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December 6, 2023

VIA ELECTRONIC FILING

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

Re: Petition for Declaratory Statement Regarding Rule 25-6.049, F.A.C.
Dkt. 20230128

Dear Mr. Teitzman:

Attached for filing in the above-captioned docket is Tampa Electric Company's Response to Petition.

Thank you for your assistance in connection with this matter.

Sincerely,

A handwritten signature in blue ink that reads 'Malcolm N. Means'.

Malcolm N. Means

MNM/bml
Attachments

cc: All Parties of Record
TECO Regulatory

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Declaratory Statement)
By 1150 WHG, LLC)
_____)

DOCKET NO.: 20230128-EI

FILED: December 6, 2023

**TAMPA ELECTRIC COMPANY'S
RESPONSE TO PETITION**

Pursuant to Section 120.54(5)(b)6, Florida Statutes, and Rule 28-105.0027, Florida Administrative Code ("F.A.C."), Tampa Electric Company ("Tampa Electric," or "the company"), files this Response to Petition in the above-captioned docket and states as follows:

I. Introduction

1. The company's name and address are:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

2. Tampa Electric is a Florida corporation and is a wholly owned subsidiary of TECO Energy, Inc., which is a wholly owned subsidiary of Emera Incorporated. The company is an investor-owned public utility operating under the jurisdiction of the Florida Public Service Commission ("Commission" or "FPSC") pursuant to Chapter 366, Florida Statutes.

3. Tampa Electric provides retail electric service to over 810,000 customers in a 2,000 square mile service territory in Hillsborough and portions of Polk, Pasco, and Pinellas counties, Florida. Tampa Electric and its approximately 2,400 employees are focused on safety, providing cleaner and greener energy for its communities, and making it easier for its customers to do business with the company – when and where they want.

4. All pleadings, motions, notices, orders, or other documents filed in this proceeding or required to be served upon Tampa Electric shall be served upon the following individuals:

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II. Factual Background

5. On November 8, 2023, 1150 WHG, LLC (the “Petitioner”) filed a Petition for Declaratory Statement with the Commission (“Petition”) concerning the applicability of individual metering requirements under Rule 25-6.049, Florida Administrative Code (the “Rule”). In the Petition, the Petitioner states that it is the owner and developer of a residential building located at 1150 3rd Street SW, Winter Haven, Florida (“the Property”) and that it is a customer of Tampa Electric.

6. According to the Affidavit of Jack Boyajian filed in this docket on November 8, 2023, the existing structures on the Property were constructed in 1973. Tampa Electric has provided service to the Property since this time.

7. According to the Polk County Property Appraiser, there are ten buildings on this parcel, including an office building, an “open mezzanine,” and eight “motel” structures.¹ The customer of record at the Property when Tampa Electric originally established service was a motel. The company provided service to the motel until November 2022, when the Petitioner became the customer of record.

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<https://www.polkpa.org/CamaDisplay.aspx?OutputMode=Display&SearchType=RealEstate&ParcelID=262832000000011050>

8. Petitioner is in the process of renovating the Property to convert it from the existing motel use to 224 residential units. *See* Affidavit of Jack Boyajian, at ¶¶5-7. As a part of this conversion, the Petitioner is in the process of installing sub-panels and submeters² to each proposed apartment within the former motel structures, all behind the existing master meter. *See* Affidavit of Jack Boyajian, at ¶8. While the Petition claims that the conversion project “did not include any major electrical renovations,” the Petitioner also describes the installation of its own submeters as “costly” and as involving “substantial costs.” *See* Petition, at Section IV.³

9. The project also includes installation of solar panels “which will be tied into the master-meter under a co-generating arrangement with TECO.” Affidavit of Jack Boyajian, at ¶10. The Petitioner plans to “distribute the benefits of the renewable power to the Property’s residents.” Petition, at Section V. While it is not clear from the Petition, Tampa Electric understands that this is a reference to net metering the solar array against the collective usage of all tenants and all common areas at the Property.⁴

10. In January of 2023, a Tampa Electric energy auditor visited the Property at the customer’s request to perform a Commercial Energy Audit. The purpose of a Commercial Energy Audit is to inform customers about potential energy-savings opportunities, not to evaluate construction design plans. Furthermore, the Petitioner did not deliver construction design plans to Tampa Electric at this time.

² These are submeters that will be owned and operated by the Petitioner, as opposed to utility-owned individual meters.

³ The petition does not contain page or paragraph numbers, so this Response will refer to the section headings in the Petition.

⁴ Tampa Electric emphasizes that the Petitioner *has not* requested a declaratory statement regarding whether this proposed manner of service is consistent with Rule 25-6.065, F.A.C., which governs net metering of customer-owned renewable generation.

11. On June 16, 2023, representatives of the Petitioner verbally advised the company's Supervisor of Distribution Design that it intended to master meter and submeter the new apartments.

12. On June 18, 2023, the Supervisor of Distribution Design and one of Tampa Electric's Lead Distribution Design Technicians met with Mr. Boyajian at the Property. At this time, the two individuals informed Mr. Boyajian that master metering and non-utility submetering at the property would be inconsistent with the Rule.

13. The Petitioner submitted design plans for the project to Tampa Electric in June of 2023. These plans were not submitted through the company's usual channel for submission of plans, known as One Source. Furthermore, these plans did not reflect submetering of the residential units.

14. Tampa Electric sent letters to the Petitioner on July 6 and August 11, 2023, explaining the company's position that the Property does not qualify for an exemption from the individual metering requirement under the Rule.

15. The Petitioner made a complaint with the Commission on August 11, 2023.

16. On August 16, 2023, the Petitioner informed Tampa Electric that the first set of apartments at the Property would be available for rent in mid-September. The Petitioner also announced plans to continue with master metering and submetering the property. The Petitioner thus continued with the installation of submeters after receiving multiple communications from Tampa Electric indicating that individual utility metering is required by the Rule.

17. On September 27, 2023, Commission Staff issued a complaint resolution. Staff reviewed materials provided by the Petitioner and Tampa Electric and found that Tampa Electric did not violate the Rule. A copy of Staff's September 27, 2023, complaint resolution is included as **Exhibit 1**.

18. Based on the text of the Petition, the Affidavit of Jack Boyajian, and conversations with the Petitioner, Tampa Electric understands that the Petitioner’s proposal for the Property is as follows:

- a. The Property would have a single Tampa Electric meter, with the Petitioner as customer of record. This account would be billed at the applicable commercial rate, not residential rate applicable to apartment residents under the company’s RS rate schedule.
- b. Each individual apartment would have a Petitioner-owned submeter.
- c. The Petitioner would net meter the solar panels against the aggregated usage of all common areas and apartments as recorded at the master meter.
- d. Individual residential tenants would then be billed for their share of the collective usage at the Property, after accounting for the net-metered solar generation, billed at the Petitioner’s commercial rate.

