



Stephanie A. Cuello
SENIOR COUNSEL

April 3, 2026

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Motion to Dismiss to the Complaint of Justin Gage*; Docket No. 20260045-
EI

Dear Mr. Teitzman:

Please find attached for electronic filing, Duke Energy Florida, LLC's Motion to Dismiss to the Complaint of Justin Gage.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me at (850) 521-1425.

Sincerely,

/s/ Stephanie A. Cuello

Stephanie A. Cuello

SAC/mw
Attachments

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Justin Gage
against Duke Energy Florida, LLC

Docket No. 20260045-EI

Filed: April 3, 2026

**DUKE ENERGY FLORIDA, LLC'S MOTION TO DISMISS
THE COMPLAINT OF JUSTIN GAGE**

Duke Energy Florida, LLC (“DEF” or the “Company”), pursuant to Rule 28-106.204 Florida Administrative Code (“F.A.C.”) hereby files this Motion to Dismiss the Complaint of Justin Gage (“Petitioner” or “Mr. Gage”) filed against DEF with the Florida Public Service Commission (“FPSC” or “Commission”). For the reasons set forth below, DEF requests the FPSC dismiss this Complaint.

I. Background

1. On August 26, 2025, Mr. Gage filed a claim with Sedgwick, DEF’s claims administrator. Mr. Gage alleged damages from a surge event originating from the PME-4 switchgear on or about August 21, 2025.
2. On August 28, 2025, DEF completed its investigation, including a review of event logs, meter data, and outage records; there was no record or evidence of any event on DEF’s system affecting the customer’s address on the reported date of loss. A letter was sent to Mr. Gage denying his claim on August 28, 2025.
3. On September 4, 2025, Mr. Gage contacted DEF to report a loud boom coming from the transformer. DEF arrived onsite and found Mr. Gage had power. The voltage was checked and found to be good; however, his concern was with the PME-4 and not the transformer or a current outage. Mr. Gage stated the equipment did not have safety stickers, was too close to bushes, and

the bottom was not sealed. DEF advised his concerns would be investigated and the Company will put a safety sticker on the equipment.

4. DEF's inspection of its equipment found no violations of the NESC. The PME located near Mr. Gage's next-door neighbor is a dead front, underground distribution switchgear. Switch and fuse components are completely encased and protected so that they are not susceptible to foliage, wildlife, and other contaminants. Mr. Gage's premises are served by a nearby transformer, and not the PME-4 he references in his complaint.

5. On or about September 2025, Mr. Gage appealed his claim denial. DEF Liability Claims responded to Mr. Gage's claim appeal and explained DEF completed a thorough investigation and found no record or evidence of any event affecting his address on or around August 21, 2025. Mr. Gage received this response on September 19, 2025.

6. On October 17, 2025, DEF received Mr. Gage's complaint, filed with the FPSC. DEF filed a response to the complaint on November 6th, 2025. (*See Exhibit A*)

7. On October 18, 2025, Mr. Gage contacted DEF's Customer Care and advised the PME-4 does not meet the electrical code requirements and is a safety concern. An investigation request was issued. DEF arrived onsite and confirmed the PME-4 was locked and secured.

8. On November 21, 2025, a bore crew for Spectrum hit a primary line across from Mr. Gage's home. A DEF crew was dispatched to the site. Mr. Gage approached the crew and advised he observed smoke coming from the PME-4 and requested a supervisor. A visual inspection was completed on the inside of the PME-4, in the presence of Mr. Gage, and neither side showed any indication of smoke, burn, or scorch marks.

9. On November 25, 2025, after receiving an inquiry from OSHA, a DEF Supervisor and Safety Professional visited the site and noted the PME-4 is in very good condition. DEF replaced

the current safety stickers with updated stickers on both sides of the PME-4. No OSHA or NESC violations were noted.

10. On or about March 27, 2026, the Petitioner filed a complaint with the FPSC, alleging DEF violated “Commission rules, orders, and statutes governing electric utility safety standards, compliance certifications, and truthfulness in Commission filings”. *See document no. 01812-2026, page 1.*

11. Mr. Gage specifically alleges DEF has violated Rule 25-6.0345 F.A.C. Safety Standards, Rule 25-6.039 F.A.C. Safe work practices, and Rule 25-6.0346 F.A.C Truthful certification to Commission.

II. Argument for Dismissal

12. A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action. *Meyers v. City of Jacksonville*, 754 So. 2d 198, 202 (Fla. 1st DCA 2000). The standard to be applied in disposing of a motion to dismiss is whether, with all the allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. *Id.* The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2d DCA 1960). When making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); *Flye v. Jeffords*, 106 So. 2d 229 (Fla. 1st DCA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963); and Rule 1.130, Florida Rules of Civil Procedure. When “determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative

defenses raised by the defendant, nor consider any evidence likely to be produced by either side.”

Varnes v. Dawkins at 350.

