

STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 4, 2021

Kaley Flynn, Director
Rules Ombudsman in
The Executive Office of the Governor
Reg.Reform@eog.myflorida.com

SENT VIA E-MAIL

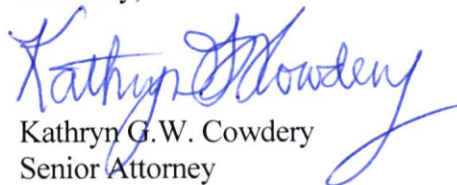
Re: Docket No. 20210137-PU – Proposed adoption of Rule 25-18.010, F.A.C., Pole Attachment Complaints

Dear Ms. Flynn:

The Florida Public Service Commission proposed the above-listed rule at its regular Commission Conference on November 2, 2021. The Commission has determined that this rule may affect small businesses. Accordingly, pursuant to Section 120.54(3)(b)2.b.(I), Florida Statutes, enclosed is a copy of the Florida Administrative Register (FAR) notice of the proposed rule, which was published in the November 4, 2021 edition of the FAR. Pursuant to your instructions, we have filled out and included a copy of the OFARR rulemaking notification form.

If there are any questions with respect to these rules, please contact me at kcowdery@psc.state.fl.us or (850) 413-6216.

Sincerely,


Kathryn G.W. Cowdery
Senior Attorney

Enclosures
cc: Office of the Commission Clerk

RECEIVED-FPSC
2021 NOV -5 AM 11:08
COMMISSION
CLERK

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO: RULE TITLE

25-18.010: Pole Attachment Complaints

PURPOSE AND EFFECT: This is a procedural rule proposed to administer and implement Section 366.04(8), FS, which requires the Florida Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments.

Docket No. 20210137-PU

SUMMARY: Rule 25-18.010 gives the information that must be included in a complaint filed with the Commission by a pole owner or attaching entity pursuant to s. 366.04(8), FS; establishes the filing date for a complaint; gives requirements concerning responses filed to a complaint; and establishes time deadlines for Commission final action on complaints filed pursuant to Section 366.04(8), FS

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: A SERC was not prepared and ratification is not required pursuant to the exemption in Section 120.80(13)(g), F.S.

RULEMAKING AUTHORITY: 350.127(2), 366.04(8)(g) FS.

LAW IMPLEMENTED: 366.04(8) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G.W. Cowdery, kgcowdery@psc.state.fl.us, (850)413-6199, or Adria Harper, aharper@psc.state.fl.us, (850) 413-6082, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850

THE FULL TEXT OF THE PROPOSED RULE IS:

25-18.010 Pole Attachment Complaints

(1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to Section 366.04(8), F.S., must contain:

(a) The name, address, email address, and telephone number of the complainant or complainant's attorney or qualified representative;

(b) A statement describing the facts that give rise to the complaint;

(c) Names of the party or parties against whom the complaint is filed;

(d) A copy of the pole attachment agreement, if applicable, and identification of the pole attachment rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments that is the subject matter of the complaint;

(e) A statement of the disputed issues of material fact or a statement that there are no disputed issues of material fact;

(f) If the complaint requires the Commission to establish just and reasonable cost-based rates, terms, and conditions for pole attachments, the complaint must contain an explanation of the methodology the complainant is requesting the Commission to apply;

(g) If the complaint involves a dispute regarding rates or billing, a statement of the dollar amount in dispute, the dollar amount not in dispute, whether the amount not in dispute has been paid to the pole owner, and if not paid the reasons why not;

(h) A statement of the relief requested, including whether a Section 120.569 and 120.57, F.S., evidentiary hearing is being requested to resolve the complaint; and

(i) A certificate of service that copies of the complaint have been furnished by email to the party or parties identified in paragraph (1)(c) of this rule.

(2) The filing date for the complaint is the date that a complaint is filed with the Commission Clerk containing all required information set forth in subsection (1) of this rule.