III. Argument

19. Petitions for declaratory statements are governed by Section 120.565, Florida Statutes. It provides that any “substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.”

20. Rule 28-105.001, which implements Section 120.565, explains that a declaratory statement “is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.”

21. The Petition seeks a declaration from the Commission regarding the application of Rule 25-6.049, Florida Administrative Code (“Measuring Customer Service Rule” or the “Rule”) to the Property. More specifically, Petitioner seeks a declaration that the general requirement to

individually meter each separate occupancy unit in a residential building does not apply to the Property through application of the “grandfather clause”⁵ in the Rule.

22. Petitioner *has not* requested a declaratory statement that its proposed net metering arrangement is consistent with Rule 25-6.065, F.A.C., also known as the “Net Metering Rule.” The Commission should not expressly or implicitly approve Petitioner’s proposed net metering arrangement in its disposition of the Petition.

23. The Commission should declare that the “grandfather clause” does not apply to the Property and Petitioner’s proposed master metering arrangement is inconsistent with the Rule for five reasons. First, Tampa Electric correctly interpreted and applied the plain language of the Rule to the Property and required individual metering of the apartments on the Property. Second, Tampa Electric’s reading of the Rule is consistent with Commission precedent. Third, the Commission should declare that individual metering is required because the Petitioner’s master-metering approach directly undermines the goals of the Florida Energy Efficiency and Conservation Act (“FEECA”) that the Rule implements. Fourth, the Petitioner’s proposed master-metering and net-metering of a new residential building is an improper circumvention of the Commission’s Net Metering Rule. Finally, public policy weighs in favor of rejecting the Petitioner’s interpretation of the Rule.

Tampa Electric Correctly Interpreted and Applied the Rule

24. In letters sent to the customer on July 6 and August 11, 2023, Tampa Electric explained to the Petitioner that the Rule requires the company to individually meter the apartments

⁵ A “grandfather clause” is “a provision that creates an exemption from the law’s effect for something that existed before the law’s effective date; specifically, a statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect.” Black’s Law Dictionary (11th ed. 2019).

at the Property because the Property does not qualify for the grandfather exemption. As explained below, this interpretation is consistent with the plain language of the Rule.

25. The Florida Supreme Court has explained that the “words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022). “Under the whole-text canon, proper interpretation requires consideration of ‘the entire text, in view of its structure and of the physical and logical relation of its many parts.’” *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012)).

26. The “grandfather clause” in the Rule is found in the second sentence of Subsection (5). The words of the clause must be considered “in their context” and in relation to the first sentence of Subsection (5). *Lab Corp.*, 339 So.3d at 323. The first two sentences of Subsection (5) state:

(5) Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home, and recreational vehicle parks. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since January 1, 1981. (emphasis added).

27. While the Petitioner focuses on the last two criteria for grandfather clause eligibility – construction permit issuance date and continuous master-metered service – they ignore the first criterion, which limits applicability of the grandfather clause to “any such occupancy unit.”⁶ This phrase refers to the term “occupancy unit” in the first sentence, as emphasized above, and limits the applicability of the grandfather clause to the “occupancy units” included in that first sentence.

⁶ The term “occupancy unit” is defined in Paragraph (8)(a) of the Rule as “that portion of any commercial establishment, single and multi-unit residential building, or trailer, mobile home or recreational vehicle park, or marina which is set apart from the rest of such facility by clearly determinable boundaries as described in the rental, lease, or ownership agreement for such unit.”

As the United States Supreme Court has explained: “The word ‘such’ usually refers to something that has already been ‘described’ or that is ‘implied or intelligible from the context or circumstances.’” *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 766 (2023) (interpreting the Securities Act of 1933 and quoting Concise Oxford Dictionary of Current English 1218 (1931); Webster’s New International Dictionary 2518 (2d ed. 1954)). Indeed, the ordinary meaning of the term “such” includes “[t]hat or those; having just been mentioned,”⁷ or “of the same class, type, or sort.”⁸ The use of the term “such” to qualify the term “occupancy units” in the second sentence therefore limits the types of “occupancy units” eligible for the grandfather clause to those specified in the first sentence. Any other reading would be illogical; since the individual metering requirement only applies to occupancy structures listed in the first sentence, the grandfather clause only applies to exempt those enumerated structures from that requirement.

28. This limitation of the grandfather clause to certain types of structures is logical in consideration of the “entire [Rule], in view of its structure and of the physical and logical relation of its many parts.” *Lab. Corp. of Am.*, 339 So. 3d at 323. In addition to the grandfather clause, Subpart (5) includes seven other exemptions from the individual metering requirement for certain other types of facilities, or portions of those facilities. *See* R. 25-6.049(5)(a)-(g), F.A.C. These exemptions apply where “attributing usage to individual occupants is not practical.” Order No. PSC-05-0258-PAA-EU, issued March 8, 2005, in Docket No. 050010-EU. Since some types of facilities are exempt from the individual metering requirement regardless of when they were constructed, it is logical that they are not included in the grandfather clause. A clear example of this would be a motel, which is not listed in the first sentence of Subsection (5) and therefore is not subject to the individual metering requirement and is not eligible for the grandfather clause. In

⁷ *Such*, Black’s Law Dictionary (11th ed. 2019)

⁸ *Such*, Merriam-Webster.com Dictionary.

other words, motels are exempt from individual metering regardless of when they were constructed under a separate exemption, so there is no need for them to also be eligible for “grandfathering.”
See R. 25-6.049(5)(d), F.A.C.

29. This reading of the Rule is also bolstered by the change made to the rule language in 2006. Prior to that date, Subsection (5) read as follows:

(a) Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction is commenced after January 1, 1981. Individual electric meters shall not, however, be required: [other exemptions omitted]

It is clear from the prior version of the Rule that only the enumerated types of structures were eligible for the grandfather clause at that time, and only if they were constructed prior to 1981. In an Order issued prior to adoption of the current rule language, the Commission described this language as a “requirement of individual metering to specified buildings ‘for which construction is commenced after January 1, 1981.’” Order No. PSC-00-1802-FOF-EU, issued October 2, 2000, in Docket No. 981104-EU (emphasis added).

