

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Formal Complaint of Justin Gage against Duke Energy Florida, LLC

Docket No. 20260045-EI

PETITIONER'S RESPONSE IN OPPOSITION TO STAFF RECOMMENDATION ON ISSUE 2 AND REQUEST FOR COMMISSION CONSIDERATION PRIOR TO VOTE

Petitioner, Justin Gage, files this Response in Opposition to Staff Recommendation on Issue 2 and respectfully requests that the Commission consider this response prior to its scheduled vote in this docket. Petitioner does not oppose Staff's recommendation that Duke Energy Florida, LLC's Motion to Dismiss be denied, but Petitioner does oppose Staff's recommendation that the formal complaint be denied on the merits.

I. Preliminary Statement

The Staff Recommendation correctly concludes that Petitioner's formal complaint states a cause of action under the Commission's jurisdiction and that Duke Energy Florida, LLC's Motion to Dismiss should be denied. However, the recommendation on Issue 2 should not be adopted because it rests on an incomplete and inaccurate account of the record, improperly treats later corrective action as proof that no prior violation existed, and fails to address the central issue presented by the complaint: whether Duke Energy knowingly allowed a noncompliant high-voltage unit to remain in service while repeatedly denying the noncompliance in written statements.

This matter concerns the condition of the PME-4 high-voltage box during the period before Duke Energy finally performed corrective action, not merely the condition of the box after the bushes were removed, labels were addressed, and outside scrutiny had already forced action. The fact that later inspections found the unit in compliance after corrective measures had been taken does not resolve whether the unit had been noncompliant for months beforehand, whether Duke Energy knew that fact, or whether Duke Energy then made false or misleading statements to the Commission and to Petitioner.

II. Material Facts Omitted or Misstated in the Staff Recommendation

1. On September 4, 2025, a Duke Energy technician came to the site, observed the condition of the high-voltage box, and acknowledged that the unit was not in compliance. Petitioner has evidence that the technician stated the box was not in compliance and that he would put notes in Duke Energy's computer reflecting that condition.

2. On that same September 4, 2025 visit, the technician initiated action to have the unit brought into compliance. This is significant because it demonstrates contemporaneous recognition of an existing problem, not merely a later customer-preference adjustment.
3. After the September 4, 2025 visit, no other technician came out and inspected or corrected the noncompliant condition before Duke Energy later sent (within 2 weeks) written correspondence asserting that the box was in compliance and could be safely opened. (A video camera in tree right above the box)
4. Petitioner provided Duke Energy with photographs showing the September 4, 2025 technician standing inside the bushes and attempting to force the door open, as well as other photographs documenting the restricted clearance, access limitations, and other noncompliant conditions of the panel. (including lizards running around inside the box)
5. Duke Energy was therefore on direct notice of the restricted door clearance and related access issues, yet it continued to deny in writing, through emails and letters, that the box was out of compliance.
6. Petitioner filed a complaint with the Florida Public Service Commission, and despite notice of the asserted safety condition, Duke Energy continued to deny in writing that the high-voltage box was noncompliant. (Denial letter to the petitioner and to the PSC)
7. More than two and one-half months passed without corrective action, and PSC staff did not promptly inspect the box during the period when the complained-of condition remained in place.
8. During an emergency response to a cut underground line caused by Spectrum, Duke Energy personnel encountered the very access condition Petitioner had been complaining about, further supporting Petitioner's contention that the box could not be safely and properly accessed as Duke Energy had repeatedly claimed.
9. A Duke Energy employee explained that approximately ten feet of clearance was needed so personnel could use a six-foot hot stick and work on the box from a safe distance. That explanation is consistent with Petitioner's long-standing concern that the restricted clearance created a real safety issue rather than a cosmetic or trivial one. (photo and video evidence)
10. Because Petitioner believed Duke Energy employees' lives were at risk, Petitioner contacted OSHA. OSHA's involvement followed Petitioner's report of a serious safety condition, and Duke Energy thereafter undertook corrective action.

