

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** October 26, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Gervasi) *PSG SMC*  
Division of Economics (Doherty, Draper) *RD EDD PD RTH*

**RE:** Docket No. 20180195-EI – Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Company.

**AGENDA:** 10/30/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** 1/21/19 (Date by which petition must be ruled upon pursuant to Section 120.542, F.S.)

**SPECIAL INSTRUCTIONS:** This item should be placed after Item 3 on the Agenda.

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### Case Background

On October 23, 2018, Florida Public Utilities Company (FPUC) filed a petition pursuant to Section 120.542, Florida Statutes (F.S.), requesting a temporary waiver of Rule 25-6.100, Florida Administrative Code (F.A.C.), which sets forth customer billing requirements. Pursuant to the rule, utilities are required to render monthly bills. FPUC is requesting that it be granted a temporary waiver from the requirement of Rule 25-6.100, F.A.C., that FPUC render monthly bills to its customers in its Northwest service territory until completion of its restoration efforts in response to Hurricane Michael.

Pursuant to Section 120.542(6), F.S., notice of the petition was published in the October 24, 2018 edition of the Florida Administrative Register, Volume 44, Number 208. As of the date of the filing of this recommendation, no comments have been submitted on the petition.

Docket No. 20180195-EI

Date: October 26, 2018

Staff's recommendation addresses whether FPUC's petition should be granted. The Commission has jurisdiction pursuant to Sections 120.542, 366.03, 366.04, 366.05, 366.051, 366.06, and 366.8260, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant FPUC's petition for a temporary waiver of Rule 25-6.100, F.A.C., Customer Billings?

**Recommendation:** Yes, the Commission should grant FPUC's petition for a temporary waiver of the requirement in Rule 25-6.100, F.A.C., that FPUC render monthly bills to its customers in Jackson, Calhoun, and Liberty Counties until FPUC completes its restoration efforts in response to Hurricane Michael. (Gervasi, Doherty, Draper)

**Staff Analysis:** FPUC is requesting that it be granted a temporary waiver from the requirement of Rule 25-6.100, F.A.C., that FPUC render monthly bills to its customers in Jackson, Calhoun, and Liberty Counties until completion of restoration efforts in response to Hurricane Michael.

### Legal Standard for Rule Waivers

Section 120.542(2), F.S., authorizes the Commission to grant waivers from its rules "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate the principles of fairness." "Substantial hardship" is defined as "a demonstrated economic, technological, legal, or other type of hardship" to the person requesting the variance. A violation of the "principles of fairness" occurs when "the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule."

### FPUC's Petition

FPUC states that many of the homes and businesses served by FPUC in its Northwest service territory have been either totally destroyed or rendered uninhabitable as a result of Hurricane Michael. Access to some locations remains limited due to downed trees, other debris, and related hazardous conditions. Even in those areas in which mail service has been reinstated by the U.S. Postal Service, many customers are unable to take delivery due to the condition of their premises. FPUC asserts that due to extraordinary circumstances beyond its control, it is unable to satisfy the requirements of Rule 25-6.100, F.A.C., which requires that "[b]ills shall be rendered monthly and as promptly as possible following the reading of meters."

FPUC states that its inability to comply with Rule 25-6.100, F.A.C., will place it in jeopardy of regulatory penalties by the Commission, which would constitute a substantial hardship. FPUC further asserts that requiring it to comply with the rule to the letter would impact FPUC very differently than other utilities that were not impacted by Hurricane Michael and would necessitate that FPUC take unprecedented action to effectuate billing that would otherwise detract from its current restoration efforts.

FPUC states that the purpose of Rule 25-6.100, F.A.C., and its underlying statutes is to ensure that utilities provide timely, accurate, and fair bills to their customers with specified information regarding the customer's usage and the rates and fees being assessed. FPUC asserts that a temporary waiver of the rule will serve this purpose because FPUC will not impose any interest or penalties on bills during the suspension period, and billing will be reinstated when service is

restored. FPUC further asserts that customers will not experience any negative impact as a result of the waiver and will likely benefit from the waiver by virtue of having additional time to focus their limited resources on recovery as opposed to utility bills. FPUC proposes to suspend billing in Jackson, Calhoun, and Liberty Counties until service is restored to all customers capable of taking service in their respective county. FPUC states that it will not impose late fee penalties or interest on bills during this period and will work with customers on additional payment arrangements as may be necessary. Customers will be promptly notified when billing resumes upon completion of restoration efforts within each county, and FPUC will provide all required information for usage during the suspension period. FPUC states that it is unable to give a firm date upon which it will be able to reinstate billing in the three affected counties, but it will inform Commission staff when it is able to do so.

### **Conclusion**

Staff believes that FPUC has met the requirements of Section 120.542, F.S. FPUC has demonstrated that the purpose of the underlying statutes will be achieved by other means and that application of Rule 25-6.100, F.A.C., would place a substantial hardship on FPUC. Therefore, staff recommends that the Commission grant FPUC's petition for a temporary waiver of the requirement in Rule 25-6.100, F.A.C., that FPUC render monthly bills to its customers in Jackson, Calhoun, and Liberty Counties until FPUC completes its restoration efforts in response to Hurricane Michael.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed. (Gervasi)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and the docket should be closed.