

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 In the Matter of : DOCKET NO. 981104-EU
 :
 Proposed Amendment of :
 Rule 25-6.049, F.A.C., :
 Measuring Customer :
 Service :



PROCEEDINGS: **RULE HEARING**
 (Continued from 3-15-99)

CONDUCTED BY: MARY ANNE HELTON
 Hearing Officer

DATE: **Wednesday, May 5, 1999**

TIME: Commenced at 9:35 a.m.
 Concluded at 11:50 a.m.

PLACE: Betty Easley Conference Center
 Room 152
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
 FPSC Division of Records & Reporting
 Bureau Chief, Reporting

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1 **APPEARANCES:**

2 **MARY ANNE HELTON and RICHARD BELLAK,**
3 Division of Appeals, Florida Public Service
4 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
5 Florida 32399, appearing on behalf of **Commission**
6 **Staff.**

7 **DAVID WHEELER and REESE GOAD, FPSC, Division of**
8 **Electric and Gas.**

9 **CRAIG HEWITT, FPSC, Division of Research & Regulatory**
10 **Review.**

11 **JON C. MOYLE, JR., Moyle, Flanigan, Katz,**
12 **Kolins, Raymond & Sheehan, 210 South Monroe Street,**
13 **Tallahassee, Florida 32301, appearing on behalf of**
14 **Valencia Condominium Association and Point**
15 **Management, Inc.**

16 **MARK LAUX, 101 North Monroe Street, Suite**
17 **1060, Tallahassee, Florida 32301, appearing on behalf**
18 **of Tampa Electric Company.**

19 **JAMES A. MCGEE, Florida Power Corporation, Post**
20 **Office Box 14042, St. Petersburg, Florida 32399-0950,**
21 **appearing on behalf of Florida Power Corporation.**

22 **KENNETH A. HOFFMAN, Rutledge, Ecenia, Underwood,**
23 **Purnell & Hoffman, P. O. Box 551, Tallahassee, Florida**
24 **32302-1050, appearing for Florida Power and Light Company.**

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1 P R O C E E D I N G S

2 (Hearing convened at 9:35 a.m.)

3 **MS. HELTON:** This is a continuation of the
4 Section 120.54 rulemaking hearing in Docket 981104-EU.

5 I believe that there are some different
6 people here in the audience today than were here, I
7 guess, in the middle of March when we first met. So
8 for those of you who don't know, I'm Mary Anne Helton.
9 I'm an Assistant General Counsel here at the
10 Commission, and I will be the hearing officer today
11 for this rule hearing. And because there are some
12 different people here I think that we should go ahead
13 and take appearances. And even if you made an
14 appearance in the middle of March, just go ahead and
15 make one today so we'll know for sure who is here.

16 Mr. Hoffman.

17 **MR. HOFFMAN:** My name is Kenneth Hoffman.
18 I'm with the law firm of Rutledge, Ecenia, Purnell and
19 in Hoffman here in Tallahassee. Our address is 215
20 South Monroe Street, Suite 420, Tallahassee, Florida
21 32301. I'm here this morning, Your Honor, on behalf
22 of Florida Power and Light Company. Also with me is
23 Rosemary Morely and Bob Valdez, both from Florida
24 Power and Light Company.

25 **MR. MOYLE:** Jon Moyle, Jr. from Moyle

1 Flanigan here in Tallahassee. I requested a public
2 hearing and I'm here on behalf of Point Management.
3 Thank you. And Valencia Condominium.

4 **MR. MCGEE:** Jim McGee on behalf of Florida
5 Power Corporation, P. O. Box 14042, St. Petersburg
6 33733. With me is Mr. Tom Klamar, who is with Florida
7 Power Corporation's Pricing Department.

8 **MR. LAUX:** Mark Laux, Tampa Electric
9 Company.

10 **MR. BELLAK:** Richard Bellak representing the
11 Commission Staff.

12 **MS. HELTON:** As I stated earlier in the
13 middle of March, in a rulemaking proceeding, any
14 person may make comments or make suggestions
15 concerning the rule. Those making presentations are
16 subject to questioning from others. We will proceed
17 informally without swearing witnesses. The Commission
18 Staff will make its presentation first and then answer
19 any questions from other hearing participants, who
20 then may make their presentations and receive
21 questions from Staff, and a brief rebuttal will be
22 allowed.

23 First we've got some preliminary matters
24 that need to be clarified.

25 For those of you who don't know, we passed

1 out at the first part of the hearing a composite
2 Exhibit 1, which includes the normal type of stuff in
3 rulemaking hearings. And Mr. Moyle, you and I -- I
4 think we attempted to identify and put into the record
5 as Exhibit 2 the Generic Workshop Notice for 990188.
6 Ms. Kelly, who is better at identifying things like
7 that than us told me we did not do a good job of it,
8 and I went back and read the record. And I agree with
9 her. So let's make it clear that Exhibit No. 2 will
10 be the Workshop Notice for Docket 990188, and I assume
11 that's "-EU." I don't know.

12 (Exhibit 2 marked for identification and
13 entered into the record.)

14 Then I think it would be appropriate to
15 identify as Exhibit No. 3 the Notice that went out for
16 the continuation of this hearing today.

17 **MR. MOYLE:** No objection.

18 (Exhibit 3 marked for identification and
19 entered into the record.)

20 Okay. I think we're ready to get started.
21 Mr. Bellak.

22 **MR. BELLAK:** I believe that Mr. Wheeler has
23 a brief statement.

24 **MR. WHEELER:** Yes. I'd just like to take an
25 opportunity at the start to offer Staff's

1 understanding of the proposed rule amendment, and to
2 provide a brief history of how we got to this point.

3 The rule amendment recommended by the Staff
4 in this docket was the result of Commission Order PSC
5 098-0449-FOF-EI which was issued on March 30, 1998, in
6 Docket No. 971542-EI.

7 The Order was issued in response to Florida
8 Power Corporation's request for a declaratory
9 statement regarding the applicability of the
10 individual metering requirement found in Rule
11 25-6.049, specifically in Paragraph 5(a) of that rule.

12 This rule was originally adopted in 1980 and
13 it was a result of the federal PURPA legislation which
14 required the states to consider a number of measures,
15 including a prohibition of master metering.

16 Specifically, the Request for Declaratory
17 Statement addressed the applicability of the
18 individual metering requirement to facilities whose
19 construction was commenced prior to January 1st, 1981.
20 At issue was whether the rule allows buildings which
21 were built prior to 1981 that are -- but are currently
22 individually metered by the utility, can convert to a
23 single master meter.

24 FPC's request cited a specific instance
25 where they allowed a pre-1981 condominium which was

1 individually metered to be converted to the master
2 meter. This was Redington Towers Two Condominium.
3 FPC subsequently came to believe that this conversion
4 request was granted in error and should have been
5 denied based on the requirements of the rule.

6 FPC subsequently denied request by Redington
7 Towers Condominiums One and Three to convert to master
8 metering, and filed a Request for Declaratory
9 Statement with the Commission, which would clarify the
10 meaning of the provisions regarding the pre-1981
11 buildings.

12 Basically, the Redington Towers situation
13 involved two differing interpretations of the rule
14 which addressed the requirement for individual
15 metering, specifically for buildings which were
16 constructed prior to January 1st, 1981.

17 The interpretation FPC was operating under
18 when they allowed the Redington Towers One conversion
19 would essentially allow all pre-1981 buildings,
20 regardless of whether they were originally master
21 metered or individually metered, to opt for master
22 metering at any time.

23 This interpretation essentially creates a
24 special class of customer who, solely by virtue of
25 their age, can choose whether they want to be master

1 metered or individually metered at any point in time.