30. This intent to apply grandfathering only to certain types of structures was carried forward into the current language of the Rule. The Commission Staff’s Recommendation proposing the 2006 amendments to the Rule summarized the change to the current rule language as follows:

As mentioned in the Case Background, a minor clarification is proposed to Rule 25- 6.049(5). The proposed amendment makes clear that individual metering of occupancy units in commercial establishments, multi-unit residential buildings, marinas, and trailer, mobile home or recreational vehicle parks, is not required when the construction permit was received before January 1, 1981, and the occupancy units have been master metered continuously since that date. (emphasis added).⁹

⁹ *See* Staff Recommendation, filed September 8, 2005 in Docket Nos. 050152-EU, 990188-EI, at 4.

Again, Staff made it clear that the current grandfather clause language only applies to occupancy units in the listed types of structures and that it does not apply broadly to *any* type of pre-1981 structure.

31. Since, as explained above, the plain language of Subsection (5) limits the applicability of the grandfather clause to occupancy units in the types of structures listed in the first sentence, the question then becomes whether the Property contains one of those types of occupancy units. The Property was previously in use as a motel, which is not one of the types of structures listed in the first sentence of Subsection (5). Thus, even if the motel structures were constructed prior to 1981 and master-metered prior to 1981,¹⁰ the occupancy units within those structures are not eligible for the grandfather clause. While the grandfather clause would potentially apply if the property was a pre-1981, master-metered “residential building,” the Property was a motel prior to the current renovation project and will not be a residential building until after the renovation is complete. Consequently, the structure cannot be “grandfathered” as a residential building.

32. Furthermore, the motel exemption no longer applies because the Petitioner is in the process of converting the motel structures into apartments.

33. In short, neither the grandfather clause nor the motel exemption applies to the Property. Instead, the Property is a new residential building, and the Rule precludes a master metering-submetering arrangement and requires Tampa Electric to individually meter the occupancy units within that building.

The Petitioner’s Interpretation is Inconsistent with Commission Precedent

¹⁰ Mr. Boyajian’s affidavit states that the motel at the Property was constructed prior to 1981 and has been continuously master metered during that time. Tampa Electric has not confirmed whether the motel it served at the Property was constructed prior to 1981, but the Petition and the records of Polk County suggest that it was. The company cannot determine from its records whether the motel was master metered continuously since 1981.

34. Through the Petition, the Petitioner seeks to expand the scope of the grandfather clause to apply to *all* master-metered, pre-1981 structures.¹¹ This is inconsistent with the Commission’s prior interpretations of the Rule.

35. The Commission has previously agreed that “it was not pre-1981 buildings that were intended to be grandfathered by the Rule – it was the non-conforming use to which those buildings were put that the Rule grandfathered.” Order No. PSC-98-0449-FOF-EI, issued March 30, 1998, in Docket No. 971542-EI, at 2 (emphasis added).¹² In other words, the grandfather clause “simply tolerates pre-existing non-conforming uses, it does not condone creation of new ones.” *Id.* (emphasis added). Here, the Developer seeks to exempt 224 new residential apartment units from the individual metering requirement, which would effectively create a new non-conforming use.

36. The Commission has also explained that the purpose of the grandfather clause is “advancing conservation while, at the same time, avoiding the retroactive imposition of individual metering retrofit costs on buildings constructed as master-metered buildings prior to adoption of the rule.” Order No. PSC-00-1802-FOF-EI, issued October 2, 2000, in Docket No. 981104-EU, at 3-4. Application of the grandfather clause to the Property will neither advance conservation¹³ nor avoid retrofit costs. The Developer has made and is making a significant investment to convert a motel into new residential apartments, including installation of new Petitioner-owned meters in each new apartment unit. *See* Affidavit of Jack Boyajian, at ¶¶5,8. The Petition itself describes these investments in new submeters as “costly” and as involving “substantial cost.” *See* Petition,

¹¹ “The grandfather clause allows buildings constructed before 1981 to circumvent the exorbitant costs associated with installing individual metering in a property.” Petition, at Section V.

¹² The quotation here and in the next sentence are arguments asserted by Florida Power Corporation, which the Commission expressly “agree[d] with” in this Order. *See also* Order No. PSC-00-1802-FOF-EU, issued October 2, 2000 in Docket No. 981104-EU (withdrawing proposed amendment of the Rule to incorporate FPC’s interpretation of the grandfather clause as unnecessary because it had previously “adopted [FPC’s] rationale” in Order No. PSC-98-0449-FOF-EI).

¹³ *See* the discussion of FEECA, *infra*.

at Section IV. Plainly, the Petitioner has already incurred “individual metering retrofit costs,” albeit for Petitioner-owned submeters instead of for designing and constructing the system for the use of individual utility meters.¹⁴

37. Petitioner’s reading of the Rule would also allow developers to purchase *any* master-metered, pre-1981 building, regardless of type, and convert that structure to a new use without installing individual meters. For instance, a developer could purchase a large industrial building, convert it to apartments, and avoid individual metering for all tenants. This runs counter not only to the plain language of the Rule, but also to the Commission’s expressed intent for the grandfather clause, which was to avoid retroactive application of the Rule to existing non-conforming *uses* of structures, not the structures themselves.¹⁵ This reading would also undermine FEECA and several admirable public policy goals, as explained below.

The Petitioner’s Proposal Undermines the Goals of FEECA

38. Sections 366.80 through 366.83 of the Florida Statutes are known as the Florida Energy Efficiency and Conservation Act, or “FEECA.” §366.80, Fla. Stat. Through FEECA, the Legislature directed the Commission to accomplish several goals including, among other things, reducing the growth rates of electric consumption and weather-sensitive peak demand. *See* §366.81, Fla. Stat. The Rule implements FEECA by making individual occupancy unit residents responsible for paying for their actual electricity consumption, which makes them “more likely to conserve and minimize their bills.” Order No. PSC-05-0258-PAA-EU, issued March 8, 2005 in Docket No. 050010-EU; *see also* Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020

¹⁴ Furthermore, as noted in the Factual Background section above, the Petitioner chose to continue with installation of submeters instead of utility-owned meters even after being informed by Tampa Electric that individual utility meters were required.

¹⁵ Granting the Petition would depart from the plain language of, and long-standing interpretation of, the Rule and would be tantamount to amending the Rule by declaratory statement rather than through the rulemaking process in Section 120.54, Florida Statutes.

in Docket No. 20200175-EU (“Casa Devon tenants currently have the typical motivation to save energy and reduce their electric bills as individually metered customers because they can control their consumption and save energy.”)

