

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: March 19, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) *oest S.M.L.*
Division of Economics (Guffey) *SKG WSE EA JAH*
Division of Engineering (Buys) *DB TJ*

RE: Docket No. 20200063-EI – Proposed repeal of Rule 25-6.0342, F.A.C., and Electric Infrastructure Storm Hardening.

AGENDA: 03/31/20 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening, was enacted in 2007 for the purpose of ensuring the provision of safe, adequate, and reliable electric transmission and distribution service for operational as well as emergency purposes; requiring the cost-effective strengthening of critical electric infrastructure to increase the ability of transmission and distribution facilities to withstand extreme weather conditions; and reducing restoration costs and outage times to end-use customers associated with extreme weather conditions. This rule applies to all investor-owned electric utilities and requires that each utility file with the Commission for its approval a detailed storm hardening plan and to update that plan every three years.

The 2019 Florida Legislature passed SB 796 to enact Section 366.96, Florida Statutes (F.S.), which requires each investor-owned electric utility (IOU) to file a transmission and distribution storm protection plan (Storm Protection Plan) for the Commission's review and directed the

Commission to hold an annual proceeding to determine each IOU's prudently incurred costs to implement its plan and allow recovery of those costs through a Storm Protection Plan Cost Recovery Clause. Section 366.96(3), F.S., also required the Commission to adopt rules to implement and administer the section. In furtherance of the Legislature's directive, the Commission adopted Rules 25-6.030, Storm Protection Plan, and 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause, which became effective on February 18, 2020.

During the rulemaking for Rules 25-6.030 and 25-6.031, F.A.C., the Commission also noticed several other rules, including Rule 25-6.0342, F.A.C., to determine if the new storm plan rules would necessitate changes to other rules. The Commission received comments indicating that Rule 25-6.0342, F.A.C., would no longer be necessary because it would be duplicative and obsolete as a result of the new storm protection plan rules.

Notice of the rule development appeared in the June 6, 2019, edition of the Florida Administrative Register. On June 25, 2019, and August 20, 2019, staff held rule development workshops to obtain stakeholder comments on Rules 25-6.030 and 25-6.031, F.A.C., as well as rules that would be affected by them, including Rule 25-6.0342, F.A.C. Several utilities opined that once Rules 25-6.030 and 25-6.031, F.A.C., were adopted and effective, Rule 25-6.0342, F.A.C., should be repealed.

This recommendation addresses whether Rule 25-6.0342, F.A.C., should be repealed as redundant and obsolete because it requires utilities to submit duplicative information available to the Commission through other sources. The Commission has jurisdiction pursuant to Sections 350.127(2), 366.05(1), 366.96, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the repeal of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening?

Recommendation: Yes, the Commission should propose the repeal of Rule 25-6.0342, F.A.C., as set forth in Attachment A. The Commission should certify Rule 25-6.0342, F.A.C., as a minor violation rule. Once Rule 25-6.0342, F.A.C., is repealed, it should be removed from the list of minor violation rules. (Harper, Buys, Guffey)

Staff Analysis: Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening is duplicative of the Commission's new rule, Rule 25-6.030, F.A.C., Storm Protection Plan. Both require all IOUs to file storm hardening plans that contain a detailed description of the construction standards, policies, practices, and procedures employed to enhance the reliability of overhead and underground electrical transmission and distribution facilities. Both rules also require that the utility's storm hardening plan include descriptions of how the utilities' storm programs and projects will enhance the reliability of overhead and underground electrical transmission and distribution facilities. As to cost impacts, new Rule 25-6.030, F.A.C., requires more stringent and detailed reporting requirements for estimated and actual costs and rate impacts associated with completed activities when each utility files its Storm Protection Plan. For these reasons, Rule 25-6.0342, F.A.C., is duplicative, obsolete, and unnecessary, and staff recommends that it be repealed.

Minor Violation Rules Certification

Rule 25-6.0342, F.A.C., was on the Commission's list of minor violation rules. Pursuant to Section 120.695, F.S., as of July 1, 2017, the agency head shall certify whether any part of each rule filed for adoption is designated as a minor violation rule. A minor violation rule is a rule that would not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm when violated. Staff recommends that the Commission certify that Rule 25-6.0342, F.A.C., was a minor violation rule. Once Rule 25-6.0342, F.A.C., is repealed, it should be removed from the list of minor violation rules.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54(3)(b)1., F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule repeal is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation. Staff notes that none of the impact/cost criteria will be exceeded as a result of the recommended repeal.