11. After the emergency response and OSHA involvement, Duke Energy removed the bushes that obstructed safe access to the unit and otherwise brought the area into compliance. Those actions support, rather than defeat, the conclusion that the earlier condition required correction. OSHA usually will not respond to a complaint unless it is from an employee but because of the level of safety concerns about the box they agree to do an informal complaint.
12. Only after Duke Energy finally performed those corrective measures did PSC staff inspect the box and conclude that it was in compliance. A post-correction inspection cannot fairly be treated as dispositive proof that no violation existed beforehand.
13. The absence of an OSHA citation does not establish that the unit had been compliant during the prior period. At most, it reflects OSHA's handling of a complaint not initiated by an employee and the fact that corrective measures were taken before OSHA pursued the matter further.
14. The bushes were not removed merely to placate Petitioner. They were removed because they interfered with safe access and because Duke Energy could no longer maintain the position that the unit was compliant once the safety concerns had been exposed by the emergency event and OSHA complaint.
15. Petitioner's complaint identifies the governing statutes and Commission rules and alleges facts showing that the box could not be properly accessed during the relevant period. Petitioner's position remains that the documented condition of the unit violated Commission-adopted safety requirements and that Duke Energy's written denials are an independent reason the matter should not be denied on this record.

III. Staff's Merits Recommendation Is Legally and Factually Unsound

Staff recommends denial on the ground that later inspections by Duke Energy personnel and PSC staff found no NESC violations. That reasoning is flawed because the formal complaint concerns the condition of the unit during the months before Duke Energy took corrective action, not simply the condition observed after the complained-of conditions had been altered.

Staff also states that Petitioner failed to identify which NESC provisions were violated. Yet the complaint identifies specific unsafe conditions, including inadequate clearance, inability to properly open the door, and improper safety labeling, and those allegations were sufficiently definite for Staff itself to conclude under Issue 1 that the complaint states a cause of action within Commission jurisdiction.

The same recommendation acknowledges that Petitioner's complaint and photographs are sufficient to state a cause of action regarding DEF's compliance with Commission safety standards. It is internally

inconsistent for Staff to recognize that the complaint clearly alleges concrete safety noncompliance for purposes of defeating dismissal, yet then minimize the same facts when recommending denial on the merits without full evidentiary development.

Moreover, Staff's statement that Duke Energy removed bushes and updated labels merely "to satisfy Mr. Gage" improperly minimizes the significance of the corrective actions. Corrective action taken after repeated complaints, an emergency response, and OSHA involvement is evidence that the complained-of condition was serious enough to require remediation, not proof that no prior noncompliance existed.

IV. Commission Review Is Required

The Commission should decline to adopt Staff's recommendation on Issue 2 because the present record reflects genuine factual disputes concerning the condition of the PME-4 during the relevant period, Duke Energy's knowledge of that condition, the timing and significance of corrective action, and the truthfulness of Duke Energy's written denials.

At minimum, those disputes should not be resolved against Petitioner on the basis of post-correction inspections and a paper record that does not fully account for the chronology described above. Where a regulated utility is alleged to have known of noncompliance, failed to timely correct it, and then denied that noncompliance in writing, the public-interest function of the Commission is best served by full and careful review rather than summary rejection.

V. Request for Relief

WHEREFORE, Petitioner respectfully requests that the Florida Public Service Commission:

1. Consider this Response prior to the Commission conference set for July 7, 2026
2. Deny Duke Energy Florida, LLC's Motion to Dismiss, consistent with Staff's recommendation on Issue 1
3. Reject Staff's recommendation on Issue 2 that the formal complaint be denied
4. Require full consideration of the evidence concerning the PME-4's condition during the relevant period, Duke Energy's knowledge of the condition, and Duke Energy's written denials of the condition.

Respectfully submitted,

/s/ Justin Gage

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CERTIFICATE OF SERVICE

Docket No. 20260045 EI

I HEREBY CERTIFY that a true and correct copy of **PETITIONER'S RESPONSE TO STAFF RECOMMENDATION ON ISSUE 2 AND REQUEST FOR COMMISSION CONSIDERATION PRIOR TO VOTE**s has been furnished by electronic mail on this **24th day of June, 2026**, to the following persons:

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Respectfully submitted

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