

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement  
regarding Rule 25-6.049, F.A.C., by 1150  
WHG, LLC.

DOCKET NO. 20230128-EU  
ORDER NO. PSC-2024-0073-FOF-EU  
ISSUED: March 21, 2024

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman  
ART GRAHAM  
GARY F. CLARK  
ANDREW GILES FAY  
GABRIELLA PASSIDOMO

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

I. BACKGROUND

1150 WHG, LLC (WHG) is converting a master-metered motel into residential units and seeking to sub-meter those units under the existing master-meter. On November 8, 2023, WHG filed a petition for declaratory statement (Petition), asking us to declare that, based on the facts presented, “the property qualifies for the grandfather exception set forth in [R]ule 25-6.049, [Florida Administrative Code (F.A.C.)], since the Property was constructed pursuant to a permit issued prior to January 1, 1981 and has received continuous master-metering since January 1, 1981.” Tampa Electric Company (TECO) provides electric service to the property.

Rule 25-6.049, F.A.C., sets forth electric metering requirements to measure energy use. The rule requires individual electric metering for each occupancy unit in new commercial, residential, and other buildings. This rule provides limited exemptions from the individual metering requirement for hotels, motels, hospitals, nursing homes, and other facilities for which billing for individual metering is impractical due to the nature of the facility’s operation.<sup>1</sup> The rule also avoids retroactive application of the individual metering requirement for residential units in buildings constructed before 1981, allowing older properties to remain master-metered.<sup>2</sup>

Individual electric metering is typically defined as measuring electric service for each occupancy unit of an establishment on an individual basis, using utility-owned meters for billing.

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<sup>1</sup> Rule 25-6.049, F.A.C.; *see also* Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

<sup>2</sup> Rule 25-6.049(5), F.A.C.

In contrast, master-metering is typically used to describe situations in which electric service for multiple occupancy buildings is measured using a single, utility-owned meter for billing. TECO defines a sub-meter, in tariff sheet No. 4.110, as a meter used to check electric usage on a particular electrical load for a non-billing purpose. Sub-meters are installed behind the utility-owned master-meter by the property owner or third party.

In the past, we have stated that the purpose of Rule 25-6.049, F.A.C., is to implement the Florida Energy Efficiency and Conservation Act (FEECA) and encourage customers to conserve electricity.<sup>3</sup> As we have noted, “when unit owners are responsible for paying for their actual consumption, they are more likely to conserve to minimize their bills.”<sup>4</sup>

Pursuant to Section 120.565, F.S., and Rule 28-105.0024, F.A.C., a Notice of Declaratory Statement was published in the November 13, 2023, edition of the Florida Administrative Register to inform substantially affected persons of the Petition. TECO was granted intervention into this docket by Order No. PSC-2023-0360-PCO-EU, issued November 28, 2023. Pursuant to Order No. PSC-2023-0360-PCO-EU, TECO filed its response to the Petition on December 6, 2023, and WHG filed its reply to TECO’s response on December 13, 2023. We have jurisdiction to consider this matter pursuant to Section 120.565 and Chapter 366, F.S.

## II. LAW GOVERNING PETITIONS FOR DECLARATORY STATEMENTS

Section 120.565, Florida Statutes (F.S.), sets forth the necessary elements of a petition for declaratory statement. This section provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., states the purpose of a declaratory statement:

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. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

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<sup>3</sup> Order No. PSC-15-0363-PAA-EU, issued September 8, 2015, in Docket No. 150142-EU, *In re: Petition by Wiscan, LLC for waiver of Rule 25-6.049(5), F.A.C.*

<sup>4</sup> *Id.*

If a petition meets the filing requirements provided by Rule 28-105.002, F.A.C., an agency must issue a declaratory statement. A declaratory statement enables members of the public to resolve ambiguities of law and obtain definitive, binding advice as to the applicability of agency law to a particular set of facts.

Under Rule 28-105.003, F.A.C., in considering the facts set forth in the pleadings, “[t]he agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.” Therefore this order relies on the facts as presented by WHG and TECO, without taking a position with regard to the validity of the facts.