39. Petitioner essentially argues that the submeters installed by Petitioner in each apartment are an effective substitute for individual utility metering in accomplishing the goals of FEECA. The tenants at the Property, however, will not be billed at the appropriate residential rates. Instead, these tenants will pay a portion of the Petitioner’s commercial rate.¹⁶ This will not send appropriate price signals to the tenants to promote conservation. As the Commission has previously explained: “A large proportion of the production costs of electricity are allocated to the rate classes based on their contribution to the system’s peak demand. Since residential customers tend to be more peak intensive, they are allocated relatively more costs than the less peak intensive commercial and industrial customers. Thus, residential rates tend to be higher than commercial rates.” Order No. PSC-97-0074-FOF-EU, issued January 24, 1997, in Docket No. 951485-EU (emphasis added). The tenants at the Property accordingly may pay a lower rate than they would under a residential rate. Billing residential customers at a potentially lower commercial rate would “obviate the policy reason for the rule, which is to encourage energy conservation.” Order No. PSC-97-0763-FOF-EU, issued June 27, 1997, in Docket No. 970647-EU (citing Order No. PSC-97-0763-FOF-EU).¹⁷

¹⁶ “it is the intent of 1150 WHG to have tenants pay for their individual electrical use at the same rate at which the landlord is billed...” Affidavit of Jack Boyajian, at ¶9.

¹⁷ Billing residential tenants at a commercial rate also creates a related cost-of-service and rate design issue, as this arrangement would not result in the recovery of the entire cost to serve the residential tenants. *See* Order No. PSC-97-0074-FOF-EU, issued January 24, 1997 in Docket No. 951485-EU (“The rates charged to the various classes of customers are based on the unique usage characteristics of each class.”).

40. Furthermore, Tampa Electric spent the last several years making a major capital investment¹⁸ in approximately 800,000 new Advanced Metering Infrastructure (“AMI”) meters. These AMI meters can, among other things, provide “granular, near real-time data that will enable customers to take control of their energy usage and make decisions that will lower their electric bills.”¹⁹ Usage of the Petitioner’s submeters instead of Tampa Electric’s AMI meters deprives the residential tenants of these energy-saving features.

41. The Petitioner’s proposal will also undermine the utility energy efficiency programs required under FEECA.²⁰ If the Petitioner is the only customer of record at the property, the residential tenants will not be Tampa Electric customers. Consequently, they will be deprived of the opportunity to participate in Tampa Electric’s residential customer energy efficiency programs.²¹

42. Finally, the Petitioner claims that the proposed installation of solar panels at the Property would incentivize residents to conserve energy. Assuming the Petitioner does not plan to charge the tenants for the electricity generated by the panels,²² it will in fact do the opposite. Tenants will be informed that they are receiving “free electricity” from the on-site solar arrays, which may encourage tenants to use *more* electricity than they would otherwise.

The Petitioner’s Proposal Improperly Circumvents the Commission’s Net Metering Rule

¹⁸ In the company’s last base rate case, Tampa Electric estimated that the project would entail a capital investment of approximately \$228 million between 2017 and 2022. *See* Direct Testimony of Regan Haines, Exhibit No. RBH-1, Document No 4, filed April 9, 2021, in Docket No. 20210034-EI.

¹⁹ Direct Testimony of Regan Haines, filed April 9, 2021, in Docket No. 20210034-EI, at 28; *see also* <https://www.tampaelectric.com/residential/billing-options/understanding-your-bill/> (“The Interactive Bill features both a daily and monthly usage graph, with the ability to see how temperature data affects your bill.”).

²⁰ The Act requires the Commission to adopt conservation goals for each utility subject to FEECA and to review those goals at least every five years. §366.82, Fla. Stat. After the Commission approves goals for a utility, the utility must submit a Demand Side Management (“DSM”) plan designed to meet the utility’s goals. R. 25-17.0021(4), F.A.C. This plan is comprised of customer energy efficiency programs. R. 25-17.0021(4), F.A.C.

²¹ As explained below, severing the relationship between the tenants at the Property and Tampa Electric will also deprive them of the benefits of Commission oversight.

²² If the Petitioner does charge for the electricity, it would make the Petitioner a “public utility” under Section 366.06(8), Florida Statutes, and subject the Petitioner to Commission jurisdiction.

43. The Petitioner *has not* requested a declaratory statement regarding whether its proposed manner of electrical service is consistent with Rule 25-6.065, F.A.C., also known as the “Net Metering Rule,” which governs net metering of customer-owned renewable generation. The Commission should accordingly decline to state whether the proposed arrangement is consistent with the Net Metering Rule. Tampa Electric nonetheless highlights this aspect of Petitioner’s project because, if the Petitioner succeeds in master metering the apartments and installs the proposed solar array, it will improperly circumvent the Net Metering Rule.

44. The Net Metering Rule defines “net metering” as “a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer’s electricity consumption on site.” *See* R. 25-6.065(2)(c), F.A.C. Section (8) of the Net Metering Rule provides that an investor-owned utility must allow each interconnected “customer-owned renewable generation” facility to net meter.

45. The Net Metering Rule defines the term “customer-owned renewable generation” as “an electric generating system located on a customer’s premises that is primarily intended to offset part or all of the customer’s electricity requirements with renewable energy.” R. 25-6.065(2)(a), F.A.C.

46. If the Petitioner is allowed to master-meter the Property, the Petitioner will be the only Tampa Electric “customer.” The Petitioner will likely argue that the on-site solar array is sized to offset the “customer’s” electric usage measured at the master meter and seek interconnection under the Rule. The Petitioner apparently intends, however, to size the solar array to offset the electricity requirements of both the common areas at the Property and the usage of the apartments on site. *See* Petition, at Section V (“distribute the benefits of the renewable power”). Thus, the array is not primarily intended to offset *the Petitioner’s* electricity requirements, but to offset the electricity usage of *224 occupied residential apartments*. The Petitioner’s proposal

would thus improperly circumvent the size limitation built into the definition of “customer-owned renewable generation.”

47. The Petitioner’s proposed arrangement may also make the Petitioner an “electric utility as that term is defined in Section 366.02(4), Florida Statutes. That provision states that an “electric utility” includes any “investor-owned electric utility...which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.” By installing solar panels and submeters behind the Tampa Electric meter, and by distributing power from those panels to the sub metered tenants, the Petitioner would effectively own and operate an electric generation and distribution system within the state. If the Petitioner sells the electricity generated by the solar array to the tenants on the Property, it would also make the Petitioner a “public utility” under Section 366.06(8), Florida Statutes.

48. Tampa Electric would also note that the Florida Legislature recently had an opportunity to consider a proposed bill that would expressly authorize an arrangement similar to the one proposed by the Petitioner. Florida Senate Bill 1718 (2021) proposed to modify Section 366.91 by permitting a “business entity,” which was defined to include the owner of residential multifamily housing units, to install renewable energy generation on any property that business owns or leases.²³ That bill would also have allowed such a business entity to sell electricity from that generation without subjecting “the energy-producing business...to regulation under [Chapter 366].”²⁴ It also would have allowed business entities to size an on-site renewable energy generation system at 150 percent of the entity’s usage in the prior calendar year.²⁵ For multifamily housing,

²³ Available at: https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_s1718__.DOCX&DocumentType=Bill&BillNumber=1718&Session=2021

²⁴ *Id.* at page 5-6.

