

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: June 24, 2026

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Crawford, Newman) *JSC*
Division of Engineering (Brown) *L/K*
Office of Consumer Assistance (Kendrick) *AK*

RE: Docket No. 20260045-EI – Formal complaint of Justin Gage against Duke Energy Florida, LLC for alleged violations of Commission rules, orders, and statutes governing electric utility safety standards, compliance certifications, and truthfulness in Commission filings.

AGENDA: 07/07/26 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On October 17, 2025, Mr. Justin Gage (Mr. Gage) filed Informal Complaint No 1488062E, alleging that a PME-4 switchgear unit¹ administered by Duke Energy Florida, LLC (DEF) located near his house was out of compliance with the National Electrical Safety Code (NESC). In particular, Mr. Gage alleged that the PME-4 unit had missing or improper safety stickers, was improperly sealed at the base, and that the door of the unit was too close to nearby bushes to be fully opened.

¹ A switchgear is composed of electrical disconnect switches, fuses, or circuit breakers used to control, protect, and isolate electrical equipment.

Mr. Gage had previously been in contact with DEF regarding the PME-4. On September 4, 2025, Mr. Gage reported that a loud boom had come from the PME-4. A DEF technician arrived onsite and confirmed that Mr. Gage had power. At that time Mr. Gage raised his concerns with the PME-4 with the technician. The technician told Mr. Gage that his concerns would be investigated and put a safety sticker on the unit. A DEF investigation found that the PME-4 was in compliance with the NESC and that Mr. Gage was not served by that PME-4 but by a nearby transformer. Mr. Gage then filed an informal complaint with the Commission under Rule 25-22.032, Florida Administrative Code (F.A.C.).

While the informal complaint was being processed at the Commission, Mr. Gage also filed a complaint with the Occupational Safety and Health Administration (OSHA). OSHA reached out to DEF about the complaint and a DEF Supervisor and Safety Professional examined the PME-4 on November 25, 2025. They found no OSHA or NESC violations. On or about that date, DEF removed the bushes that were near the PME-4. In early December OSHA informed Mr. Gage that his case was being closed because the bushes were removed.

On January 6, 2026, Commission engineering safety staff examined the PME-4 unit and found no violations of the NESC. Mr. Gage was unsatisfied and the matter was referred to the Commission's Process Review Team (PRT) for review. In March, Commission staff advised Mr. Gage that his informal complaint had been reviewed by the PRT, and it did not appear that DEF had violated any Commission statutes, rules, orders, or its tariff in its handling of the matter, and that the Commission did not have jurisdiction to award damages.

On March 27, 2026, Mr. Gage filed a formal complaint against DEF under Rule 25-22.036(3)(b), F.A.C., alleging the same material facts contained in his informal complaint. The formal complaint asserts that the PME-4 unit was out of compliance with the NESC from September 2025 to December 2025. Mr. Gage further alleges that DEF made false or misleading statements to the Commission regarding the PME-4's compliance, and that Commission staff failed to properly review his informal complaint.

On April 3, 2026, DEF filed a Motion to Dismiss the Complaint. DEF asserts that the complaint does not comply with Rule 25-22.036, F.A.C., because the complaint fails to contain competent substantial evidence that any action taken by DEF constitutes a violation of any applicable statute, rule, Commission order, or the company tariff. Further, DEF denies that it made any false statements to the Commission. On April 6, Mr. Gage filed a response, asserting that the complaint sets forth photographic evidence of NESC violations.²

This recommendation addresses whether DEF's Motion to Dismiss the Complaint should be granted and the appropriate disposition of Mr. Gage's complaint against DEF. The Commission has jurisdiction over this matter pursuant to Section 366.04., Florida Statutes (F.S.).

² Mr. Gage's OSHA complaint and the referenced photographs are attached to his formal complaint, Document No. 01812-2026, filed March 27, 2026, in Docket No. 20260045-EI.

Discussion of Issues

Issue 1: Should the Commission grant DEF's Motion to Dismiss?

Recommendation: No, the Commission should deny DEF's Motion. (Newman, Crawford)

Staff Analysis:

Legal Standard

To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). 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. A determination of the petition's sufficiency is confined to the petition and the documents incorporated therein and the grounds asserted in the motion to dismiss. *Id.* All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted. *Id.*

Rule 25-22.036., F.A.C., prescribes the elements that must be contained in a formal complaint:

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.

Formal Complaint

Mr. Gage's formal complaint states that DEF violated three Rules: Rule 25-6.0345, F.A.C., which adopts the 2023 NESC as the applicable safety standards for transmission and distribution facilities; Rule 25-6.039, F.A.C., which requires utilities to establish safe work practices; and Rule 25-6.0346, which requires utilities to submit quarterly reports certifying work order compliance with all applicable safety standards. To support these claims, Mr. Gage supplied photographs purporting to show the violations with explanatory text.

DEF's Motion to Dismiss

DEF's Motion to Dismiss states that the complaint "fails to provide competent or substantial evidence" that any of DEF's actions violate any rule. DEF states that it has repeatedly inspected the PME-4 and have found no NESC violations. DEF further states that it has never made false or misleading statements to the Commission regarding the inspections of the PME-4. Mr. Gage's response to DEF's Motion to Dismiss reiterates the claims made in the formal complaint about the physical condition of the PME-4.