The SERC concludes that the repeal of Rule 25-6.0342, F.A.C., will likely not directly or indirectly increase regulatory costs in excess of \$200,000 within one year after implementation. Further, the SERC concludes that the repeal of the rule 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. Thus, the repeal of the rule does not require legislative ratification, pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the repeal of Rule 25-6.0342, F.A.C., would have no impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states that no additional transactional costs are likely to be incurred by individuals and entities because of the repeal.

Conclusion

The Commission should repeal Rule 25-6.0342, F.A.C. as set forth in Attachment A. Once Rule 25-6.0342, F.A.C., is repealed, it should be removed from the list of minor violation rules.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rule should be filed with the Department of State, and the docket should be closed. (Harper)

Staff Analysis: If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rule may be filed with the Department of State and the docket should be closed. (Harper)

1 **25-6.0342 Electric Infrastructure Storm Hardening.**

2 ~~(1) Application and Scope. This rule is intended to ensure the provision of safe, adequate,~~
3 ~~and reliable electric transmission and distribution service for operational as well as emergency~~
4 ~~purposes; require the cost effective strengthening of critical electric infrastructure to increase~~
5 ~~the ability of transmission and distribution facilities to withstand extreme weather conditions;~~
6 ~~and reduce restoration costs and outage times to end use customers associated with extreme~~
7 ~~weather conditions. This rule applies to all investor owned electric utilities.~~

8 ~~(2) Storm Hardening Plans. Each utility shall, no later than 90 days after the effective date~~
9 ~~of this rule, file with the Commission for its approval a detailed storm hardening plan. Each~~
10 ~~utility's plan shall be updated every 3 years, unless the Commission, on its own motion or on~~
11 ~~petition by a substantially affected person or utility, initiates a proceeding to review and, if~~
12 ~~appropriate, modify the plans. In a proceeding to approve a utility's plan, the Commission~~
13 ~~shall consider whether the utility's plan meets the desired objectives of enhancing reliability~~
14 ~~and reducing restoration costs and outage times in a prudent, practical, and cost effective~~
15 ~~manner to the affected parties.~~

16 ~~(3) Contents of Plan: Each utility storm hardening plan shall contain a detailed description~~
17 ~~of the construction standards, policies, practices, and procedures employed to enhance the~~
18 ~~reliability of overhead and underground electrical transmission and distribution facilities in~~
19 ~~conformance with the provisions of this rule. Each filing shall, at a minimum, address the~~
20 ~~extent to which the utility's storm hardening plan:~~

21 ~~(a) Complies, at a minimum, with the National Electric Safety Code (ANSI C 2) [NESC]~~
22 ~~that is applicable pursuant to subsection 25-6.0345(2), F.A.C.~~

23 ~~(b) Adopts the extreme wind loading standards specified by Figure 250-2(d) of the 2007~~
24 ~~edition of the NESC for the following distribution facilities:~~

25 ~~1. New construction;~~

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

1 ~~2. Major planned work, including expansion, rebuild, or relocation of existing facilities,~~
2 ~~assigned on or after the effective date of this rule; and~~

3 ~~3. Critical infrastructure facilities and along major thoroughfares taking into account~~
4 ~~political and geographical boundaries and other applicable operational considerations.~~

5 ~~(c) Is designed to mitigate damage to underground and supporting overhead transmission~~
6 ~~and distribution facilities due to flooding and storm surges.~~

7 ~~(d) Provides for the placement of new and replacement distribution facilities so as to~~
8 ~~facilitate safe and efficient access for installation and maintenance pursuant to Rule 25-~~
9 ~~6.0341, F.A.C.~~

10 ~~(4) Deployment Strategy: Each utility storm hardening plan shall explain the systematic~~
11 ~~approach the utility will follow to achieve the desired objectives of enhancing reliability and~~
12 ~~reducing restoration costs and outage times associated with extreme weather events. The~~
13 ~~utility's storm hardening plan shall provide a detailed description of its deployment strategy~~
14 ~~including, but not limited to the following:~~

15 ~~(a) A description of the facilities affected; including technical design specifications,~~
16 ~~construction standards, and construction methodologies employed.~~

17 ~~(b) The communities and areas within the utility's service area where the electric~~
18 ~~infrastructure improvements, including facilities identified by the utility as critical~~
19 ~~infrastructure and along major thoroughfares pursuant to subparagraph (3)(b)3. are to be~~
20 ~~made.~~

21 ~~(c) The extent to which the electric infrastructure improvements involve joint use facilities~~
22 ~~on which third party attachments exist.~~

23 ~~(d) An estimate of the costs and benefits to the utility of making the electric infrastructure~~
24 ~~improvements, including the effect on reducing storm restoration costs and customer outages.~~

25 ~~(e) An estimate of the costs and benefits, obtained pursuant to subsection (6) below, to~~
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existing law.