### III. WHG’S PETITION FOR DECLARATORY STATEMENT AND TECO’S RESPONSE

#### A. WHG’s Statement of Facts

In its Petition and accompanying affidavit, WHG states it purchased the property at issue in November 2022. The property was originally constructed in 1973 and has continuously operated with a master-meter electrical system since then. In December 2022, the City of Winter Haven issued permits for WHG to renovate the property, converting it into individual, residential units.

WHG asserts that it informed TECO in January 2023 that it planned to install a sub-metering system for electrical use on the property. Sometime after that, WHG alleges it began the process of installing sub-metering in the residential units on the property. Under its plan, WHG states that tenants will pay for their electricity at the same rate at which WHG is billed by TECO, based on their individual energy usage recorded by the sub-meter in each unit. WHG sets forth that an independent third party will then invoice and collect these amounts from the tenants as reimbursement for WHG. WHG states that it will ultimately be billed by TECO for the energy usage recorded by the master-meter for the entire property. WHG further contends that in July 2023, TECO objected to the plan.

WHG claims that it has changed all of the wiring in the building and installed half of the sub-meters in the individual units already. WHG estimates that it would cost \$1.5 million to install individual meters. Moreover, WHG opines that the installation of solar panels—which it states would also further the purposes of FEECA—is not justifiable if the property cannot use master-metering. WHG states that its ultimate goals are to avoid retrofitting costs, upgrade the property for tenants, and achieve the conservation and sustainability goals of FEECA.

#### B. TECO’s Response

In its response to the Petition, TECO states that the property at issue included multiple motel structures and an office building. TECO sets forth that the company provided electric service to the motel from its construction in 1973 until November 2022, when Petitioner became the customer of record. TECO asserts that in January 2023, an energy auditor from TECO visited the property to perform a Commercial Energy Audit.

TECO also alleges that on June 16, 2023, WHG advised TECO that it intended to master-meter the property with sub-metering in the individual apartments. TECO contends that on June 18, 2023, TECO informed WHG that master-metering is not consistent with Rule 25-6.049, F.A.C. TECO further claims that when WHG sent construction design plans to TECO in June 2023, the plans did not include sub-metering of the residential units. TECO states that the company sent letters to WHG in July and August of 2023, informing Petitioner that the property did not qualify for master-metering.

In August 2023, WHG made an informal complaint to this agency. TECO states that WHG subsequently informed TECO that it would begin renting out apartments in September 2023. On September 27, 2023, our staff issued a complaint resolution, finding that TECO had not violated any of our rules and, therefore, could interrupt electric service after giving WHG proper notice.

### C. Legal Arguments of the Parties

WHG maintains its property is exempt from the individual metering requirement of Rule 25-6.049, F.A.C., because its buildings were permitted and constructed prior to 1981 and the property has had continuous master-metering since its construction. WHG also argues the requirement for new residential buildings to use individual meters does not apply in this matter because the buildings on the property are not new, despite the renovations.

In response, TECO argues that WHG's property does not qualify for the grandfather exception in Rule 25-6.049, F.A.C. TECO opines that the grandfather exception has limited applicability to occupancy units built prior to 1981, not motels and other overnight occupancy buildings. TECO claims its interpretation follows the plain language of Rule 25-6.049, F.A.C., and Commission precedent.

In its reply to TECO's response, WHG now asserts that the grandfather exception in Rule 25-6.049, F.A.C., applies because the property has occupancy units in a new residential building. WHG states the property is a new residential building because of the renovations. WHG posits that it is irrelevant whether its exemption from individual metering came from the motel exception or the grandfather exception. WHG contends that it follows the plain language of the rule and TECO misrepresents Commission precedent.

WHG further asserts that its use of the grandfather exception is a continuation of a prior, non-conforming use, rather than the creation of a new, non-conforming use. It contends that substantial upgrading of the property does not create a new use and that the rule does not require that the property's use remains continuous to rely on the grandfather exception. WHG also argues that it has already incurred substantial costs by sub-metering some of the units, and that it would be burdensome to switch to individual metering.