2 The second interpretation, which is the
3 interpretation that the Commission adopted in its
4 order on declaratory statement, used the pre-1981
5 language essentially as a grandfather provision. As
6 such, the rule language under this interpretation was
7 intended to mitigate any hardships which would have
8 been created for existing master metered buildings at
9 the time of the effective date of the individual
10 metering requirement. Under this interpretation,
11 facilities which were master metered at the time the
12 requirement for individual metering was imposed would
13 not be forced to undergo a costly conversion to
14 individual metering.

15 However, the rule did not allow pre-1981
16 buildings to convert from existing individual metering
17 to master metering.

18 In these situations the application of the
19 new individual metering requirement imposed no
20 conversion cost because they were already individually
21 metered.

22 It's my understanding that the January 1st,
23 1981, date was chosen to follow closely the effective
24 date of the new individually metering requirement
25 rule. The effective date of the new rule was November

1 26th, 1980.

2 It is this latter interpretation of the rule
3 which the Commission adopted in its order on FPC's
4 Request for Declaratory Statement. In that Order the
5 Commission declared that the individual occupancy
6 units in Redington Towers Condominiums One and Three
7 are not eligible for conversion to master metering.

8 In addition, the Commission directed the
9 Staff to initiate rulemaking to determine whether
10 Paragraph 5(a) of Rule 25-6.049 should be amended. As
11 a result of this direction, the Staff proposed the
12 amendment which is the subject of this hearing. The
13 amendment clarifies the pre-1981 provision in the rule
14 to comport with the Commission's decision in the case
15 of Redington Towers One and Three.

16 Staff believes the proposed rule amendment
17 reflects a logical interpretation of the pre-1981
18 requirements and believes it should be adopted.

19 That concludes my opening statement.

20 **MS. HELTON:** At this time we can take
21 questions of Mr. Wheeler. Mr. Moyle, do you want to
22 start?

23 **MR. MOYLE:** Sure. I believe we have this
24 for the record Mr. Wheeler, if you wouldn't mind just
25 providing us with your name and position and

1 employment history at the Public Service Commission.

2

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3

DAVID WHEELER

4 appeared as a witness and testified as follows:

5

DIRECT STATEMENT

6

MR. WHEELER: Yes. My name is

7

David Wheeler. I'm an economic analyst in the

8

Division of Electric and Gas, Bureau of Electric

9

Regulation. I've been with the Commission since

10

February of 1990. Do you need anything more than

11

that?

12

EXAMINATION

13

BY MR. MOYLE:

14

Q No, I think that's fine. And you gave us

15

some of your involvement in the most recent proposed

16

rule change. I take it that you were not involved in

17

the rule when it was originally adopted in 1981,

18

correct?

19

A Correct.

20

Q What did you do? Could you please describe

21

what you did to propose the rule change that is before

22

us today?

23

A Could you be a little more specific in terms

24

of -- I'm not sure I understand that question.

25

Q You gave us some history as to the research

1 you did with respect to the Redington situation and
2 the interpretation. Did you do anything else in terms
3 of researching the purpose of the rule as it was
4 originally adopted and as you propose the change?

5 **A** Yes. I did review the Staff recommendations
6 and orders in the original rulemaking, as well as
7 portions of the transcript of the rule workshop that
8 was conducted at the time the original rule was
9 adopted.

10 Essentially I tried to go back and collect
11 all of the information available at the Commission
12 regarding the rulemaking.

13 **MS. HELTON:** Can I clarify something there.
14 When you said the original rule that was adopted, do
15 you mean the 1981 amendments; is that right?

16 **MR. WHEELER:** Right. Not the current
17 amendment.

18 **MS. HELTON:** Rule was originally adopted in
19 1969.

20 **MR. WHEELER:** Right. These were
21 amendments -- right. There was a Rule 25-6.49 I
22 believe. The rulemaking I'm speaking of was the
23 rulemaking that occurred in 19 -- I believe it was a
24 '79 docket number.

25 **MS. HELTON:** I think those rulemaking

1 changes became effective on November 26th, 1980.

2 **MR. WHEELER:** Right. Those were the changes
3 that contained the individual meeting requirement that
4 were in response to the PURPA legislation. So that's
5 the rulemaking I was speaking of when I answered that
6 question.

7 **MS. HELTON:** Okay.

8 **MR. MOYLE:** I'd like to show Mr. Wheeler a
9 couple of documents that I'd like to go ahead and have
10 introduced, and they relate to the rulemaking
11 proceeding that you just referenced; the rule that was
12 adopted in November of 1980.

13 **MS. HELTON:** Do you want them just to be a
14 composite exhibit?

15 **MR. MOYLE:** There's two. I'll just do them
16 separately. I didn't know we'd have such a big
17 showing. I thought I made everybody copies.

18 (Counsel hands out documents.)

19 **Q (By Mr. Moyle)** What I'm showing you is the
20 testimony of a Mr. Lloyd, who was with Florida Power
21 and Light. And this is testimony that was given in
22 the adoption of the amendment to Rule 25-6.49
23 Measuring Customer Service. Did you review this in
24 preparation for the rule amendment?

25 **A** Yes, I believe I did. I'm not sure that I

1 read -- let's see, this is the.

2 Q This is just a couple of pages but one page
3 in particular, page -- it's marked in the transcript
4 as 11, talks about the January 1, 1981 date, and it's
5 testimony from Florida Power and Light.

6 A Okay. This is prefiled direct testimony of
7 the FPL witness; is that correct?

8 Q That's my understanding.

9 A Okay. I've reviewed portions of that
10 prefiled testimony. I don't recall specifically
11 whether I read this particular page or not.

12 Q I'd ask you just if you would to read Page
13 11.

14 A Read it aloud?

15 MS. HELTON: Let's get this identified, too.
16 This would be Exhibit No. 4. It looks like it's an
17 excerpt of the testimony of R.E. Lloyd, Jr. in Docket
18 No. 780886-Rule. It's Pages 1 and 11 of that
19 testimony.

20 (Exhibit 4 marked for identification and
21 entered into the record.)

22 Q (By Mr. Moyle) Just read it to yourself,
23 if you would.

24 A Okay.

25 (Witnesses complies.)

1 Okay I've read it.

2 **Q** There's nothing in this testimony filed by
3 Florida Power and Light that indicates in order to
4 qualify for an individual meter that you had to be
5 constructed prior to 1981 and be on a master meter,
6 correct?

7 **A** Now, I think what he's discussing here is
8 how to define -- how to define the cutoff date. In
9 other words, do you count it when the building is
10 started or completed? And he was recommending using
11 a -- he was recommending the use of the building
12 permit date as the cutoff for the January 1, 1981,
13 grandfather provision.

14 **Q** He didn't mention anything in terms of the
15 building prior to 1981 must have also been on master
16 meter at least in this section, did he?

17 **A** No.

18 **MR. MOYLE:** I want to have that marked and
19 introduced as No. 4.

20 **MS. HELTON:** This is a rulemaking hearing so
21 we really don't have the rules of evidence apply, and
22 you can pretty much put in most things that you want
23 to. But it concerns me a little bit that this is just
24 an excerpt; that we don't have the full what he said
25 in his comments, nor do we have the transcript of what

1 people said in response to what he said in his
2 comments. So with that, you know -- we'll go ahead
3 and let it in, but just it's not the full story
4 necessarily.

5 **MR. MOYLE:** My understanding of this
6 proceeding is I get the opportunity to present things
7 that I believe make my point and Mr. Bellak or others
8 could present things they believe makes their point.