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Analysis

The Commission has previously held pro se litigants such as Mr. Gage to a relaxed pleading standard, in order to prevent delay and promote resolution of litigants' claims. Staff believes the petition states a cause of action related to the safety compliance of DEF facilities, which is under Commission jurisdiction as provided under Section 366.04(6), F.S. Staff believes that the factual allegations contained in Mr. Gage's complaint are sufficiently clear to show which of DEF's actions Mr. Gage believes violated Commission rules. The complaint and accompanying photographs show how Mr. Gage believes the PME-4 was out of compliance with the NESC. Mr. Gage alleges insufficient clearance for the PME-4's door and improper safety labelling.

Staff believes that these allegations relate to DEF's compliance with Commission safety standards and that the facts and documentation in the docket sufficiently state a cause of action for the Commission to make a determination on the formal complaint, as discussed in Issue 2. Therefore, staff recommends that DEF's Motion to Dismiss should be denied.

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Issue 2: What is the appropriate disposition of Mr. Gage's complaint?

Recommendation: Staff recommends that Mr. Gage's formal complaint should be denied. It does not appear that DEF violated its Commission-approved tariff or any statutes, rules, or orders of the Commission in the condition or maintenance of the PME-4 unit. (Newman, Crawford)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction that affects the complainant's substantial interests and that is in violation of a statute enforced by the Commission, or of any Commission rule or order. As discussed below, Mr. Gage's petition fails to show that DEF violated any rules, statutes, orders, or its tariff in the condition or maintenance of the PME-4 unit.

Formal Complaint

Mr. Gage's formal complaint states that DEF violated three rules: Rule 25-6.0345, F.A.C., which adopts the 2023 NESC as the applicable safety standards for transmission and distribution facilities; Rule 25-6.039, F.A.C., which requires utilities to establish safe work practices; and Rule 25-6.0346, F.A.C., which requires utilities to submit quarterly reports certifying work order compliance with all applicable safety standards. Mr. Gage alleges the PME-4 unit was not in compliance with the NESC in three ways: the unit lacked the proper safety stickers, the base was improperly sealed, and the door had insufficient clearance. Mr. Gage claims that DEF was aware of the noncompliance on September 4, 2025, but denied the fact to the Commission and refused to bring the unit into compliance. Mr. Gage states the PME-4 was noncompliant from September 2025 to December 2025, at which point DEF brought the unit into compliance under pressure from OSHA. Mr. Gage further states that Commission staff failed to properly review his complaint.

Analysis

Based on the information provided, it does not appear that DEF violated a statute, rule, order, or applicable provision of DEF's Commission-approved tariff. Section 25-6.0345, F.A.C., states that "[t]he safety standards prescribed by the 2023 National Electrical Safety Code (NESC) C2-2023, are adopted and incorporated by reference into this rule as the applicable safety standards for transmission and distribution facilities subject to the Commission's jurisdiction." The other potential rule violations, including DEF's alleged false statements to the Commission, depend on finding that DEF violated the NESC.

The PME-4 unit was inspected at least three times. First, on September 4, 2025, a DEF technician responded to Mr. Gage's report of a loud boom coming from the unit, and Mr. Gage raised his concerns with the DEF technician. At that time, the technician examined the unit, logged Mr. Gage's complaints, and placed a new safety sticker on the unit.³ DEF's investigation at that time found no NESC violations; in particular, it found that the unit was properly sealed

³ NESC Rule 381G requires that a prominent and appropriate safety sign should be visible when the first door or barrier is opened or removed. National Electrical Safety Code, IEEE Std C2-2023 (New York: IEEE, 2023), Rule 381G.

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and that the unit could be safely accessed. Second, on November 25, 2025, a DEF Supervisor and Safety Professional inspected the PME-4 and found no NESC or OSHA violations. At that time DEF put new safety stickers on the unit and notified the HOA that the bushes near the unit were being removed “to satisfy Mr. Gage’s complaint.” Third, on January 6, 2026, Commission staff inspected the unit and found that it was in good condition and well maintained. Commission staff found no NESC violations.

Staff does not believe that DEF violated the NESC. Multiple inspections by DEF technicians and Commission staff failed to find any violations of the NESC. In his complaint, Mr. Gage fails to identify which provisions of the NESC he believes were violated. DEF put new safety stickers on the unit and removed the nearby bushes to satisfy Mr. Gage; staff believes these actions appear to resolve Mr. Gage’s concerns with the PME-4, as the formal complaint acknowledges the unit was brought into compliance in December. OSHA did not conclude that DEF violated the NESC, merely closing its case after the conditions Mr. Gage complained about were removed. Mr. Gage also alleges that Commission staff improperly investigated his complaint. Mr. Gage does not explain how Commission staff improperly reviewed his complaint or how Commission staff improperly used its discretion. Staff does not believe that DEF violated a statute, rule, order, or applicable provision of DEF’s Commission-approved tariff in the condition or maintenance of the PME-4 unit; therefore, the complaint should be denied.

Conclusion

Staff recommends that Mr. Gage’s formal complaint should be denied. It does not appear that DEF violated its Commission-approved tariff or any statutes, rules, or orders of the Commission in the condition or maintenance of the PME-4 unit.

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Issue 3: Should this docket be closed?

Recommendation: 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, this docket should be closed upon the issuance of a consummating order. (Newman, Crawford)

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, this docket should be closed upon the issuance of a consummating order.