²⁵ *Id.* at 6.

this was defined as 150 percent of the usage of all meters on the property.²⁶ This bill ultimately died in the Regulated Industries Committee. The fact that the Florida Legislature did not change Chapter 366 to approve the kind of service arrangement proposed by the Petitioner should be considered by the Commission in its disposition of this Petition.

Public Policy Weighs in Favor of Individual Metering

49. Although supporting affordable housing is a worthy public policy goal, if the Petitioner is allowed to create a new residential building that is exempt from the individual metering requirement, it will deprive the 224 tenants at the Property of the benefits of Commission jurisdiction and oversight, which would be contrary to the portion of public policy the Commission is responsible for implementing.

50. In 1997, microMETER Corporation filed a proposed rule amendment to eliminate the individual metering requirement for occupancy units in multi-unit buildings. *See* Order No. PSC-97-0074-FOF-EU, issued January 24, 1997, in Docket No. 951485. Instead, microMETER proposed to “allow non-utility entities to meter individual occupancy units,” meaning the “customer would submeter and bill the individual occupancy units.” *Id.*

51. In rejecting the proposed change to the Rule, the Commission explained that one of the “major concerns” with the proposal was the “severing of the direct relationship between the utility and the end use of the electricity, and the loss of consumer protections that this relationship currently provides.” *Id.* The Commission explained that if non-utilities were allowed to meter and bill for electricity, it would “no longer have the statutory authority to ensure that the protections currently afforded by the Commission statutes and rules are provided to submetered customers.” *Id.* These protections included “meter reading, meter testing, billing, disconnections for non-

²⁶ *Id.* at 6.

payment and other reason, reconnections, voltage standards, provision for life-saving medical equipment, adjustments for metering errors, over and underbillings, and customer deposits.” *Id.* The Petitioner’s proposal here would similarly deprive the Commission of jurisdiction over the service provided to those customers, as well as the consumer protections that jurisdiction affords.

52. Tampa Electric is also concerned with the severing of the relationship between the company and Petitioner’s tenants, which would deprive those tenants of Tampa Electric’s expertise, customer service, and, as explained above, Tampa Electric’s many residential demand-side management (“DSM”) customer programs.

53. The Petitioner claims that requiring installation of individual utility-owned meters in buildings constructed prior to 1981 would “produce substantial disincentives for developers” to invest in existing structures. *See* Petition at Section V. This is inaccurate for several reasons. First, developers are willing to make investments in electrical equipment, such as installation of new meters, as part of renovation projects. The clearest illustration of this is that the Petitioner paid a “substantial cost” to install submeters in each unit *in this very project* and plainly would have made this investment even in the absence of the individual utility metering requirement. Second, there are many renovation projects that would not require installation of individual meters due to the application of the grandfather clause or another exemption. For instance, a developer could renovate a pre-1981, master-metered *residential building* without investing in individual meters because that structure would qualify for the grandfather clause. Finally, a developer could do their due diligence by inquiring with the electric utility about any necessary retrofits prior to beginning a renovation project, which Petitioner did not do here.

Petitioner’s Particular Circumstances do not Justify Deviation from the Rule

54. In addition to arguing that the grandfather clause applies to the Property, the Petitioner also repeatedly emphasizes the cost it would incur to comply with the Rule. This does not justify deviation from the requirements of the Rule.

55. First, the Petitioner only incurred costs associated with master metering and submetering because of a failure to properly communicate with Tampa Electric. The Petitioner acquired the property in November of 2022, but did not, and still has not, submitted adequate construction plans for its proposed master and submetering arrangement to Tampa Electric. Furthermore, the Petitioner did not verbally inform Tampa Electric regarding the submetering proposal until over six months after acquiring the Property.²⁷

56. Second, the Petitioner chose to continue with installation of submeters on the Property even after receiving multiple communications from Tampa Electric explaining that master metering is not allowed and individual utility metering is required, and after receiving a complaint resolution letter from Commission Staff expressing Staff's opinion that Tampa Electric had not violated the Rule.

57. In Order No. PSC-2020-0295-PAA-EU, the Commission addressed an emergency petition for variance or waiver of the individual metering requirement for an apartment building. In finding that there was no economic or legal hardship that would justify a waiver, the Commission noted that the petitioner "negotiated its agreement with HUD, including an agreement to master meter, without first consulting the Commission's rules and requesting a waiver or variance." *Id.* Here, the Petitioner began submetering the apartments without first consulting with Tampa Electric or the Commission and chose to continue doing so despite being told by Tampa Electric that individual metering is required. While Petitioner has not requested a Rule variance or

²⁷ While a company representative did perform a Commercial Energy Audit on the property in January of 2023, the purpose of such an audit is to review potential energy efficiency programs that may be available for the property, not to review and evaluate construction design plans.

waiver, these circumstances clearly do not demonstrate the type of economic or legal hardship that would justify such a waiver.

IV. Conclusion

58. The Commission should declare that the Property is not eligible for master metering and is subject to the individual metering requirement in the Rule. The grandfather clause does not apply to construction of new apartment units within a former motel. Petitioner's interpretation of the Rule ignores the plain language of that Rule as well as Commission precedent. Application of Petitioner's interpretation would undermine the goals of FEECA; circumvent the Net Metering Rule; deny the tenants the benefits of Tampa Electric's AMI meters, energy efficiency programs, expertise, and customer service; and deprive the tenants of the consumer protections offered by the Commission. For all of these reasons, the Commission should declare that master metering is not permissible under the Rule and that individual metering is required for all apartments at the Property.

WHEREFORE, Tampa Electric respectfully requests that the Commission enter an Order denying the declaratory statement requested by Petition and ruling that the residential occupancy units at the Property (1) should not be served behind a master meter and (2) should be served by individual, utility-owned meters.

[remainder of page intentionally left blank]

DATED this 6th day of December 2023.