9 **MS. HELTON:** I think that's true. I just
10 felt like that clarification was necessary.

11 **MR. MOYLE:** Sure.

12 **Q** (By Mr. Moyle) And the same issue with
13 respect to a document entitled "Summary of Public
14 Hearing in Docket No. 780886," the rules. Amendment
15 to Rule 25-6.49, Measuring Customer Service. This is
16 a summary.

17 **MS. HELTON:** This is Exhibit No. 5.

18 (Exhibit 5 marked for identification and
19 entered into the record.)

20 **MR. MOYLE:** In the third paragraph it talks
21 about the date for determining master meter versus
22 individual metering.

23 **MS. HELTON:** Let me ask this question
24 Mr. Moyle if I may: Do you know who prepared this
25 summary?

1 **MR. MOYLE:** It was in the Public Service
2 Commission files. So it was in your files -- I don't
3 know specifically, but it was the official record
4 contained within your files that I got.

5 **MS. HELTON:** It's written from the
6 first-person.

7 **MR. MOYLE:** I think it was the hearing
8 officer, similar to yourself in this hearing, is the
9 best I can surmise, but it wasn't clearly identified
10 but it was within the Public Service Commission
11 official records.

12 **MS. HELTON:** Okay.

13 **Q** **(By Mr. Moyle)** And, again, Mr. Wheeler in
14 the third paragraph the discussion about the cutoff
15 date for the master metering, what not, there's no
16 mention that in order to qualify for an individual
17 meter you had to be constructed prior to 1981 and on
18 master metering, is there?

19 **A** I'm sorry. Could you say that again?

20 **Q** This document -- you had a made the
21 statement earlier that it was the interpretation that
22 in order to be eligible for a master meter somebody
23 had to have been constructed prior to 1981 building
24 had to be constructed prior to 1981, and the building
25 had to have been on a master meter. Correct?

1 **A** Correct.

2 **Q** And in the summary of the rule hearing
3 there's nothing in there that talks about the building
4 having to have been on a master meter prior to 1981 in
5 order to be eligible for an individual meter, correct?

6 **A** That's correct.

7 **Q** Okay. And in your review of the materials,
8 the transcripts and others you may have reviewed --
9 you said you reviewed portions of the transcripts, did
10 you find anything in any of the proceedings that
11 indicated in order to be eligible for a individual
12 meter that a building had to have been constructed
13 prior to 1981, and had to have been on a master meter?

14 **A** No. I could find very little discussion of
15 that topic, period, one way or the other.

16 **Q** Let's talk about the Redington situation
17 just for a couple of minutes, if we could?

18 **MS. HELTON:** Let me ask you this, because I
19 don't think the Redington order has been put into the
20 record as such. I think that's probably something we
21 should do. Let's identify that as Exhibit 6. Can you
22 give me that order number, Mr. Moyle or Mr. Wheeler?

23 **MR. WHEELER:** I've got it here

24 PSC-98-0449-FOF-EI.

25 (Exhibit 6 marked for identification and

1 entered into the record.)

2 MS. HELTON: When was it issued?

3 MR. WHEELER: March 30, 1998.

4 MR. MOYLE: I think it's in Docket
5 No. 971542.

6 MR. WHEELER: Right.

7 MS. HELTON: Okay. I'm sorry to interrupt
8 you.

9 MR. MOYLE: That's quite all right.

10 Q (By Mr. Moyle) The Redington Tower
11 situation, and I heard you describe it and that you
12 were reviewing it and that's what part of what
13 prompted this rule amendment, but if I understand it
14 correctly, there Redington Two that sought to be
15 individually metered by asking that of Florida Power
16 Corporation, correct?

17 A Master metered. They were already
18 individually metered.

19 Q I'm sorry. You're correct. They sought to
20 be master metered as a result of discussions with
21 Florida Power Corp?

22 A Yes, that's my understanding.

23 Q And what did Florida Power do in response to
24 that request?

25 A They allowed them to convert to a single

1 master meter.

2 Q Do you know what Florida Power Corp relied
3 on in allowing them to be converted to a master meter?

4 A They relied upon their interpretation of the
5 rule, I'm presuming.

6 Q Okay.

7 A Presumably that's the thought process they
8 went through.

9 Q And then it came to your attention -- do you
10 know what the results were in terms of savings to the
11 Redington Towers Two as a result of being able to
12 convert to a master meter?

13 A In terms of actual hard numbers or just in a
14 general way?

15 Q If you know hard numbers that's fine; if you
16 know in a general way that's fine as well.

17 A Yeah. I would hesitate to go into
18 specifics, but presumably in terms of the rate they
19 paid it would be reduced due to the -- well, basically
20 two reasons: Instead of paying a customer charge for
21 each individual unit, they would pay a single customer
22 charge which would be attributable to the master
23 meters. In addition, by virtue of converting to a
24 master meter, they were allowed to take service under
25 a commercial rate schedule as opposed to the

1 residential rate schedule.

2 Q I have the brief for Declaratory Statement
3 that was filed by Redington Towers One, and then that
4 in that brief they represented that they saw a
5 difference in the rates of about 38%. You don't have
6 any reason to disagree with that savings, do you?

7 A I didn't look -- I didn't sit down and do
8 the numbers nitty-gritty on exactly what the rate was,
9 so I couldn't say whether that was right or wrong.

10 MR. MOYLE: I want to have this into the
11 record as well.

12 MS. HELTON: That will be Exhibit 7, the
13 Redington Towers brief, filed was the docket number
14 97451.

15 MR. MOYLE: 1542.

16 (Exhibit 7 marked for identification and
17 entered into the record.)

18 MR. MOYLE: Submitted for filing on January
19 15, 1998. Contains Document No. 00988 from the
20 Florida Public Service Commission's Records and
21 Reportings first page.

22 MR. HOFFMAN: Your Honor, on behalf of FPL,
23 I don't have a copy of the exhibit so, you know, I
24 have to sort of work a little bit in the dark on this.
25 I can get a copy from Mr. Moyle later. But not having

1 read it, I just want to make an objection on the
2 record, and that is that FPL objects to any questions
3 and any exhibits to the extent they deal with issues
4 of costs, potential cost savings and rates, because we
5 believe that those issues are beyond the scope of this
6 rulemaking. This rulemaking is limited to a proposed
7 amendment to clarify the 1981 date and that's it.
8 Issues concerning potential cost savings, differences
9 in rates are part of the generic docket. They were
10 discussed a couple of weeks ago at the workshop in the
11 generic rulemaking and need not be duplicated in this
12 rulemaking hearing.

13 **MS. HELTON:** Mr. Moyle, do you want to
14 respond?

15 **MR. MOYLE:** Sure. I would respectfully
16 disagree with my friend, Mr. Hoffman, in that respect,
17 in that, you know, rates and impacts on customer --
18 customers are part and parcel of a rulemaking
19 proceeding. I don't think you can say we're going to
20 adopt a rule and ignore the impacts of the rule on the
21 regulated public. Indeed, in this matter -- and we
22 can get to this at the end of the proceeding, and sort
23 of some procedural matters -- but my client has
24 specifically asked for a statement of estimated
25 regulated cost, which in the Florida Administrative

1 Law requires that those impacts on the regulated
2 public be considered; the cost involved be considered.

3 So I appreciate the reluctance of the
4 Florida Power and Light and others presumably to talk
5 about cost and cost savings and what not, but to the
6 extent that there's documentation and evidence that
7 shows that this rule change has the potential of
8 costing people money or removing potential savings
9 from people who have buildings that were built prior
10 to 1981, then I think it's right on point, relevant
11 and surely should be considered in a rulemaking public
12 hearing, which -- and I've looked at the statute prior
13 to coming in here today and I don't know that there's
14 anything that says you can't take something and
15 consider it.

