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**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

ORIGINAL

November 21, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Petition for declaratory statement
regarding eligibility of pre-1981 buildings
for conversion to master metering by
Florida Power Corporation

971542-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are fifteen copies of Florida Power Corporation's Petition for declaratory statement regarding eligibility of pre-1981 buildings for conversion to master metering.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

JAM/kp
Enclosure

cc: Mr. Robert Holthaus, Redington Towers, Bldg. 3
Mr. Robert W. Glover, Redington Towers, Bldg. 1

DOCUMENT NO. DATE

GENERAL OFFICE

12051 NOV 24 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement regarding eligibility of pre-1981 buildings for conversion to master metering by Florida Power Corporation.

Docket No. 971542-EI

Submitted for filing:
November 24, 1997

PETITION FOR DECLARATORY STATEMENT

Florida Power Corporation ("Florida Power" or "the Company"), pursuant to Section 120.565, F.S., and Rule 25-22.020, F.A.C., hereby petitions the Florida Public Service Commission ("the Commission") for the issuance of a declaration, more fully stated below, that buildings with individually metered occupancy units do not become eligible for conversion to master metering under Rule 25-6.049(5), F.A.C., because they were constructed before January 1, 1981.

Introduction

1. The name of the Petitioner and its business address is:

Florida Power Corporation
3201 - 34th Street South
Post Office Box 14042
St. Petersburg, FL 33733-4042

2. All notices, orders, pleadings and other communications in this proceeding should be directed to:

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

For deliveries by courier service, the address is:

3201 - 34th Street South
St. Petersburg, FL 33711

DOCUMENT FILED DATE

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Commission Rule to be Interpreted

3. The declaratory statement requested by Florida Power involves the interpretation of Commission Rule 25-6.049(5) through (7), F.A.C., ("the Master Metering Rule" or "the Rule"), and in particular paragraph (5)(a) of the Rule, which provides in pertinent 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 for which construction is commenced after January 1, 1981.

Declaratory Statement Sought

4. Based on the facts described below, Florida Power requests a declaration by the Commission that:

A building or facility listed in paragraph (5)(a) of the Master Metering Rule that currently has individually metered occupancy units, does not become eligible for conversion to master metering under the Rule by virtue of having been constructed on or before January 1, 1981.

Factual Background

5. Florida Power has received several inquiries from condominium associations and shopping mall managers regarding the possibility of converting their pre-1981 buildings from individual metering to master metering. In one case, specific written requests were made on behalf of two related condominium associations, Redington Towers, Building I, and Redington Towers, Building III, demanding that Florida Power provide commercial service to a master meter they proposed to have installed for each building. Florida Power has responded to these inquiries by advising that, under the Company's interpretation of recent Commission actions, the Master Metering Rule does not allow an exception to the prohibition against master metering for a pre-1981 building where the owners of

the building (or its agents) have previously elected to install individual metering. For this reason, Florida Power also declined to provide the master metered service requested by the two Redington Towers condominium associations (see attached letters dated October 10, 1997). However, based on subsequent discussions with Staff regarding these requests and the potential for others, as well as the Company's own inconsistencies in its past application of the Master Metering Rule,¹ Florida Power concluded that its interest in a proper and uniform application of the rule in the future would be best served by a declaratory statement from the Commission.

Discussion

6. The issue to be resolved is whether the language in paragraph (5)(a) quoted above is intended to render the Master Metering Rule completely inapplicable to buildings constructed before 1981, or whether the language instead is intended to "grandfather" the use of master metering in pre-1981 buildings. Under the former interpretation, the owners of pre-1981 buildings would simply be exempt from the prohibition against master metering under any circumstances, and would therefore be free to switch between individual metering and master metering at their choosing. Under the latter interpretation, master metered buildings existing at the time the prohibition against master metering was adopted would be grandfathered into the Rule, *i.e.*, the pre-existing use of master metering would be allowed to continue to avoid a retroactive application of the Rule. It