Respectfully submitted,



J. JEFFRY WAHLEN

jwahlen@ausley.com

MALCOLM N. MEANS

mmeans@ausley.com

VIRGINIA PONDER

vponder@ausley.com

Ausley McMullen

Post Office Box 391

Tallahassee, FL 32302

(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

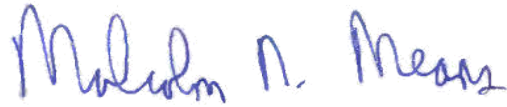
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Petition, filed on behalf of Tampa Electric Company, has been served by electronic mail on this 6th day of December 2023 to the following:

Caroline Dike
Susan Sapoznikoff
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
cdike@psc.state.fl.us
ssapozni@psc.state.fl.us

Smith Law Firm
Christopher Horton
101 N.E. Third Avenue, Suite 1910
Fort Lauderdale FL 33301
(954) 761-8700
cmhorton@smithcurrie.com
cgare@smithcurrie.com

1150 WHG, LLC
1150 3rd Street SW
Winter Haven FL 33880



ATTORNEY

EXHIBIT 1

Florida Public Service Commission - Consumer Request

2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
850-413-6480

Consumer Information	Utility Information	PSC Information
Name: JACK BOYAJIAN Svc. Address: 1150 3RD STREET SW Polk County, (201)-874-7500 ELOISE, FL 33880 Caller: JACK BOYAJIAN Mailling Addr: 1150 3RD STREET SW ELOISE, FL 33880 Account #: E-Track #:	Company Code: EI806 Company Name: Tampa Electric Company Attn: Response Needed From Company? Y Date Due: 09/01/2023 <hr/> Reply Received: 08/29/2023 Reply Received Timely? Y Informal conference: N Customer Objects To Company Response? N Customer has been Contacted For Objection? N <hr/> Request No: 1427031E	Assigned to: JEAN MCLEAN-SINATRA Entered by: BRSTEVEN Date: 8/11/2023 10:55:32 AM Via: PHONE Prelim Type: QUALITY OF SERVICE PO Officer: Disputed Amt: 0.00 <hr/> Closed by: JMCLEANS Date Closed: 09/29/2023 Close Type: GI-30 Apparent Rule Violation: N

Preclose type - Quality of Service

Customer Comments: Customer stated he is a owner of a property that use to be a hotel an is turning it into a apartment complex Customer stating that he is keeping the master metering an is sub metering each unit. TECO has been involved since November of 2020 they did a audit and was informed that he was sub metering the units. Customer stated he and his engineer's did the plans an submitted them to the city of winter haven an it was approved December of 2022. January 2023 a commercial audit was done by TECO which identified the company would keep the master metering an sub metering and on the beginning of June of 2023 someone from TECO shows up on the customer site and informed them he will have to remove every thing from his sub metering and now wire every unit separately on July 6 he received a letter from a Jordan Williams from TECO threatening to shut down the company unless they rewire every Unit separately an TECO is citing RULE 25-6.049. Customer is upset due to the fact that he feels he didn't do anything to break the rule an wants TECO to Fix his issue

Per Consumer Complaint Rule 25-22.032, please use the following procedures when responding to PSC complaints.

1. Complaint resolution should be provided to the customer via direct contact with the customer, either verbally or in writing within 15 working days after the complaint has been sent to the company.

2. A response to the PSC is due by 5:00 p.m. Eastern time, of the 15th working days after the complaint has been sent to the company.
3. The response should include the following:
 - a) the cause of the problem
 - b) actions taken to resolve the customer's complaint
 - c) the company's proposed resolution to the complaint
 - d) answers to any questions raised by staff in the complaint
 - e) confirmation the company has made direct contact with the customer
4. Send your written response to the PSC, and copies of all correspondence with the customer to the following e-mail, fax, or physical addresses:

E-Mail - pscreply@psc.state.fl.us

Fax - 850-413-7168

Mail - 2540 Shumard Oak Blvd.

Tallahassee, Florida 32399-0850

Case taken by B.Stevens

08/11/2023 Customer correspondence received via email, added to file, and forwarded to JMclean-Sinatra. Attachments printed and added to the file. DHood

"From: Jack Boyajian <jb@huttonfirm.com>
Sent: Friday, August 11, 2023 3:02 PM
To: Consumer Contact <Contact@PSC.STATE.FL.US>
Cc: kjwagenhofer@tecoenergy.com
Subject: 1427031E – Compliant Number

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please see the attached communication from TECO, We completely disagree with the TECO's interpretation of the referenced Rule.

Thank you.

Jack Boyajian
201-874-7500
The Hutton Group, Inc.
jb@huttonfirm.com"

08/29/2023 Received report via email. eplendl

9/1/2023 COMPANY RESPONSE:-

Tampa Electric and Mr. Boyajian are interpreting the Florida Administrative Code Rule 25-6.049(5) (the "Rule") differently. The impact of the Rule on the customer's construction project is compounded by the fact that the customer did not coordinate with Tampa Electric's Design and Engineering team on his construction project until very late in his construction process.

The Rule sets forth the circumstances under which individual occupancy units must be metered by a utility. (See, excerpt below)

- Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since January 1, 1981. Rule 25- 6.049(5), F.A.C.

Mr. Boyajian believes his project is "grandfathered" and exempt from each occupancy unit being individually metered by the utility because the building that he is renovating received a construction permit prior to 1/1/1981. Tampa Electric does not agree with Mr. Boyajian's interpretation of the Rule and believes the grandfather exception does not apply as the use of the structure has changed (i.e., motel to apartment complex) and extensive renovations have been undertaken in connection with such change in use. In fact, a construction permit was issued in late 2022 for the conversion work performed to convert the structure to an apartment complex. For this reason, Tampa Electric believes that the Rule requires that a utility-owned meter be installed to measure consumption in each apartment in the complex. (A lengthier explanation of Tampa Electric's analysis of the Rule can be found in the letter Jordan Williams sent to Jack Boyajian via email, a copy of which is included in the copies of correspondence with the customer.)

Actions taken to resolve complaint:

Tampa Electric representatives have had multiple meetings and calls with Mr. Boyajian. See attached timeline and copies of correspondence.

Although Mr. Boyajian did not initiate construction review of his project through typical channels at Tampa Electric, our Design and Engineering team did reach out to him and solicit his construction plans in April of 2023. Members of the team discussed aspects of the project and electrical design on a number of occasions. Although the customer's design plans did not reflect any submetering of the apartments, Mr. Boyajian had indicated his intent to sub-meter the apartments in discussions with Tampa Electric's Design and Engineering team which led to multiple discussions regarding sub-metering as highlighted in the timeline attached.

Tampa Electric's Design and Engineering team prepared and sent to the customer, on August 11, 2023, the company's proposed distribution design, estimated Contribution in Aid of Construction, and a construction schedule to install utility-owned meters and utility facilities for the project. Subsequently, Tampa Electric representatives have met with the customer to discuss the Tampa Electric proposed design. See timeline attached.