1 ~~third party attachers affected by the electric infrastructure improvements, including the effect~~
2 ~~on reducing storm restoration costs and customer outages realized by the third party attachers.~~

3 ~~(5) Attachment Standards and Procedures: As part of its storm hardening plan, each utility~~
4 ~~shall maintain written safety, reliability, pole loading capacity, and engineering standards and~~
5 ~~procedures for attachments by others to the utility's electric transmission and distribution~~
6 ~~poles (Attachment Standards and Procedures). The Attachment Standards and Procedures shall~~
7 ~~meet or exceed the edition of the National Electrical Safety Code (ANSI C 2) that is~~
8 ~~applicable pursuant to Rule 25-6.034, F.A.C. so as to assure, as far as is reasonably~~
9 ~~practicable, that third party facilities attached to electric transmission and distribution poles do~~
10 ~~not impair electric safety, adequacy, or pole reliability; do not exceed pole loading capacity;~~
11 ~~and are constructed, installed, maintained, and operated in accordance with generally accepted~~
12 ~~engineering practices for the utility's service territory.~~

13 ~~(6) Input from Third Party Attachers: In establishing its storm hardening plan and~~
14 ~~Attachment Standards and Procedures, or when updating or modifying such plan or~~
15 ~~Attachment Standards and Procedures, each utility shall seek input from and attempt in good~~
16 ~~faith to accommodate concerns raised by other entities with existing agreements to share the~~
17 ~~use of its electric facilities. Any third party attacher that wishes to provide input under this~~
18 ~~subsection shall provide the utility contact information for the person designated to receive~~
19 ~~communications from the utility.~~

20 ~~(7) Dispute Resolution: Any dispute or challenge to a utility's storm hardening plan,~~
21 ~~construction standards, deployment strategy, Attachment Standards and Procedures, or any~~
22 ~~projects implementing any of the above by a customer, applicant for service, or attaching~~
23 ~~entity shall be resolved by the Commission.~~

24 ~~(8) Nothing in this rule is intended to conflict with Title 47, United States Code, Section~~
25 ~~224, relating to Federal Communications Commission jurisdiction over pole attachments.~~

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1 *Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(c), (5), (6),*
2 *366.05(1) FS. History—New 2-1-07, Repealed _____.*

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

DATE: March 13, 2020

TO: Adria E. Harper, Senior Attorney, Office of the General Counsel

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

RE: Statement of Estimated Regulatory Costs for Recommended Repeal of Rule 25-6.0342, Florida Administrative Code (F.A.C.), Electric Infrastructure Storm Hardening.

Commission staff is recommending the repeal of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening which has been effective since 2007. This rule applies to all investor-owned electric utilities (IOUs) and requires that each utility file with the Commission, for approval, a detailed storm hardening plan and to update that plan every three years.

In 2019, the Florida Legislature passed SB 796 to enact Section 366.96, Florida Statutes (F.S.), which requires each IOU to file a transmission and distribution storm protection plan for the Commission's review and for the Commission to conduct an annual proceeding to determine each IOU's prudently incurred costs to implement the storm protection plan. To codify Section 366.96, F.S., the Commission adopted Rules 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause, which became effective on February 18, 2020. As a result, Rules 25-6.030, F.A.C., and 25-6.031, F.A.C., supersede the requirements of Rule 25-6.0342, F.A.C.

The attached Statement of Estimated Regulatory Costs (SERC) addresses the economic impacts and considerations required pursuant to Section 120.541, F.S. The SERC analysis indicates that the recommended repeal of Rule 25-6.0342, F.A.C., 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 repeal 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.

Notice of the rule development appeared in the June 7, 2019 edition of the Florida Administrative Register. 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 proposed rule revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-6.0342, 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 <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Private-sector job creation or employment	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Private-sector investment	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

(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 <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Productivity	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Innovation	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

(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: The Commission adopted new Rules 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery, which became effective on February 18, 2020. As a result, Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening requirements is duplicative and obsolete. The recommended repeal of Rule 25-6.0342, F.A.C., will reduce duplicative regulatory oversight.

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.

None; the rule is recommended to be repealed. See Section (3) above.

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

None; the rule is recommended to be repealed. See Section (3) above.

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.
- 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.