16 **MS. HELTON:** Mr. Moyle, go ahead and proceed
17 questioning Mr. Wheeler on the brief.

18 **Q** **(By Mr. Moyle)** Mr. Wheeler, so you
19 indicated that in granting the master metering for
20 Redington Towers Two that you believe Florida Power
21 Corporation read the rule in a way that would allow
22 buildings constructed prior to 1981 to receive master
23 metering, correct?

24 **A** Yes.

25 **Q** Are you aware of any other utilities having

1 taken a similar position?

2 A No.

3 Q Do you know when the Redington Towers Two
4 was constructed?

5 A No, I do not recall. It's my understanding
6 that they were a pre-1981 building but I don't know
7 the specific date.

8 Q But they were not on master metering, right?

9 A It's my understanding that they were in the
10 same position that Redington Towers Two was in.

11 Q Which was single metering, correct?

12 A Individual metering by the utility, yes.

13 Q Okay. What would happen to Redington Towers
14 Two if your proposed rule goes through?

15 A I'm not sure I understand that question.
16 What would happen to them?

17 Q If I understand the proposed rule it says in
18 order to be eligible for individual metering, you have
19 to have been constructed prior to 1981 and have been
20 on a master meter account. My understanding is that
21 Redington Towers Two, which originally got the
22 individual metering approval, was constructed prior to
23 1981 but was not on a master metering account. If
24 this rule change goes through, what would be the
25 impact, in your opinion, on Redington Towers Two?

1 A You mean in terms of would that be required,
2 a return to individual metering or not?

3 Q That would be a possibility. If you read
4 the rule, you know, the way it's proposed, I was just
5 wondering what your view of it was?

6 A Well, at this point they are master metered
7 and they were built prior to '81 so in that respect
8 you could say that they are, they do qualify for
9 master metering under the rule. I don't want to
10 speculate in terms of -- I really can't answer that
11 question.

12 Q You had talked earlier in your presentation
13 about this original rulemaking being, I guess, as a
14 result of some PURPA legislation; is that correct?

15 A Yes.

16 Q And what is your understanding with regard
17 to the PURPA legislation and why this rule was put
18 into place?

19 A It's my understanding that the PURPA
20 legislation required -- it was federal legislation
21 that required the states to consider a whole laundry
22 list of measures, including I think there were
23 consumer protection issues in terms of disconnect, and
24 a number of other measures, including an elimination
25 of the master metering. So as a result, the Florida

1 Commission initiated rulemaking to determine whether
2 they would adopt the PURPA standards with regard to
3 these various measures they were required to consider.
4 I'm not sure the legislation -- I'm sure the
5 legislation did not require the Commission to pass
6 these particular provisions. It merely required them
7 to consider them and that's what the Florida
8 Commission did.

9 Q Do you know if those measures were
10 considered by the Florida Public Service Commission
11 because of some conservation reasons?

12 A It's my understanding that -- and I'm not an
13 attorney so I don't want to get into the legal aspects
14 of the PURPA legislation -- but it's my understanding
15 it was primarily driven by the conservation argument;
16 the conservation issues.

17 Q Are you aware of any studies that the
18 Florida Public Service Commission has done that
19 provide any evidence that individual metering as
20 compared to master metering results in conservation of
21 energy?

22 MR. HOFFMAN: I'm going to object again on
23 the grounds it's outside the scope of the issues of
24 the rulemaking.

25 This rulemaking is supposed to be limited to

1 a clarification of the 1981 date. And generic
2 questions concerning the pros and cons of master
3 metering versus individual metering I thought were
4 part of the generic docket. We would be happy to
5 close the generic docket if that's how we want to
6 proceed here. But we've already spent a good deal of
7 time, the parties and Staff, on these generic issues
8 and I understand we're going to be spending some more
9 time on this them in the context of the generic
10 docket. So I don't think we should be duplicating
11 that effort within the limited narrow scope of this
12 rulemaking.

13 **MR. MOYLE:** Again, I would suggest in his
14 opening comment he specifically referenced PURPA; that
15 that was part of the reason for this rule itself. I
16 think it almost denies me due process if he says "Here
17 are The reasons why we're doing that rule change" and
18 then I don't have a opportunity to ask questions about
19 it.

20 **MS. HELTON:** Two questions, one is a general
21 question. Exactly what is at issue in the generic
22 docket? I haven't been party to that proceeding and
23 I'm not sure that I understand its breadth.
24 Mr. McGee, you look like you're --

25 **MR. MCGEE:** My understanding is that it's a

1 very broad-based review of the entire master metering
2 rule, and to review the considerations, in particular,
3 the one Mr. Moyle has just identified, whether or not
4 the -- there is any basis for concluding on scientific
5 studies that the accountability that comes from
6 individual metering, in fact, results in conservation.
7 Issues having to do with rate design to serve master
8 metered commercial accounts when the characteristics
9 of the residents tend to be residential. Virtually
10 any issue that can be brought up at this stage, my
11 understanding, is fair game for that docket.

12 That is the basis, I think, for why there
13 was a concern that this issue should be limited --
14 that this proceeding today should be limited just to
15 the housekeeping consideration of adopting the
16 Commission's prior policy interpretation that was in
17 the 1988 Order and reflected in the rules so that
18 everybody can be apprised of that decision and leave
19 some of the considerations that Mr. Moyle is now
20 wanting to get into for the forum that was designed
21 expressly for that purpose.

22 **MS. HELTON:** As I see your issue with the
23 rule it's that you don't believe that this amendment
24 clarifies the policy because you don't believe the
25 Commission's policy was that those buildings should be

1 grandfathered in; is that right?

2 **MR. MOYLE:** Yeah. Well, what has been
3 talked about as quote/unquote a "clarifying" amendment
4 I think from my client's view is much, much more than
5 that. We have had testimony that there's nothing in
6 the record that says in order to qualify as a building
7 eligible for individual metering that you had to,
8 number one, be constructed prior to 1981, and number
9 two, have been on a master meter account. That number
10 two-prong simply is not there, from what I can tell.
11 And so now to come in and say, "Oh, we're,
12 quote/unquote, clarifying that in order to be eligible
13 for an individual meter," you had to have been on a
14 master meter account -- you know, I just object. I
15 object that it's a housekeeping matter. I think it's
16 a very significant and substantial change to the rule.
17 And I think that in terms of the purpose for the rule
18 when it's going forward that it's legitimate and well
19 within my rights to be able to ask for the rationale
20 and the basis for the rule in the first place.

21 We've gone through a history in this state
22 where we've said we have too many rules; we need to
23 narrow the rules. And there's been this big effort,
24 as you're probably aware, to reduce rules. So here we
25 are, we have a significant change in a proposed rule,

1 you know, I think that surely I should be afforded the
2 opportunity to ask questions that gets to the policy
3 and the basis for the proposed rule.

4 Now, to the extent that there are concerns
5 about well, this is something in the generic docket,
6 do I think that I can be precluded through due
7 process and other means, from not being able to ask
8 certain questions. If it's the preference of the
9 parties or those interested to slow down this
10 proceeding so that the generic investigation can run
11 its course, then that's something that we could
12 consider. But I think it's inappropriate to limit the
13 scope of a public hearing on a proposed rule.

14 **MS. HELTON:** Well, let's see what the
15 statute says.

16 **MR. MOYLE:** Do you mind if we take a
17 five-minute break?