13. Rule 25-22.036(3)(b), F.A.C. states:

“... Each complaint, in addition to the requirements of paragraph (a) above shall also contain: (1) The rule, order, or statute that has been violated; (2) The actions that constitute the violation; (3) The name and address of the person against whom the complaint is lodged; and (4) The specific relief requested, including any penalty sought.”

14. The Complaint filed by Mr. Gage alleges DEF violated certain sections of the Florida Administrative Code. However, in his Complaint the Petitioner fails to provide competent or substantial evidence that any actions taken by or on behalf of DEF constitute a violation of Rule 25-6.0345 F.A.C., Rule 25-6.039 F.A.C., Rule 25-6.0346 F.A.C., or a violation of any other rules, statutes, company tariff, or Commission Orders.

15. DEF inspected the equipment subject to this Complaint and found no safety issues or violations of safety codes. DEF demonstrated repeatedly to Mr. Gage that the PME-4 was found to be in compliance with all applicable codes. After the inquiry from OSHA, DEF again inspected the PME-4 and did not log any OSHA or NESC violations. After this visit, the Company updated the safety stickers affixed to the PME-4, as requested by the Petitioner. Mr. Gage has failed to show DEF violated safety standards included in Rule 25-6.0345 F.A.C. and Rule 25-6.039 F.A.C.

16. DEF completes and maintains work orders within the applicable standards required by Rule 25-6.0346 F.A.C. Mr. Gage’s allegations that DEF provided the Commission with “false or misleading” statements are erroneous and unfounded accusations. DEF provided Staff with

truthful and accurate descriptions of the inspections performed on the PME-4. Again, the Petitioner has failed to show DEF violated Rule 25-6.0346 F.A.C.

17. Additionally, Section IV of the Complaint alleges violations committed by the FPSC. The violations alleged in Section IV (Violations 4-10) should be dismissed as to DEF as Mr. Gage has failed to state a claim specifically against the Company.

18. The Petitioner has not provided competent and substantial evidence that DEF violated any additional applicable statutes, rules, company tariffs, or Commission Orders. When considering all facts plead in the Petition as true, there is no legal basis upon which to grant the relief.

19. Mr. Gage has failed to state a cause of action upon which relief can be granted, therefore the Complaint should be dismissed.

III. Conclusion

Based on the foregoing, Duke Energy Florida, LLC respectfully requests this Commission dismiss the Complaint filed by Justin Gage.

Respectfully submitted,

/s/Stephanie A. Cuello

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Attorneys for Duke Energy Florida, LLC

CERTIFICATE OF SERVICE

Docket No. 20260045-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 3rd day of April, 2026.

/s/ Stephanie A. Cuello

Stephanie A. Cuello

Office of General Counsel A. Harper / J. Crawford Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 aharper@psc.state.fl.us jcrawfor@psc.state.fl.us	Justin Gage 13114 Fox Glove Street Winter Garden, FL 34787 (407) 301-6133 Jgage76@gmail.com
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EXHIBIT

A



FPSC RESPONSE FORM

FPSC Inquiry Number: 1488062E

Complainant's Name: Justin Gage

Customer of Record's Name: Justin Gage

Service Address: 13114 Fox Glove St., Winter Garden, FL 34787

Telephone Number(s): (407)-301-6133

Date Received from the FPSC: October 17, 2025

Restate Customer's Concern: (*Verbatim from FPSC*)

Duke Energy has high-voltage equipment dangerously close to my home that has not been properly maintained. The PME-4 gearbox located near my property has been out of compliance with electrical safety codes for a significant period of time. Despite my repeated reports and communications, Duke Energy has failed to correct these serious violations.

My home has already suffered damage as a direct result of Duke Energy's gross negligence in maintaining this equipment. I am deeply frightened for my personal safety and my family's well-being. The equipment sits roughly 30–40 feet from my home and only about 20 feet from my neighbor's master bedroom window, putting both of our households at serious risk.

My neighbor and I both live in constant fear of the potential hazards this neglected high-voltage system poses. Duke Energy has documented these dangerous issues but continues to disregard its responsibility to take immediate corrective action. This ongoing inaction endangers our health, safety, and peace of mind."

Please merge these details to Service Tracking #212873 I thought I was going to be contacted to provide more details.

It was discovered that Duke Energy's High Voltage Equipment (S&C PME-4 pad-mounted switchgear, manufactured in 10/2003, serial no. 036133, catalog number 65102R1-A14F14-E197, Duke Ref. K198787) had not been properly maintained.

*Please note that the box is Over 20-year-old box.

- 1) The high-voltage box has restricted clearance. (Door has 19" clearance and the door is over 40")(video and photo evidence)
- 2) This Box Clearance does not meet code requirements
- 3) PME-4 Box is not sealed at the base per the manufacturer's requirements, which is allowing ants and lizards to enter the box. (video and photo evidence showing this inside and outside the box)
- 4) The PME-4 Box is violating the Electrical code by not being properly sealed and maintained to prevent environmental and animal intrusion, which can cause flashovers, faults, and arcing
- 5) Missing safety stickers on 2 sides
- 6) Improper stickers on the other 2 sides.
- 7) Improper/missing labels are a violation of the electrical code.
- 8) The electrical box has not been properly inspected and maintained. This would be impossible because one of the doors can not be opened. Not properly inspecting/maintaining equipment is against the electrical codes.