Next, WHG claims that its use of sub-meters will achieve the purpose of FEECA—the statute that Rule 25-6.049, F.A.C., implements—as residents would be responsible for their individual electric consumption, thus incentivizing conservation. In response, TECO alleges that

we should declare that individual metering is required because WHG's master-metering approach undermines the purposes of FEECA. TECO cites to the intent of Rule 25-6.049, F.A.C., arguing that the rule implements FEECA by having individual residents pay for their electric, so that they are more likely to conserve energy and lower their bills. Here, TECO states that the tenants will be paying a portion of WHG's commercial rate under WHG's master-metering plan. TECO argues that since the cost of electricity differs for residential and commercial customers, the tenants would be paying a potentially lower commercial rate than they would under individual metering. TECO claims this would be inapposite to the policy goal of conservation under FEECA, as customers would not see their conservation efforts reflected in their bills, unless the units are individually metered.

TECO further states that WHG's proposed plan raises other issues outside the requested declaratory statement. TECO points out that WHG has not requested a declaratory statement regarding whether the proposed plan would be consistent with Rule 25-6.065, F.A.C., Net Metering (which allows a customer to offset its electricity costs via customer-owned renewable generation). TECO asserts that if we grant the requested declaratory statement, WHG will be offsetting the costs of electricity usage of all the residents on the property, not just WHG's usage, with the planned solar array.

Additionally, TECO argues that if we grant the requested declaratory statement, then WHG may be considered an "electric utility" and a "public utility" under Chapter 366, F.S. In its reply, WHG posits that TECO's argument is not based in fact. WHG argues that it would agree to any limitations the we may impose, so that WHG would not operate as a public or electric utility.

#### IV. ANALYSIS

##### A. Threshold Requirements of Petition

As stated above, the purpose of a declaratory statement is to address the applicability of statutory provisions, orders, or rules of an agency to the petitioner's particular circumstances.<sup>5</sup> Under Section 120.565(1)-(2), F.S., a petition must "state with particularity the petitioner's set of circumstances" and specify the statute, order, or rule the petitioner believes is applicable, as well as show the petitioner is substantially affected. WHG's Petition contains specific details about the property at issue and electric service concerns and identifies Rule 25-6.049, F.A.C., as the rule applicable to its set of circumstances. WHG alleges that it and TECO have different interpretations of the rule and seeks a declaration to establish the proper interpretation of the rule as it applies to WHG's property. WHG is substantially affected because of the costs associated with metering its property and the disagreement with its electric service provider. In sum, WHG has satisfied the threshold requirements for issuance of a declaratory statement.

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<sup>5</sup> Rule 28-105.001, F.A.C.

B. Application of Rule 25-6.049, F.A.C.

We find that WHG’s property does not fall under the grandfather exception of Rule 25-6.049, F.A.C., and it never has. In statutory interpretation, courts “follow the supremacy-of-text principle—namely, the principle that [t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.”<sup>6</sup> Thus, the plain language of the rule must be examined to determine how the rule should be applied to WHG’s particular circumstances.

Under Rule 25-6.049(5), F.A.C., properties with occupancy units—e.g., rented or leased portions of residential and commercial buildings—can avoid retroactive application of individual metering requirements if (1) the construction permit for the property was issued before 1981 and (2) the property has been using master-metering continuously since that time.<sup>7</sup> Here, the property was originally constructed to be a motel, which meets the definition of “overnight occupancy” in Rule 25-6.049(8)(b), F.A.C. As the property was used as a motel, rather than residential units, there has never been a requirement for individual metering from which the property needed exception. We find that since there was no grandfather exception in the first place, we cannot extend an exception to WHG now via a declaratory statement.<sup>8</sup>

Assuming for the sake of argument, even if the property originally qualified for the grandfather exception under Rule 25-6.049, F.A.C., its use has changed fundamentally from overnight occupancy to occupancy units, which would negate the exception. Subsection (5) of the rule states that “[i]ndividual electric metering by the utility shall be required for each separate occupancy unit of [a] new. . . residential building.” Although the building structures are not new, WHG obtained a new construction permit in 2022 to renovate the buildings, turning motel rooms into apartment units. In its Petition, WHG first argued that the building was not new. Then, it subsequently argued that the building was considered a new residential building in its reply to TECO’s response. Regardless, we find this renovation constitutes a new residential building.