18 **MS. HELTON:** Let's look at the statute then
19 we'll --

20 **MR. MOYLE:** Okay. And I guess -- just so
21 the you know where I'm coming from, I don't know in my
22 mind that I can totally split Mr. Moyle's problem
23 of -- that he doesn't believe this is a clarifying
24 amendment -- I don't know whether I can split that
25 completely from the cost issue. To me they are a

1 little bit part and parcel, so --. 120.54 --

2 **MR. HOFFMAN:** 120.543(c)

3 **MS. HELTON:** This is the provision on
4 rulemaking hearings. And I'm just -- does everybody
5 have a copy of the statute they can look at or do you
6 want me to read it out? "If the intended action
7 concerns any rule other than one" -- well, we don't
8 care about that.

9 "Effected persons will be given an
10 opportunity to present evidence and argument on all
11 issues under consideration." I guess that's the key
12 there; that we can -- we're here today to talk about
13 the issues that are under consideration.

14 **MR. MOYLE:** And I would also refer you to
15 120.54, I believe it's (c) -- it might be 2(c), but it
16 says "When a workshop or public hearing is held, the
17 agency must ensure that the persons responsible for
18 preparing the proposed rule are available to explain
19 the agency's proposal and to respond to questions or
20 comments regarding the rule being developed."

21 I would submit that you've done that.
22 Mr. Wheeler is here. He's responsible for preparing
23 it. He's explained it in his explanation. He made
24 reference to a number of items. And that those are
25 fair grounds for me to question him. Reference

1 purpose specifically. So I think that gives support
2 to my argument.

3 **MR. HOFFMAN:** And, Your Honor, I would just
4 say again that in your notice of the proposed
5 amendment, it specifically states that the purpose and
6 effect of the amendment is to clarify that Rule
7 25-6.0495(a) only allows pre-1981 buildings to be
8 master metered that are not currently individually
9 metered.

10 So the notice that was provided for this
11 rulemaking hearing specifically stated that the
12 purpose of the amendment was for a clarification of
13 the existing rule only. There was no notice provided
14 that the scope of this rulemaking hearing would go
15 beyond clarification. And I think everyone
16 understands that what we're doing in the generic
17 docket is going beyond clarification of the existing
18 rule and exploring a whole host of issues, such as the
19 one that Mr. Moyle is addressing in his question to
20 Mr. Wheeler.

21 **MS. HELTON:** Go ahead.

22 **MR. NOYLE:** I would just respond that I
23 don't think a Notice can override or limit statutory
24 rights that are vested to people who comply with, you
25 know, the 120 procedure.

1 It sounds to me like Mr. Hoffman and his
2 client have a concern on this conservation issue. If
3 they want to push this thing off and finish the
4 generic proceeding and then come back with this
5 rulemaking proceeding, I probably would agree to that
6 if that makes it easier for everybody.

7 **MR. HOFFMAN:** Well, I can respond to that
8 because, you know, Mr. Moyle need not speculate on
9 what our concerns are. Our concerns are only we don't
10 do the same thing twice. We're not interested in
11 duplicating our resources and our efforts. And the
12 notice for this rulemaking was very narrow, and it
13 states that what we're here to do is talk about the
14 clarifying amendment to the existing rule. Period.
15 And we will be happy to participate in the generic,
16 we're required to and we look forward to doing that.

17 **MR. MOYLE:** It's the same thing twice. He
18 could have simply answered the question are there any
19 PSC studies out there that show the results of
20 conservation pre-1981 buildings. It would have taken
21 30 seconds. So in terms of doing things twice, from a
22 judicial economy standpoint we're spending more time
23 arguing about the law than having him answer some
24 questions, which I think I have a right to have
25 addressed.

1 **MR. MCGEE:** If that's the extent of his
2 inquiry, I would withdraw our objection to it. But I
3 have a concern this may be just the prelude to a whole
4 host of questions that get into areas that are far
5 beyond the issues that are before the Commission
6 today.

7 **MS. HELTON:** How many questions do you have
8 related to cost?

9 **MR. MOYLE:** Probably more than the one. But
10 if I were asking questions about the competitive
11 bidding rule of Mr. Wheeler, those objections would be
12 very well founded and I think you would be very well
13 in order to rule that that's beyond the scope of this
14 rulemaking. But when my questions are about something
15 that has been specifically referenced by the
16 Commission's witness in his opening statement, I would
17 just be at a loss to see how I could not ask a series
18 of questions related that. If that's the rationale
19 that the agency is using to support its rule, I think
20 that's legitimate to ask some questions about.

21 **MS. HELTON:** Too, I have a little bit of a
22 concern that under the APA Mr. Moyle has the right to
23 challenge our rule at any time -- I mean, he can
24 challenge an existing rule. If he has -- do you have
25 concerns the Commission's policy is not -- is

1 unfounded because you believe there's a cost
2 difference?

3 **MR. MOYLE:** Again, this is -- I'm trying to
4 understand the rationale. I mean, I'm trying to,
5 through the APA and this process -- this is not an
6 existing rule. This is a proposed rule. And I'm
7 exercising my rights within the statute to have the
8 agency explain this proposed rule and the rationale of
9 its proposed rule.

10 **MS. HELTON:** Let me ask this: What is the
11 schedule for the generic docket? Are any of you all
12 on that docket?

13 **MR. BLACK:** Yeah. We don't have --

14 **MS. HELTON:** Reese Goad with the Commission
15 Staff.

16 **MR. GOAD:** We don't have any firm dates for
17 the future. We're in the process of preparing a data
18 request from issues that arose during the workshop
19 held on April 14th. Depending on the information
20 supplied to those data requests, I assume we'll
21 schedule a date in the future for a subsequent
22 workshop or prepare Staff recommendations for the
23 Commission.

24 I would like to add for the record, too,
25 that Staff objects to holding off on this rule hearing

1 in lieu of anything that would happen in the generic
2 docket. I think those are two separate and apart
3 events and that we should conclude this rule hearing
4 on its own and not wait for anything to happen from
5 the generic investigation.

6 **MS. HELTON:** What do the rest of the parties
7 think about that?

8 **MR. MCGEE:** We most definitely concur with
9 Staff; that there's absolutely no reason that we're
10 aware of why this administrative follow-up on a
11 decision that the Commission already made in March of
12 last year needs to be put off any further. This is --
13 really prevents information that interested persons,
14 who would ordinarily get their information from the
15 Commission's rules -- most readily available source of
16 Commission policy -- can't find that information out
17 because of some unrelated -- other than subject matter
18 of master metering, but unrelated to the issue before
19 us now -- having to wait for that proceeding to
20 conclude, and that, by its nature, could be a long
21 protracted proceeding.

22 **MR. HOFFMAN:** FPL supports what Staff has
23 said and what Mr. McGee, on behalf of Florida Power
24 Corp, has said.

25 The Commission does this all the time. A

1 situation comes up, the Commission addresses it and
2 deems fit to clarify an existing rule. I think the
3 public will benefit by getting some clarification to
4 the status quo, and by doing that, maybe the Redington
5 Two situation won't come up. And in the meantime, if
6 Mr. Moyle and the Commission, you know, deem fit to
7 pursue, you know, some change in the status of how
8 master metering and individual metering is treated in
9 in Florida in the future, that can be pursued through
10 a generic docket.

11 **MS. HELTON:** Mr. Laux, do you have something
12 you want to say?

13 **MR. LAUX:** Tampa Electric has totally
14 participated in the generic docket; continues to fully
15 participate in the generic docket and we'll answer any
16 questions that the Commission Staff or the parties
17 have in that docket.