The Company's Proposed Resolution to the Complaint:

Tampa Electric proposes that Mr. Boyajian continue to work with his assigned Tampa Electric project manager, Stephen Miccio, and Tampa Electric's Design and Engineering team to work towards individually meter each occupancy unit as the Rule requires. In the letter sent to Mr. Boyajian on August 11, 2023, Tampa Electric indicated to Mr. Boyajian that failure to comply with the Rule would result in Tampa Electric suspending service to his project thirty days from Mr. Boyajian's receipt of Tampa Electric's design plan, also sent to Mr. Boyajian on August 11, 2023.
– J Mclean-Sinatra

9/1/2023 OBSERVATIONS

The customer, who is a builder, believed according to Rule 25- 6.049(5), F.A.C. that he did not have to have sub-metering at the units he was constructing. However, Tampa Electric Company (TEC) explained to the customer that he in fact, had to wire each unit separately. Tampa Electric believes that the Rule requires that a utility-owned meter be installed to measure consumption in each apartment in the complex. Tampa Electric's Design and Engineering team prepared and sent to the customer, on August 11, 2023, the company's proposed distribution design, estimated Contribution in Aid of Construction, and a construction schedule to install utility-owned meters and utility facilities for the project. Subsequently, Tampa Electric representatives have met with the customer to discuss the Tampa Electric proposed design, all of whom will work to meter individually each occupancy as the Rule warrants. It appears no PSC rules or Company tariffs were broken in the complaint resolution. – J Mclean-Sinatra

09/08/2023 Customer Called requesting to Speak with Analyst; Customer was transferred to Analyst.
B.Stevens

09-08-2023 – I spoke to Mr. Boyajian. He disagrees with TECO. He said his reading of the F.A.C. is that his project is grandfathered in. He believes that he does not have to individually meter each unit. He wants to appeal. He would like FPSC legal staff and technical staff to review this matter.
/JPlescow

09/13/2023 Customer correspondence received via email, added to file, and forwarded to

JMcLean-Sinatra. DHood

"From: Jack Boyajian <jb@huttonfirm.com>
Sent: Tuesday, September 12, 2023 12:34 PM
To: Consumer Contact <Contact@PSC.STATE.FL.US>
Subject: Rule 25-6.049, 1150 3rd Street, Winter Haven, FL 33880, Case # 1427031E

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To: Mr. John Plescow:

The cases that we discussed last Friday are in the following link:

<https://www.flrules.org/gateway/ruleno.asp?id=25-6.049>

I would like to have electronic copies of the petitions, staff recommendations and final PSC decisions on all of these as soon as possible.

In addition, you will receive my brief as to why legally the rule should not be interpreted as TECO has in our circumstance.

Thank you in advance for your expedited response.

Jack Boyajian
201-874-7500
The Hutton Group, Inc.
jb@huttonfirm.com"

09/21/2023 Company response received via email and forwarded to JMclean-Sinatra. DHood

9/22/2023 - TAMPA ELECTRIC COMPANY'S
SUPPLEMENTAL RESPONSE TO COMPLAINT
PSC Complaint Number 1427031E – WHG LLC (Jack Boyajian)

This document supplements Tampa Electric Company's Response to PSC Complaint Number 1427031E – WHG LLC ("Developer"), which was provided to Commission Staff on August 29, 2023.

Summary

The Developer's plan to extensively renovate and convert motel structures into residential apartment units on a master metered basis ("Project") is inconsistent with Rule 25-6.049, Florida

Administrative Code (“Measuring Customer Service Rule” or the “Rule”). The Rule requires Tampa Electric to install individual electric meters for each separate occupancy unit of new residential buildings. The grandfather provision in the rule does not apply to the Project, because the motel served by Tampa Electric before the Project began did not qualify for the grandfather provision, and because the Commission has agreed that the grandfather provision in the Rule “simply tolerates pre-existing non-conforming uses, it does not condone creation of new ones.” As proposed, the Project would create a new non-conforming use, and therefore violates the Rule.

Key Facts

Tampa Electric began providing electric service at 1150 3rd Street SW, Winter Haven, Florida, 33880 (“Premise”) many years ago. According to the Polk County Property Appraiser, there are ten buildings on this parcel, including an office building, an “open mezzanine,” and eight

“motel” structures.² The customer of record at the Premise when Tampa Electric originally established service was a motel. The company did not install individual electric meters to the individual rooms in the motel, because it then was a “lodging establishment” providing “overnight occupancy” as specified in subsections (5)(d) and (8)(b) of the Rule. The company provided service to the motel until November 2022.

Developer became the customer of record at the Premise on November 15, 2022. Based on Tampa Electric’s conversations with the Developer and site visits, Tampa Electric understands that the Developer is making extensive renovations to the motel structures to convert them to residential apartment buildings. Developer verbally advised the company’s Supervisor of Distribution Design on June 16, 2023, that it intended to master meter the new apartments; however, the site plans for the Premise submitted to the company on June 21, 2023, specified nothing about master metering/submetering. During a site visit on June 19, 2023, the company advised the Developer that the proposed plan to master meter the apartment complex would violate the Rule. The Developer made a complaint with the Commission on August 11, 2023.

The Measuring Customer Service Rule

Rule 25-6.049 of the Florida Administrative Code sets out requirements for utilities for measuring customer service. Subsection (5) of the Rule states:

(5) Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home, and recreational vehicle parks. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has

2

<https://www.polkpa.org/CamaDisplay.aspx?OutputMode=Display&SearchType=RealEstate&ParcelID=262832000000011050>

received master-metered service continuously since January 1, 1981. In addition, individual electric meters shall not be required: * * *

(d) For lodging establishments such as hotels, motels, and similar facilities which are rented,

leased, or otherwise provided to guests by an operator providing overnight occupancy as defined in paragraph (8)(b). (emphasis added) ***

The term “occupancy unit” is defined in Paragraph (8)(a) of the Rule as “that portion of any commercial establishment, single and multi-unit residential building, or trailer, mobile home or recreational vehicle park, or marina which is set apart from the rest of such facility by clearly determinable boundaries as described in the rental, lease, or ownership agreement for such unit.” Thus, Subsection (5) requires utilities to individually meter each “occupancy unit” in residential buildings, unless the facility qualifies for the “grandfather clause” in the second sentence of Subsection (5).

The Grandfather Provision in the Rule Does Not Apply to the Project.

The grandfather provision in the Rule does not apply to the Project, because the motel served by Tampa Electric before the Project began was not eligible for the grandfather clause.

Pursuant to the plain language of the grandfather clause, it only applies to “such occupancy units,” meaning units within those structures listed in the first sentence of Subsection (5). This list includes “commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home, and recreational vehicle parks.” This list of facilities eligible for the grandfather clause does not include motels, because motels are exempt from the individual metering requirement regardless of when they were constructed. Thus, even if the motel structures

were constructed prior to 1981 and master-metered prior to 1981, they do not fall in one of the categories of structures that is eligible for the grandfather clause.