(3) The pole owner or attaching entity that is the subject of the complaint may file a response to the complaint. The response must be filed with the Commission Clerk within 30 calendar days of the date the complaint was served on the respondent, unless the Prehearing Officer grants a motion for extension of time filed pursuant to Rule 28-106.204, F.A.C., or Rule 28-106.303, F.A.C., as appropriate.

(4) A response filed under subsection (3) of this rule must include the following:

(a) A statement of whether a Section 120.569 and 120.57, F.S., evidentiary hearing is being requested to resolve the complaint; and

(b) If the complaint requires the Commission to establish just and reasonable cost-based rates, terms, and conditions for pole attachments, the response must contain an explanation of the methodology the respondent is requesting the Commission to apply.

(5) The Commission will take final action on a complaint concerning rates, charges, terms, conditions, and voluntary agreements relative to pole attachments at a Commission Conference no later than 360 days after the complaint's filing date as set forth in subsection (2) of this rule.

(6) The Commission will take final action on a complaint limited to denial of access relative to pole attachments at a Commission Conference no later than 180 days after the complaint's filing date as established under subsection (2) of this rule.

Rulemaking Authority 350.127(2), 366.04(8)(g) FS. Law Implemented 366.04(8) FS. History-New

NAME OF PERSON ORIGINATING PROPOSED RULE: Brandon Wendell

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 2, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 47, Number 159, August 17, 2021.

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

To: Kaley Flynn, Director

Submitted By: **Name, Title:** Kathryn G.W. Cowdery, Senior Attorney
Agency, Board: Florida Public Service Commission
Phone Number: (850) 413-6199

Re: Rulemaking Notification for:

Rule Number: 25-18.010 **Rule Title:** Pole Attachment Complaints

Rule Summary: Rule 25-18.010, F.A.C., establishes the procedure to administer and implement subsection 366.04(8), F.S., by listing the information that must be included in a complaint filed with the Commission under subsection 366.04(8), F.S.; establishing the filing date for a complaint; giving the requirements concerning responses filed to a complaint; and establishing time deadlines for Commission final action on complaints.

List EACH rule separately. Add tables as needed.

Date: [Date request sent to 11/4/2021 OFARR] Date of anticipated 11/4/2021 publication:

Does this rule qualify for Rules Ombudsman review in accordance with section 120.54(3)(b), F.S.? Yes No

Please complete this form when submitting rulemaking notification to the Office of Fiscal Accountability and Regulatory Reform (OFARR) pursuant to Executive Order 11-211 and Directive published on November 11, 2019. If any information or documents are missing, the notification will be returned without review. OFARR will indicate what is missing, and the completed notification must be resubmitted.

1. Proposed Rulemaking Activity:

- Notice of Development of Rulemaking – Attach the proposed Notice. If no text is available, give a detailed explanation of the rulemaking, including why it is necessary.
- Notice of Proposed Rule – Attach the proposed Notice, “Is a SERC Required” Checklist, and SERC (if required), all materials incorporated by reference, and all forms referenced or required by the rule.
- Notice of Emergency Rule – Attach the proposed Notice. Explain fully why emergency rulemaking is appropriate.
- Notice of Change – Attach the proposed Notice. Be sure the text is coded correctly according to Rule 1B-30.003(5)(f), F.A.C. Explain why a change is required. Attach any correspondence from JAPC or the public. If no documents exist, summarize any public comment the agency has received or public hearings/workshops the agency has held.
- Notice of Withdrawal – Attach the proposed Notice. Explain why it is necessary to withdraw the rulemaking. Include any JAPC correspondence.

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

Other – Attach the proposed Notice. Include detailed information about the rulemaking.

2. Is this rulemaking included in the agency’s Annual Regulatory Plan (ARP)? Yes No

3a. Does each amendment or new rule:

Rule Number: Rule Title:

Increase Fees? Yes No N/A

Increase Regulation? (I.E., Additional Licensure, Continuing Education Requirements, etc.) Yes No N/A

List EACH rule separately. Add tables as needed.