18 We have a concern that this particular
19 clarification of the rule will be dragged out and the
20 request for clarification will never come to an end.
21 We have not clarified the rule; the question is still
22 out there. As a party who has to go out day in and
23 day out and interface with customers, we'd like to
24 know what the interpretation from the Commission of
25 that rule is. So we believe, and agree with Staff,

1 this should move forward; that the clarification as
2 requested should be brought to an end. And then any
3 party who wants to participate in the generic docket
4 can participate.

5 **MR. MOYLE:** Just a couple of points. I
6 think that, you know, the need for the urgency -- as I
7 understand this rule's been in place for something
8 like 18 years, and so the need to clarify -- I don't
9 know what has been happening for those previous 18
10 years with respect to people, you know, out in the
11 field and what not, but it's not like something where
12 a rule was adopted and created confusion and
13 immediately had to go back and change it. It's been
14 on the books, as I understand it, since the early
15 '80s, the way it currently is.

16 The generic docket is a separate proceeding,
17 but from what I heard Staff say, I'm not sure there's
18 going to be another hearing. They are going to send
19 some information out and get some request for data
20 back, so I have a little hard time understanding how
21 Mr. Hoffman can object to my asking certain questions
22 in this proceeding by saying, "No, this isn't the
23 right place. Let him ask those questions in the
24 generic proceeding." But then Staff is saying, "We're
25 not sure whether we're going to have another hearing

1 or what we're going to do."

2 **MR. GOAD:** Whether or not we have another
3 workshop, I think that Mr. Moyle will be able to
4 participate in Commission Agenda Conference if Staff
5 were to take a recommendation to the Commission. So
6 either way he would have a forum to speak in the
7 future.

8 **MR. MOYLE:** How about a forum for asking
9 questions such as I'm trying to ask today?

10 Can we take five minutes?

11 **MS. HELTON:** Let's take 15 minutes. We'll
12 break until 10:45.

13 **MR. MOYLE:** Thanks.

14 (Brief recess.)

15 - - - - -

16 **MS. HELTON:** We can go ahead and get started
17 then.

18 First off, I'm not inclined to continue this
19 hearing again. I guess probably most people know I
20 don't come to this with a completely totally blank
21 slate.

22 I was one of the participants in Staff's
23 recommendation for the Redington Towers Condominium
24 Declaratory Statement. And I think, if I recall
25 correctly, the Commission was pretty clear during the

1 course of its discuss in that matter that they wanted
2 to go forward -- us to go forward with rulemaking to
3 clarify the amendment. So, therefore, I believe that
4 we should go forward with this hearing.

5 As far as the cost issue, I'm going to allow
6 Mr. Moyle to continue his line of questioning. If it
7 reaches the point where I believe that it's totally
8 irrelevant, then I'll say so. Of course, it's within
9 you all's rights to object if you feel it's so
10 necessary.

11 **MR. HOFFMAN:** Your Honor, in an effort to
12 move things forward, I'll just state on the record
13 that FPL would have a continuing line of objection to
14 that line of inquiry, and unless you hear otherwise
15 from me, that objection will remain in place and I
16 won't state a specific objection in response to each
17 of Mr. Moyle's questions.

18 **MS. HELTON:** I appreciate that.

19 **MR. MOYLE:** You had mentioned costs; I
20 assume the same applies to conservation? The question
21 I think that was pending related to conservation,
22 which begets cost -- but just for clarification.

23 **MS. HELTON:** I had not meant conservation,
24 but if you're going to bring that up as an issue, then
25 I guess the same would apply there.

1 I do see this as a clarifying amendment.
2 However, I do believe that you have certain rights to
3 bring issue with the rule since we're in rulemaking
4 right now, so --.

5 MR. MOYLE: Thank you.

6 Q (By Mr. Moyle) Mr. Wheeler, I think the
7 last question I had posed to you was are you aware of
8 any Florida Public Service Commission study that has
9 been done which establishes energy conservation as a
10 result of having individual meters versus master
11 meters?

12 A No.

13 Q Are you aware of any evidence that supports
14 that proposition?

15 A In reviewing the '79-80 rulemaking, there
16 was some mention of studies that had been done, not by
17 the Florida Commission, but studies that had been done
18 that indicated that there were savings associated with
19 the individual metering versus master metering.

20 Q Are you aware of any studies done in the
21 last ten years that indicate that there are energy
22 savings as a result of individual metering versus
23 master metering?

24 A No, not that I'm aware of. That's not
25 something that I've researched recently.

1 **Q** Are you aware of the authority upon which --
2 maybe this is Mr. Bellak but are you aware of the
3 authority upon which you are relying on to promulgate
4 this proposed rule?

5 **A** No. I would have to defer to the attorney
6 on that matter.

7 **MS. HELTON:** Do you believe there's a
8 problem with the authority?

9 **MR. MOYLE:** I'm not sure what the
10 authority -- it's something I need to look at.

11 This isn't the right time to raise that
12 issue if there is. But it is a proceeding and I'd
13 just like to make sure I understand.

14 **MS. HELTON:** Are you asking Mr. Bellak now
15 the question?

16 **MR. MOYLE:** Sure.

17 **MR. BELLAK:** I can check on that. I have
18 some materials that indicate that it's Section 366.051
19 is the legal authority for the rule. But that's
20 something I can check on.

21 **Q** **(By Mr. Moyle)** Mr. Wheeler, are you aware
22 of any other states which allow for individual
23 metering -- excuse me, more master metering as
24 compared to individual metering?

25 **MR. HOFFMAN:** Again, let me reiterate

1 particularly, this is a very generic question. Now
2 we're moving outside the state of Florida.

3 MR. MOYLE: I'll withdraw that question.

4 (Pause)

5 Q (By Mr. Moyle) The Redington Tower
6 situation, you had indicated there were some cost
7 savings resulting from two areas: One is the meter
8 reading fee and the second is the tariff; is that
9 correct?

10 A It's not a meter reading fee. It's a
11 customer charge which covers more than just meter
12 reading.

13 Q What is that?

14 A Pardon?

15 Q I'm sorry. I interrupted you. Go ahead and
16 finish your answer.

17 A The second one was the rate, commercial
18 versus residential issue. I think those were the two
19 that I identified.

20 Q And what else is included in that customer
21 charge?

22 A I believe the customer charge includes the
23 cost of metering, billing, the cost of service -- of
24 the service drop and there are certain customer
25 service costs that are also included in that charge,

1 although -- I can't -- as a general statement that's
2 what it includes. I couldn't say that that's an all
3 inclusive list but those are the main components, I
4 believe.

5 Q Do you have any idea as to what
6 percentage -- can just an approximate percentage --
7 the cost of reading a meter is for that customer
8 charge?

9 A No, not off the top of my head, no, I
10 couldn't tell you.

11 Q If people were allowed to put in a master
12 meter in a condominium, for example, as compared to
13 having individual meters, wouldn't there be cost
14 savings as a result of only having to pay a customer
15 charge for one meter if you had the master meter as
16 compared to having to pay a customer charge for let's
17 say it was a condo of hundred units, a hundred
18 separate customer charges?

19 A Is your question specific to the reading
20 costs or -- I'm not sure I understand the scope of the
21 question. Could you --

22 Q Can you answer it with respect to the
23 reading cost?

24 A Well, I suppose with respect to the
25 reading -- the cost of reading individual meters

1 versus several individual meters versus one master
2 meter, I suppose there could be savings, although if
3 it was in a -- if the meters were in a gang area where
4 you could read all of the individual meters from one
5 location, there may not be a great difference in terms
6 of cost, because the meter reader has to make the site
7 visit anyway. It would depend. Yes, conceivably
8 there would be savings if you only had to read one
9 meter versus several depending, I guess, on where they
10 were located.