Furthermore, the grandfather clause does not apply because the Project creates a new nonconforming use. Even if the motel was constructed prior to January 1, 1981, the Commission has agreed that “it was not pre-1981 buildings that were intended to be grandfathered by the Rule – it was the non-conforming use to which those buildings were put that the Rule grandfathered.” In other words, the grandfather clause “simply tolerates pre-existing non-conforming uses, it does not condone creation of new ones.” *Id.* (emphasis added).⁸ Instead, the purpose of the grandfather clause is “advancing conservation while, at the same time, avoiding the retroactive imposition of individual metering retrofit costs on buildings constructed as master-metered buildings prior to adoption of the rule.” *Id.*

Here, the Developer seeks to create a new non-conforming use by converting motel structures into new residential apartments while retaining the prior motel’s master metering arrangement. This proposal does not further the purpose of the grandfather clause – to avoid imposition of retrofit costs on buildings constructed prior to adoption of the rule – because the Developer has made and is making a significant investment to renovate a motel into new residential apartments.

Tariff Provisions

In addition to the Rule, Tampa Electric’s tariff contains language relevant to this dispute. Section 2.8 requires the customer to apply for a “change in service” by telephone, in writing, or online. This application must include load data, including “the electrical requirements of each device to be

installed and the total anticipated demand.” Section 2.9 requires the customer to notify the company “before adding any major load (e.g., a new 220-volt outlet) and that an “application for required alteration in service must be made by the customer in the same manner as application for new service.” Tampa Electric’s records show that the Developer received an energy audit on January 30, 2023, but it is unclear whether the Developer complied with these tariff provisions.

Conclusion

Tampa Electric is sympathetic to the predicament the Developer is in, and is prepared to work with the Developer and the Staff to resolve this complaint; however, any such resolution should specify that Tampa Electric must install individual electric meters for each separate apartment for future conversion projects similar to the Project described above, and that the master metering arrangement contemplated by the Developer for this Project violates the Commission’s Measuring Customer Service Rule. – J Mclean-Sinatra

9/27/2023 Resolution letter mailed to customer – J Mclean-Sinatra

Dear, Mr. Boyajian:

When your complaint was filed with the Florida Public Service Commission (FPSC) against Tampa Electric Company (TECO) on August 11, 2023, you explained that you were the owner of a property that use to be a hotel, and you were turning it into an apartment complex. You further explained that you were keeping the master metering, and you were submetering each unit. You stated that TECO was aware of your plans to submeter the apartments since November of 2020. You explained that in June of 2023 TECO informed you that the sub metering would have to be removed, and every unit would have to be wired separately. You believe that TECO did not comply with FPSC Rule 25-6.049 Florida Administrative Code (F.A.C.) by not allowing you to “master meter,” i.e. have one single utility meter for the building.

TECO has informed me that your building does not qualify for master metering pursuant to Rule 25-6.049 F.A.C. TECO records indicate that you did not coordinate with its Design and Engineering team until late in the construction process.

Rule 25-6.049, F.A.C., requires individual electric metering by a utility for each separate occupancy unit with limited exceptions. At issue is the portion of the rule that makes a limited exception to allow for master metering for a building with master-metered service that has been ongoing since January 1, 1981. Rule 25- 6.049(5) F.A.C., states, in relevant part:

Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since January 1, 1981.

TECO does not agree with your interpretation of the Rule and believes the grandfather exception does not apply, because the use of the structure has changed from a motel to an apartment complex, and extensive renovations were made in connection with the change in use. Additionally, TECO reported that a construction permit was issued in late 2022 for the conversion work performed to convert the structure to an apartment complex. For this reason, the utility believes

that the Rule requires that a utility-owned meter be installed to measure consumption in each apartment in the complex.

FPSC staff reviewed the documentation provided by you and TECO. FPSC staff believes that TECO has not violated any FPSC rules in the handling of this matter; therefore, TECO can interrupt your service after proper notice has been provided.

If you disagree with staff's conclusion, you may wish to hire an attorney to resolve the matter with TECO. Alternatively, you may file a petition for initiation of formal proceedings for relief against TECO. The request for formal proceedings must follow the complaint requirements in Rule 25-22.036, F.A.C. - Initiation of Formal Proceedings (enclosed for your review). The Rule can be found online at www.flrules.org.

You may file your petition by mail (address below) or electronically via the Commission's web portal. Access the Electronic Filing Requirements and e-filing instructions at <http://www.floridapsc.com/ClerkOffice/EFilingRequirements>, and the Electronic Filing Web Portal at <https://secure.floridapsc.com/ClerkOffice/EfilingPublic>. The PSC cannot accept this request via fax.

Mailing address:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

If you file a formal complaint, TECO will have the opportunity respond. The formal complaint is heard by the Commission in a public hearing. After considering your complaint and TECO's response, the Commission will rule on your complaint. In its consideration, the Commission will consider whether your complaint meets the rule requirements and whether the Commission is able to grant your requested relief.

If your formal complaint application does not meet the requirements specified in Rule 25-22.036, F.A.C., or if the Commission is unable to grant the relief you are seeking, your formal petition may be dismissed. If you have any questions, you may contact Jacob Iming at 850-413-6738.

Sincerely,

John Plescow
Regulatory Program Administrator
Office of Consumer Assistance & Outreach
Florida Public Service Commission - J Mclean-Sinatra

9/27/2023 ADDITIONAL OBSERVATIONS

The customer is the owner of a property (which was a hotel), and is now turning it into an apartment complex. The customer believes the Rule 25-6.049 Florida Administrative Code (F.A.C.) allows him to "master meter", i.e. have one single utility meter for the building. TECO interprets the rule to mean that the customer must wire every unit separately. Further more, the customer believes his interpretation of the above rule is correct since he is "grand fathered in". At issue is

the portion of the rule that makes a limited exception to allow for master metering for a building with master-metered service that has been ongoing since January 1, 1981. Rule 25- 6.049(5) F.A.C., states, in relevant part:

Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since January 1, 1981. TECO does not agree with the customer's interpretation of the Rule and believes the grandfather exception does not apply because the use of the structure has changed from a motel to an apartment complex, and extensive renovations were made in connection with the change in use. FPSC staff believes that TECO has not violated any FPSC rules in the handling of this matter; therefore, TECO can interrupt the customer's service after proper notice has been provided. The customer was provided information on how to file a petition for initiation of formal proceedings against TECO. – J Mclean-Sinatra

9/29/2023 Case closed – J Mclean-Sinatra