Even if the outer structures remain the same, the renovation changes the nature of the property from commercial to residential. The 2022 permit and subsequent conversion creates a new, nonconforming use when WHG installs sub-metering rather than individual metering, which is opposite to Commission precedent. As we have stated, “[t]he concept of grandfathering simply tolerates pre-existing non-conforming uses, it does not condone the creation of new

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<sup>6</sup> *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (citing Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 56 (2012)).

<sup>7</sup> We have identified the purpose of the grandfather clause to be “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 the adoption of the rule.” Order No. PSC-00-1802-FOF-EU, issued October 2, 2000, in Docket No. 981104-EU, *In re: Proposed Amendment of Rule 25-6.049, F.A.C., Measuring Customer Service*.

<sup>8</sup> Even in rule waivers, which this Petition is not, “[t]he types of facilities that are exempted from the individual metering requirement are those in which, due to their nature or mode of operation, it is not practical to attribute usage to individual occupants. For example, hotels and motels are commercial enterprises in which the occupants of the units are not billed for their use of electricity, but rather pay a bundled rate for the use of a room for a limited time.” Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

ones.”<sup>9</sup> Not only does the creation of a new grandfather exception contravene prior Commission precedent, the creation of sub-metering does too. We have previously held that, “[w]e are concerned that if non-utility entities become responsible for metering and billing of electricity, we will no longer have the statutory authority to [e]nsure that the protections currently afforded by the Commission statutes and rules are provided to sub-metered customers.”<sup>10</sup>

Additionally, the cost associated with changing the property from master-metering to individual metering is not sufficient reason to depart from the plain language of Rule 25-6.049, F.A.C., and Commission precedent.<sup>11</sup> There is no mention of cost considerations in Rule 25-6.049, F.A.C. Here, WHG asserts it has incurred substantial costs in wiring and installation of half of the sub-meters on the property, and the subsequent installation of individual meters would be burdensome. While WHG sets forth this cost argument, Rule 25-6.049, F.A.C., does not allow us to grant exceptions from individual metering solely based on cost.

The potential consequences of approval of the requested declaratory statement also indicate that WHG’s interpretation of Rule 25-6.048, F.A.C., runs counter to the intent of the rule. TECO states that it bills WHG’s property at a commercial rate, so WHG’s plan may circumvent rate design. Rates purposefully differ for commercial and residential customers, because “[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.”<sup>12</sup> If WHG does bill individual tenants for their contribution to the overall energy usage of the property, then the tenants will be paying a portion of a commercial rate, instead of the residential rates. If we grant the requested declaratory statement, then it may implicitly allow WHG to bypass rate design and use a commercial rate. This potential consequence of WHG’s interpretation supports our interpretation of Rule 25-6.049, F.A.C.

### C. The Purpose of FEECA

WHG’s statement that it is purporting to meet the purpose of FEECA through other means does not override the plain language and purpose of the rule. Under Rule 25-6.049, F.A.C.,

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<sup>9</sup> Order No. PSC-98-0449-FOF-EI, issued March 30, 1998, in Docket No. 971542-EI, *In re: Petition for Declaratory Statement Regarding Eligibility of Pre-1981 Buildings for Conversion to Master Metering by Florida Power Corporation*.

<sup>10</sup> Order No. PSC-97-0074-FOF-EU, issued January 24, 1997, in Docket No. 951485-EU, *In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by MicroMETER Corporation*.

<sup>11</sup> While substantial hardship is considered in rule variances, it is not a factor to consider in the rule at hand. See Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

<sup>12</sup> Order No. PSC-97-0074-FOF-EU, issued January 24, 1997, in Docket No. 951485-EU, *In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by MicroMETER Corporation* (“In its petition, Micrometer cited as an advantage to its proposal the ability of apartments, condominiums, and other multi-occupancy residential buildings to take service under a commercial rate through a master meter, in lieu of the residential rate billed through individual meters. We do not believe that this would be appropriate. The rates charged to the various classes of customers are based on the unique usage characteristics of each class. We do not believe it would be appropriate to allow customers whose usage is residential in nature to take service under a commercial rate.”).