11 Q This may have been mentioned, but I think --
12 do you know what TECO's meter reading charge is?

13 A Do you mean their customer charge?

14 Q Their customer charge.

15 A I can't remember off the top of my head.
16 It's probably -- well, I wouldn't want to guess. I
17 can't remember. It's probably something in the
18 neighborhood of \$8. \$8 per month.

19 Q Now, you said TECO, right, not Power Corp?

20 A That's right? I think it's in the
21 neighborhood of \$7 or \$8 I would guess.

22 Q Do you know what TECO's charge to read a
23 master meter is? If there is one, if it's the same,
24 would it be higher or different?

25 A Again, you're talking about the customer

1 charge, but remember that's more than just meter
2 reading. That's the cost of the meter, the drop, the
3 customer service. The customer charge, if you were to
4 convert to a master meter, presumably you would take
5 service under a commercial rate which would have a
6 different customer charge than a residential rate.
7 And that customer charge is going to be higher under a
8 commercial rate schedule because generally commercial
9 rates are designed to reflect a demand-type meter, if
10 its a large customer, which is a more expensive meter
11 than just a regular kilowatt-hour meter for a
12 residential. So the customer charge would probably be
13 higher but you'd only pay one versus many residential
14 customer charges.

15 Q So do you know in order of magnitude how
16 much higher it would be?

17 A It would depend on which commercial rate
18 you're talking about, so, no, I can't answer that.

19 Q Do you know if in any commercial rate it
20 would be more than double the charge for the
21 residential customer charge?

22 A Okay. Let me make sure I understand what
23 you're asking. One residential customer charge versus
24 one commercial customer charge?

25 Q Right.

1 A I would guess for a large demand customer
2 that customer charge would be more than double,
3 although, again, I'm speaking from memory. I don't
4 have the rate schedules memorized.

5 Q Let me give you hypothetical. There's a
6 condominium -- let's say the folks I represent manage
7 a condominium with hundred units in it. Each of those
8 hundred units has to pay a customer charge, correct?

9 A If they are individually metered by the
10 utility, yes.

11 Q Okay. And it would range from \$6 to \$10 if
12 it were in Florida, depending on whose service
13 territory, roughly?

14 A I believe FPL's customer charge is 5.65, so
15 yeah, between 5.65 and eight-something.

16 MS. HELTON: Mr. Moyle, you're beginning to
17 lose me on relevance.

18 MR. MOYLE: I'm trying to show a cost
19 savings and I'm having a little difficulty in doing
20 it.

21 Q (By Mr. Moyle) But if you had a
22 hundred-unit condominium and each of the hundred
23 condominiums were having to pay \$8 that would be \$800
24 a month that each of them would pay. If you had one
25 master meter in that condominium, I'm led to believe

1 that that customer's charge for that one meter would
2 be significantly less than that \$800 that would be the
3 sum total of each individual unit owner paying the
4 customer charge. That's what I'm trying to get at,
5 though I'm not doing it very artfully. Would you
6 agree with that statement, Mr. Wheeler?

7 **A** Yeah, I think that's a fair statement.

8 **Q** Okay.

9 **MR. MOYLE:** I think I've about exhausted my
10 questions. I do have some procedural issues that I'd
11 like to discuss at the appropriate time.

12 **MS. HELTON:** Has there been any kind of
13 study, Mr. Wheeler, that you know of that shows that
14 persons who live in a condominium share
15 characteristics that would be more similar to
16 residential customers versus commercial customers?

17 **MR. WHEELER:** The only information we have
18 on that would be -- first of all there hasn't been any
19 specific study to make that determination.

20 It's my understanding that in the load
21 research that the utilities conduct they do a
22 stratified sampling of their residential class.
23 Generally, they'll break it down into attached
24 residential, multifamily residential, and mobile home
25 park-type residential units, so there is some load

1 research data available to compare across those three
2 housing types in terms of their 12 CP cost
3 responsibility, which is essentially the driver of
4 fixed production plant costs which are used to set
5 rates.

6 So there is some data available. I have not
7 personally looked at it at that level so I couldn't
8 tell you what that data would show. But there is some
9 limited information based on that stratified sampling
10 that's done in load research by the IOUs every two
11 years.

12 But in terms of a specific study that would
13 address cost causation of multifamily condos versus
14 detached single family, no, I'm not aware that that's
15 been done.

16 **MS. HELTON:** You said most utilities have a
17 multifamily rate which I assume is like an apartment
18 rate?

19 **MR. WHEELER:** No. No. I was talking about
20 the load research. When they do load research to
21 determine --

22 **MS. HELTON:** Okay. Okay. I see what you're
23 saying.

24 **MR. WHEELER:** In terms of rates, there's
25 just one residential rate.

1 **MS. HELTON:** So someone whether they live in
2 an apartment, a house or -- regardless of the size of
3 a house or a condo, they all pay the same rate.

4 **MR. WHEELER:** Right. It's based on the
5 character of the usage. If it's residential in nature
6 you pay one rate, same rate; all customers. This
7 is --

8 **MS. HELTON:** Do you have an opinion as to
9 whether you believe persons who live in a condominium
10 should pay a residential or a commercial rate?

11 **MR. WHEELER:** Yes. I believe that -- I
12 don't have any reason to believe that their usage
13 characteristics would be any different from any other
14 residential customer. So no, I don't believe it's
15 appropriate for multifamily customers who are
16 residential in nature to be billed on a commercial
17 rate.

18 **MS. HELTON:** Mr. Moyle, do you have an
19 opinion as to whether you believe it would be
20 appropriate for persons living in a condominium to
21 pay --

22 **MR. MOYLE:** I guess -- you've raised an
23 interesting point. And I think that in order to
24 formulate an opinion, you need some good data. And
25 from what I heard, they have stratified sampling but

1 there's never been a comparison of the various
2 residential classes or a condo to a commercial.

3 **MR. WHEELER:** That's correct. That is
4 something that I would anticipate we would probably
5 try and do through the generic docket, is to request,
6 to the extent that it's possible, use the load
7 research data to make some kind of determination on
8 that question. But at this point it just hasn't been
9 done.

10 And I don't want to give you the impression
11 that we will be able to answer that question. We may
12 not be able to. I just can't say at this point that
13 the load research will enable that kind of comparison
14 or not. I don't want to give you the impression we
15 can definitely do that. But at this point, that's the
16 best data we have.

17 **MS. HELTON:** And I guess, too, where I'm
18 coming from with this is I don't know that it's
19 appropriate in a rulemaking proceeding to say that a
20 residential customer should pay a commercial -- should
21 be able to be allowed to be master metered so they pay
22 a commercial rate.

23 **MR. MOYLE:** It's my understanding it's based
24 on load characteristics. And if there's no
25 information on load characteristics then I question

1 why they should have to pay a higher residential rate
2 when their load characteristics may be more like a
3 commercial customer. At least in one case that we
4 know of -- and Mr. Wheeler I think you can confirm
5 this -- which is a residential entity's paying a
6 commercial rate, in the Redington Two situation,
7 correct?

8 **MR. WHEELER:** Yes. That doesn't make it
9 right, though. I would agree that they are paying the
10 commercial rate. That's my understanding. I don't
11 think that's correct.

12 **MR. MCGEE:** If this is a point that is of
13 interest to the hearing officer, Mr. Klamar has
14 reviewed Florida Power's load research data and has
15 information on that point.

16 **MS. HELTON:** Okay. Maybe then would you
17 be -- let's do this, let's finish with Mr. Wheeler.
18 Do any of the utilities have any questions of
19 Mr. Wheeler? (No response.) No? Okay.