In the past 2 months, I have made around 10 attempts through phone calls, letters, and emails to get this electrical box into compliance. I have full documentation of all the written attempts that failed. My neighbor

and I are terrified and worried about our health, safety and well-being after a boom came from that box 2 months ago and sent surges into our homes, causing severe damage. I can not understand how it can be so difficult to get this box up to code. Instead, the Dukes' continued ongoing pattern of gross negligence keeps us in a constant state of concern for our safety. "

10/20/25 - ATTN COMPANY: We have received additional correspondence from Mr. Gage regarding his ongoing concerns. See above for reference. Thank you. CCaro-Rora

Actions Taken to Satisfy Customer:

Duke Energy Florida's (DEF) Pad Mounted Equipment (PME) located near Mr. Justin Gage's next door neighbor, is a dead front, underground distribution switchgear. Switch and fuse components are completely encased and protected so that they are not susceptible to foliage, wildlife, and other contaminants. Mr. Gage's premise is served by a nearby transformer, and not the PME-4 he references in his complaint.

DEF records indicate Mr. Gage's premise has experienced the following outages in the last 12 months:

<u>Date</u>	<u>Duration</u>	<u>Cause</u>
12/16/24	73 minutes	Public Accident/Damage
12/17/24	146 minutes	Equipment Failure
6/27/25	82 minutes	Weather

DEF records indicate Mr. Gage's premise experienced no momentary interruptions of service in the past 12 months.

On August 26, 2025, Mr. Gage filed a claim with Sedgwick, DEF's claims administrator

On August 28, 2025, DEF completed its investigation, and a letter was sent to Mr. Gage denying his claim.

On September 4, 2025, Mr. Gage contacted DEF to report a loud boom from coming from the transformer. DEF arrived onsite and found Mr. Gage had power. The voltage was checked and found to be good; however, his concern was with the PME-4 and not the transformer or a current outage. Mr. Gage stated the equipment did not have safety stickers, was too close to bushes, and the bottom is not sealed. The Troublemaker advised he would have his concerns investigated and put a safety sticker on the equipment.

DEF's inspection of its equipment, PME-4, found no violations of the NESC as noted below:

- The equipment is locked and sealed appropriately.
- The required warning sign for personnel is inside the equipment and is intact.
- This is a dead front; therefore, there are no exposed energized parts.
- DEF voluntarily places a safety sticker on the outside of the equipment.
- DEF can safely access the equipment. If DEF determined the hedges posed a problem or prevented safe access to our equipment, we would take the necessary actions to remove the impeding obstacles
- Switch and fuse components are completely encased and protected so that they are not susceptible to foliage, wildlife, and other contaminants.

On September 19, 2025, Mr. Doug Everhart, DEF's Liability Claims Manager, responded to Mr. Gage's claim appeal and explained DEF completed a thorough investigation and found no record or evidence of any event affecting his address on or around August 21, 2025. Mr. Everhart explained, due to Mr. Gage's appeal and his call to Customer Care on September 4, 2025, a Troublemaker was sent to inspect all connections from the transformer to the meter base and the PME-4. The Troublemaker advised the customer

owned ground wire was loose and needed to be addressed by an electrician. Mr. Everhart also explained to Mr. Gage the PME-4 serves as a non-operational piece of equipment that serves as a junction for two cable runs connected by bolted joints. Mr. Gage is directly served by a transformer, not the PME-4. Based on Mr. Gage's assertion that a loud boom and a flash came from the PME-4, DEF inspected the equipment. Any flash would have resulted in visible burn marks and an outage; however, neither occurred. Thunderstorms were confirmed in the Orlando area on August 21, 2025, the date Mr. Gage claimed there was a boom and flash coming from the PME-4, and it was suggested he may have seen a flash from a lightning strike nearby. Mr. Everhart explained DEF's investigation confirmed the equipment is within normal tolerance. Industry standard pad mounted equipment is not designed with rubber gaskets or similar seals at the base and sits flush on the concrete pad. Mr. Gage's claim remains denied.

On October 17, 2025, DEF received Mr. Gage's complaint, filed with the FPSC. Mr. Everhart replied to Mr. Gage to acknowledge his complaint and to advise he would be provided with a copy of DEF's response to the FPSC.

On October 18, 2025, Mr. Gage contacted DEF's Customer Care and advised the Customer Care Specialist the PME-4 does not meet the electrical code requirements and is a safety concern. An investigation request was issued. The Troublemaker arrived onsite and confirmed the PME-4 was locked and secured.

A copy of this response was sent to Mr. Gage at jgage76@gmail.com.

Date Submitted: November 6, 2025

Attachments: Acknowledgement