. The estimated annual labor and equipment costs for both utility and contractor personnel; and

4. A description of how the vegetation management activity will reduce outage times and restoration costs due

to extreme weather conditions.

(g) An estimate of the annual jurisdictional revenue requirements for each year of the Storm Protection Plan.

(h) An estimate of rate impacts for each of the first three years of the Storm Protection Plan for the utility's typical residential, commercial, and industrial customers.

(i) A description of any implementation alternatives that could mitigate the resulting rate impact for each of the first three years of the proposed Storm Protection Plan.

(j) Any other factors the utility requests the Commission to consider.

(4) By June 1, each utility must submit to the Commission Clerk an annual status report on the utility's Storm Protection Plan programs and projects. The annual status report shall include:

(a) Identification of all Storm Protection Plan programs and projects completed in the prior calendar year or planned for completion;

(b) Actual costs and rate impacts associated with completed activities under the Storm Protection Plan as compared to the estimated costs and rate impacts for those activities; and

(c) Estimated costs and rate impacts associated with programs planned for completion during the next calendar year.

Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History—New \_\_\_\_\_.

**25-6.031 Storm Protection Plan Cost Recovery Clause.**

(1) Application and Scope. This rule applies to each utility as defined in Section 366.96(2)(a), F.S.

(2) After a utility has filed its Transmission and Distribution Storm Protection Plan (Storm Protection Plan), the utility may file a petition for recovery of associated costs through the Storm Protection Plan cost recovery clause. The utility's petition shall be supported by testimony that provides details on the annual Storm Protection Plan implementation activities and associated costs, and how those activities and costs are consistent with its Storm Protection Plan. If the Commission approves the utility's Storm Protection Plan with modifications, the utility shall, within 15 business days, file an amended cost recovery petition and supporting testimony reflecting the modifications.

(3) An annual hearing to address petitions for recovery of Storm Protection Plan costs will be limited to determining the reasonableness of projected Storm Protection Plan costs, the prudence of actual Storm Protection Plan costs incurred by the utility, and to establish Storm Protection Plan cost recovery factors consistent with the requirements of this rule.

(4) Storm Protection Plan cost recovery clause true-up amounts shall be afforded deferred accounting treatment at the 30-day commercial paper rate.

(5) Subaccounts. To ensure separation of costs subject to recovery through the clause, the utility filing for cost recovery shall maintain subaccounts for all items consistent with the Uniform System of Accounts prescribed by this Commission, pursuant to Rule 25-6.014, F.A.C.

(6) Recoverable costs.

(a) The utility's petition for recovery of costs associated with its Storm Protection Plan may include costs incurred after the filing of the utility's Storm Protection Plan.

(b) Storm Protection Plan costs recoverable through the clause shall not include costs recovered through the utility's base rates or any other cost recovery mechanism.

(c) The utility may recover the annual depreciation expense on capitalized Storm Protection Plan expenditures using the utility's most recent Commission-approved depreciation rates. The utility may recover a return on the undepreciated balance of the costs calculated at the utility's weighted average cost of capital using the return on equity most recently approved by the Commission.

(7) Pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit the

following for Commission review and approval as part of its Storm Protection Plan cost recovery filings:

(a) Final True-Up for Previous Year. The final true-up of Storm Protection Plan cost recovery for a prior year shall include revenue requirements based on a comparison of actual costs for the prior year and previously filed costs and revenue requirements for such prior year for each program and project filed in the utility's cost recovery petition. The final true-up shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs were incurred during the prior year, including a description of the work actually performed during such prior year, for each program and project in the utility's cost recovery petition.

(b) Estimated True-Up for Current Year. The actual/estimated true-up of Storm Protection Plan cost recovery shall include revenue requirements based on a comparison of current year actual/estimated costs and the previously-filed projected costs and revenue requirements for such current year for each program and project filed in the utility's cost recovery petition. The actual/estimated true-up shall also include identification of each of the utility's Storm Protection Plan programs and projects for which costs have been and will be incurred during the current year, including a description of the work projected to be performed during such current year, for each program and project in the utility's cost recovery petition.

(c) Projected Costs for Subsequent Year. The projected Storm Protection Plan costs recovery shall include costs and revenue requirements for the subsequent year for each program filed in the utility's cost recovery petition. The projection filing shall also include identification of each of the utility's Storm Protection Plan programs for which costs will be incurred during the subsequent year, including a description of the work projected to be performed during such year, for each program in the utility's cost recovery petition.

(d) True-Up of Variances. The utility shall report observed true-up variances including sales forecasting variances, changes in the utility's prices of services and/or equipment, and changes in the scope of work relative to the estimates provided pursuant to subparagraphs (7)(b) and (7)(c). The utility shall also provide explanations for variances regarding the implementation of the approved Storm Protection Plan.

(e) Proposed Storm Protection Plan Cost Recovery Factors. The utility shall provide the calculations of its proposed factors and effective 12-month billing period.

(8) Recovery of costs under this rule does not preclude a utility from proposing inclusion of unrecovered Storm Protection Plan implementation costs in base rates in a subsequent rate proceeding.

Rulemaking Authority 366.96, FS. Law Implemented 366.96, FS. History--New \_\_\_\_\_.

## SUMMARY OF THE RULE

Rule 25-6.030, F.A.C., requires each investor-owned electric utility to file a petition with the Commission for approval of a storm protection plan. The rule describes the information that must be included in the storm protection plan, as well as information needed for the Commission to satisfy its duty to file an annual report with the executive and legislative branches detailing the utility's planned and completed storm protection projects and the related rate impacts.

Rule 25-6.031, F.A.C., sets forth the information an investor-owned electric utility must submit in its storm protection plan cost recovery petition when seeking Commission review and approval of storm protection plan costs.

## WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The 2019 Florida Legislature enacted Section 366.96, F.S., entitled "Storm protection plan cost recovery." Section 366.96, F.S., requires each investor-owned electric utility to file a transmission and distribution storm protection plan for the Commission's review and directs the Commission to hold an annual proceeding to determine each investor-owned electric utility's prudently incurred costs to implement its plan and allow recovery of those costs through a Storm Protection Plan Cost Recovery Clause.

In furtherance of the Legislature's directive, Rule 25-6.030, F.A.C., specifies the elements that must be included in an investor-owned electric utility's storm protection plan, and Rule 25-6.031, F.A.C., establishes the information that must be included in the utility's storm protection plan cost recovery clause petition when seeking Commission review and approval of storm protection plan costs in the Storm Protection Plan Cost Recovery Clause.

## SUMMARY OF ANY HEARINGS HELD ON THE RULE

A request for a public hearing was received by the agency, and a public hearing was held before the Commission on November 5, 2019. At the conclusion of the public hearing, the Commission voted to keep the rules the same as proposed (no changes).

The Office of Public Counsel filed a Petition to Determine the Invalidity of the proposed rules with the Division of Administrative Hearings on November 15, 2019 (DOAH Case No. 19-6137RP). An administrative hearing was conducted on December 20, 2019, in Tallahassee, Florida at the Division of Administrative Hearings. The Administrative Law Judge issued an order on January 21, 2020, deeming the rules valid and dismissing the Office of Public Counsel's Petition.