The primary objective of [the] individual metering requirement is to promote energy conservation. When unit owners are directly responsible for paying for their electricity consumption, they are more likely to conserve in order to minimize their bills.<sup>13</sup>

Here, WHG seeks to use a solar panel array and master-metering with sub-meters to lower tenants' bills and offset their usage. While WHG asserts that sub-metering its units alongside the solar array will achieve the same conservation goals encapsulated in FEECA as individual metering, these two methods are not interchangeable under the plain language of the rule. Despite its assertion otherwise, WHG's plan to use solar panels under a cogeneration agreement does not obviate the requirement for individual metering. Thus, approval of the requested declaratory statement would actually run counter to the purpose of FEECA.

#### D. Other Regulatory Concerns

Furthermore, we find that WHG's plan raises other potential legal issues beyond those identified in its Petition. WHG's interpretation of Rule 25-6.049, F.A.C., runs counter to the legislative intent of Chapter 366, F.S., and our rules. In statutory construction, the doctrine of *in pari materia* "requires that statutes relating to the same subject . . . be construed together to harmonize the statutes and to give effect to the Legislature's intent." *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009) (citing *Fla. Dep't of State v. Martin*, 916 So.2d 763, 768 (Fla. 2005)).

If we grant WHG's declaratory statement, then WHG become a "public utility" or "electric utility" under Florida law, by maintaining and operating solar panels and supplying electric generation to its tenants. Section 366.02(8), F.S., defines a "public utility" as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity . . . to or for the public within this state." Under Section 366.02(4), an "electric utility" is defined as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." Here, WHG plans to install solar panels and sub-meters and distribute that solar power to the sub-metered tenants. By following the plain language of Rule 25-6.049, F.A.C., as we did above, we can harmonize the provisions of Chapter 366, F.S., and Rule 25-6.049, F.A.C. In doing so, we avoid the inconsistent legal consequences of the requested declaratory statement.

Rule 25-6.065, F.A.C., our net metering rule, should also be read in *in pari materia*. Under Rule 25-6.065, F.A.C., customers with their own renewable generation can "interconnect to the investor-owned utility's electrical grid . . . to net meter." Through this regulatory scheme, a customer can offset their energy usage with their own renewable generation. TECO argues that WHG's plan could cause WHG to offset electricity usage of the 200+ residents on the property, not just WHG's electricity, which it argues is opposite to the purpose of Rule 25-6.065, F.A.C. The Florida Legislature's intent is to promote renewable energy generation for individual

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<sup>13</sup> Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*



customers, not to allow net metering for businesses on behalf of others.<sup>14</sup> In order to give effect to the Legislature's intent regarding net metering, and interpret the rules in pari materia, we are denying the requested declaratory statement.

To clarify, WHG has not asked for any declaration on whether WHG's plan to provide service to its property will make it an electric company or public utility under Chapter 366, F.S., or whether the manner of electric service is consistent with Rule 25-6.065, F.A.C., nor are we making such declarations. We only point out that the declaration WHG is requesting is inconsistent with other parts of Chapter 366, F.S., and our other rules and, thus, indicates the requested declaration is an incorrect interpretation of Rule 25-6.049, F.A.C.

V. CONCLUSION

For the reasons stated above, we hereby deny WHG's Petition for Declaratory Statement and instead declare that (1) WHG's property does not fall under the grandfather exception of Rule 25-6.049, F.A.C., and (2) WHG must use individual metering for its property.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that 1150 WHG, LLC's Petition for Declaratory Statement is denied as set forth in the body of this Order. It is further

ORDERED that this docket shall be closed.

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<sup>14</sup> See § 366.91, F.S. (using a statutory scheme wherein customers can offset their own energy use via renewable energy, not others); see also Florida Senate Bill 1718 (2021) (showing a proposed bill that the Legislature **did not** pass which would have expressly authorized businesses to net meter and use renewable generation in the same manner that WHG plans).

By ORDER of the Florida Public Service Commission this 21st day of March, 2024.



ADAM J. TEITZMAN

Commission Clerk

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CGD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.