3b. For each new rule, the following information is required:

Rule Number: Rule Title:

Statute Authorizing Rulemaking: Statutory language authorizing rulemaking authority:

Statute Mandating Rulemaking: Statutory language requiring rulemaking:

New rule is due to a Legislative change occurring within the past 24 months: Yes No Provide chapter law and effective date:

List each rule separately. Add tables as needed.

4. Has the agency received any public comment about this rulemaking since the last rulemaking notification?

Yes No

If yes, please summarize the comment and the agency’s position regarding the comment (i.e. has made or intends to make changes based on the comment, disagrees with the comment, etc.) and attach any documents.

5. Has the agency received any comment from JAPC since the last rulemaking notification?

Office of Fiscal Accountability and Regulatory Reform
Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

Yes No

If yes, please summarize the comment and attach any documents.

For Notice of Proposed Rules Only

6. Describe the public need for the proposed rule and an explanation of how the proposed rule will address that need.

Section 366.04(8)(g), F.S., requires the Florida Public Service Commission (“Commission”) to adopt a procedural rule(s) no later than January 1, 2022 to administer and implement Section 366.04(8), Florida Statutes, concerning pole attachment complaints. The proposed rule does so by establishing the information required in a pole attachment complaint; provides for a response to the complaint; establishes the filing date for a complaint; and establishes the time deadlines for the Commission to take final action on a complaint.

7. Has the agency received, been made aware of, or contemplated/reviewed any lower cost regulatory alternatives (LCRA)?

Yes No

If yes, describe in detail what action the agency took in response to the LCRA. If no, please explain.

8. Summarize qualitative and quantitative *benefits* of the proposed rule. Benefits may include but are not limited to: productivity, efficiency, employment and accessibility, enhancement of health and safety, and protection of the environment.

Pursuant to Section 366.04(8)(g), Florida Statutes, the Commission is required to propose this procedural rule to administer and implement Section 366.04(8), Florida Statutes. Pursuant to Section 120.80(13)(g), Florida Statutes, the Commission is not subject to Section 120.541, Florida Statutes, in proposing this rule.

Office of Fiscal Accountability and Regulatory Reform

Rulemaking Notification

(Executive Order 11-211 requires agencies must submit all rulemaking notices to OFARR at least 1 week prior to publication)

9. Summarize qualitative and quantitative costs of the proposed rule. Costs may include but are not limited to: cost to government in administering the regulation, costs to businesses and professionals in complying with the regulation, adverse effects on the economy, private markets, health, safety and the environment.

Pursuant to Section 366.04(8)(g), Florida Statutes, the Commission is required to propose this procedural rule to administer and implement Section 366.04(8), Florida Statutes. Pursuant to Section 120.80(13)(g), Florida Statutes, the Commission is not subject to Section 120.541, Florida Statutes, in proposing this rule.

10. Does the proposed rule include a sunset provision (not to exceed five years)?

Yes No

If no, please detail why and attach any supplemental documentation.

This rule of procedure is required by Section 366.04(8)(g), F.S., in order to implement Section 366.04(8), Florida Statutes, and the statute does not include a sunset provision.

Julie Phillips

From: Reform, Reg <Reg.Reform@eog.myflorida.com>
Sent: Thursday, November 04, 2021 1:32 PM
To: Kathryn Cowdery
Cc: Julie Phillips
Subject: RE: To the Rules Ombudsman

Received

From: Kathryn Cowdery <kcowdery@PSC.STATE.FL.US>
Sent: Thursday, November 4, 2021 12:48 PM
To: Reform, Reg <Reg.Reform@eog.myflorida.com>
Cc: Julie Phillips <JPhillip@PSC.STATE.FL.US>
Subject: To the Rules Ombudsman

Dear Ms. Flynn:

Attached pursuant to Section 120.54(3)(b), Florida Statutes, is the required information concerning proposed Rule 25-18.010, F.A.C., Pole Attachment Complaints.

Please confirm your receipt of this e-mail by Reply All.

Thank you.

Kathryn Cowdery
Senior Attorney
Florida Public Service Commission

Please note that under Florida law correspondence sent to the Governor's Office, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.