¹ Florida Power had previously complied with a request for master metered service by representatives of the adjacent Redington Towers, Building II. The request was apparently approved by the Florida Power representatives handling the request based on a literal reading of the "after January 1, 1981" language in paragraph (5)(a) of the Rule, before they became aware of the concerns recently expressed by the Commission regarding an expanded use of master metering. See the discussion of the Commission's *microMeter* and *Dunedin Beach* decisions below.

follows from this interpretation, however, that if the owner of a pre-1981 building had instead elected to install individual metering, there would be no pre-existing use of master metering to be grandfathered in the first place. Since the pre-1981 building's use of individual metering would already be in conformance with the Master Metering Rule, a subsequent conversion of the building to a non-conforming use, *i.e.*, master metering, would be prohibited.

7. Florida Power submits that it was not pre-1981 buildings that were intended to be grandfathered by the Master Metering Rule -- it was the non-conforming use to which those buildings were put that the Rule grandfathered. To interpret the Rule otherwise would create a special class of customers in pre-1981 buildings who, unlike all other customers, are immune from the Commission's policy considerations favoring individual metering. The purpose of the Rule's grandfathering language was not to grant greater rights to these customers by allowing them to convert from individual metering to master metering, but rather to avoid imposing a hardship on them by retroactively requiring the opposite conversion, *i.e.*, from master metering to individual metering. The Commission recognized this purpose as recently as last month in considering a waiver of the Master Metering Rule for certain tenants of Dunedin Beach Campground.

"When there is a significant regulatory policy change, such as the one made through the adoption of this Rule, it is common to grandfather existing customers in order to avoid rate shock or unnecessary cost to either the utility or the customer." (Order No. PSC-97-1352-FOF-EU, issued October 27, 1997 in Docket No. 970647-EU.)

Obviously, where customers in pre-1981 buildings already have individual metering, there is no hardship from a retroactive application of the Rule to avoid.

8. The grandfathering language in paragraph (5)(a) of the Master Metering Rule should be interpreted consistent with the Rule's underlying objective, which is to promote the use of individual metering. This objective would be flouted by an interpretation allowing an individually metered building that already conforms with the Rule to convert to master metering. The concept of grandfathering simply tolerates pre-existing non-conforming uses, it does not condone the creation of new ones.

9. Interpreting the grandfather provision of paragraph (5)(a) in a manner that prevents the creation of new non-conforming uses would also serve to mitigate the concerns identified by the Commission in its recent decision denying a rulemaking petition by microMeter Corporation that sought to expand the use of master metering. (Order No. PSC-97-0074-FOF-EU, issued January 24, 1997 in Docket No. 951485-EU.) In summary, the Commission articulated the following concerns regarding the expanded use of master metering in condominiums, which were discussed in greater detail in its order:

- (a) "[T]he severing of the direct relationship between the utility and the end user of the electricity, and the loss of consumer protection that this relationship currently provides." (Order, at page 2.)
- (b) "[I]t would be inappropriate to allow customers whose usage is residential in nature to take service under a commercial rate." (Order, at page 3.)
- (c) "[A] large number of customers could lose the option to participate in Commission approved conservation programs." (Order, at page 4.)

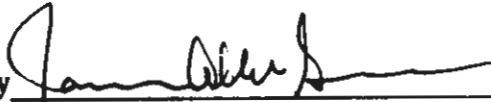
The Commission concluded by stating that:

"Although we believe that the submetering of condominiums is perhaps less problematic than other situations due to their self-governing nature, we still believe that we should retain authority over the provision of electricity to end users." (Order, at page 4.)

WHEREFORE, Florida Power Corporation requests that the Commission enter an order declaring that buildings or facilities listed in paragraph (5)(a) of the Master Metering Rule that currently have individually metered occupancy units, do not become eligible for conversion to master metering under the Rule by virtue of having been constructed on or before January 1, 1981.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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