20 - - - - -

21 **TOM KLAMAR**

22 appeared as a witness and testified as follows:

23 **DIRECT STATEMENT**

24 **MR. KLAMAR:** Klamar. K-L-A-M-A-R. I'm Tom
25 Klamar with Florida Power. I'm a principle analyst in

1 the pricing area.

2 We have load research data that does take
3 condominium-apartment-type loads and look at that
4 versus individual homes. And the low profile between
5 that and a regular residential is very similar, it
6 just is a smaller kilowatt-hour consumption; where a
7 residential home might be using 1000, 1100, a condo
8 would be using 900 or 800 just because primarily size.
9 But the time of use is very similar to any other
10 residential customer.

11 **MS. HELTON:** Does that indicate to you they
12 should take service under a residential rate and not
13 at commercial rate?

14 **MR. HEWITT:** Definitely.

15 **EXAMINATION**

16 **BY MR. MOYLE:**

17 **Q** Help me understand why the Redington Two is
18 taken under a commercial rate as compared to a
19 residential rate?

20 **A** Because under our current tariff structure
21 residential service is defined as single-family
22 dwelling; and if it's multiple dwellings under one
23 rate, it has to go to commercial.

24 **Q** And you define a condominium as a
25 single-family dwelling?

1 A Each individual unit is a single-family
2 dwelling, not the whole complex. So the rule on
3 individual metering says each apartment, each condo,
4 whatever. So each condominium is a single -- each
5 condominium unit is a single-family dwelling.

6 Q Is that single-family dwelling definition
7 something that is in the PSC rule that you're aware
8 of?

9 A I think it references that in this rule,
10 yes.

11 Q Yeah. They refer to it as separate
12 occupancy in the rule.

13 A But I think you used the term "single-family
14 dwelling." That happens to be the phraseology that we
15 use in our residential tariff. But "single-family"
16 and "separate occupancy" to me is similar but not the
17 same.

18 Q Florida Power Corp doesn't have a single
19 definition of single-family dwelling that they use, do
20 they?

21 A Not that I'm aware of -- that we have it
22 defined what a single-family dwelling is as a
23 definition anywhere.

24 Q But your understanding is that the
25 single-family dwelling then takes up the residential

1 rate regardless of whether it's a condominium, an
2 apartment complex or a single-family home?

3 A Or a trailer. All three of those would be
4 considered residential and each individual unit would
5 be considered a unique customer.

6 Q And when you said that you have those load
7 studies which indicate similar characteristics -- just
8 make sure I understand, you said that those studies
9 have specifically compared condominiums against
10 apartment complexes against single-family homes?

11 A Well, probably condominium-apartments are
12 lumped together as a multiunit type complex, and the
13 residential class in total. And I cannot tell you for
14 sure right now whether individual homes -- looked at
15 them individually or just looked at the
16 condominium/apartment versus the residential class as
17 a whole.

18 Q Okay. When were those studies done, do you
19 know?

20 A They were done approximately every two
21 years. I think the last study we've done was about
22 two, maybe three years old at this stage.

23 Q Do you share this information with the
24 Commission Staff?

25 A I think it is filed with the Commission,

1 yes.

2 Q There are other components to residential
3 load beside single-family homes, correct?

4 A Yeah. You have your condominiums, your
5 apartments and trailers are the primary
6 classifications.

7 Q I want to make sure I understand. You said
8 the condos and apartment units are lumped together --

9 A Probably, yeah.

10 Q -- compared against "other residential." So
11 the "other residential" would be single-family homes
12 and trailers?

13 A I think that would encompass everything.

14 Q Okay. And when that Redington Two came
15 through and was granted the master metering status,
16 that was a decision that you made or somebody in your
17 company?

18 A I can give you little bit more history on
19 that.

20 Originally it was made by a field account
21 rep who was dealing with the customer who was not very
22 experienced with our rules or that position and saw
23 the rule and interpreted it as you have pre-'81
24 construction so I'll go ahead and change it, being
25 very customer friendly.

1 After this progressed, another rep was
2 assigned the account, who is more familiar with the
3 rules. And I was contacted at that time. We realized
4 a mistake had been made because that was not what I
5 interpreted the rule to be; that this inexperienced
6 person did, but at that stage it was too late to
7 change the Redington Two and that's when Redington One
8 and Three became aware of what their sister building
9 was doing, and it succeeded at doing. And we said a
10 mistake was made and the rule should not have been
11 that way, interpreted that way originally. And that's
12 what prompted going to asking for clarification of
13 this rule.

14 Q Do you know that field rep's name who
15 originally made that determination?

16 A Not off the top of my head.

17 Q But you'd have it somewhere in your records?

18 A I'm not sure if he's still even employed
19 with the company. We were going through a lot of
20 transition at that time and a lot of new people were
21 being assigned to positions, so I cannot say whether I
22 have that in my record or not?

23 **MS. HELTON:** I'm starting to have a problem
24 with relevance.

25 **MR. MOYLE:** We had this discussion about the

1 Redington previously.

2 MS. HELTON: I know.

3 MR. MOYLE: I was going to ask him a cost
4 question which is part of it.

5 Q (By Mr. Moyle) Do you have any reason to
6 disagree with the document that indicates the
7 Redington Two people are saving nearly 40% off their
8 bills compared to the Redington One and Three.

9 A The calculation is probably accurate that
10 the difference between the commercial and residential
11 rate isn't that, but they are having other costs they
12 are absorbing now that we would have had that they
13 don't show in that savings.

14 Q What are those costs?

15 A They are doing some metering themselves. So
16 they now have the expense of having submetering;
17 reading those meters, maintaining those meters,
18 maintaining all of the electrical facilities behind
19 the master meter, which would then be picked up in
20 their maintenance cost. So they are not taking that
21 into consideration when they say approximately a 40%
22 savings in their electric bill because they are not
23 taking in the total additional new cost that they did
24 not have before.

25 And I agree with Mr. Wheeler, that they

1 should not be on a commercial rate but the way our
2 rate structure is designed today, that's the only
3 place they could go.

4 Q Okay. It's less profitable for Florida
5 Power Corp to have condominiums on master meters as
6 compared to individual meters, isn't it?

7 A Yes. Because they are not paying what the
8 true cost of service is because they are in a
9 different rate structure that does not have the same
10 cost to serve as residential. Residential governs our
11 system peaks, where the commercial are not as
12 coincident to the system peak, and, therefore, there's
13 less cost to serve them. So they are under a rate
14 that is lower cost to serve, therefore, the price that
15 we charge is lower.

16 MR. MOYLE: Okay. Thank you.

17 MS. HELTON: Does anybody else have any
18 questions or do you have any follow-up, Mr. McGee?

19 MR. MCGEE: I did have a statement that I
20 wanted to make, and I'll try to be brief, if it's
21 appropriate at this time.

22 MS. HELTON: Okay.

23 MR. MCGEE: Some of it has to do with the
24 discussion we had before.

25 Let me just say that I think it's somewhat

1 unfair to Mr. Wheeler in trying to give a thorough
2 presentation of not only the rule and the rule
3 amendment we're talking about today, but the history
4 of it. That having mentioned that the rule started
5 because of the considerations that were undertaken in
6 the 1980 hearings, that that somehow becomes the basis
7 for inquiry and for support of the rule amendment.

8 Mr. Moyle made it clear in his questioning
9 to Mr. Wheeler that this dual criteria was not before
10 the Commission in 1980 -- by dual criteria, I mean
11 that the building to be exempt from the requirement
12 that individual metering had to be constructed before
13 1981 and had to have been -- had to have been master
14 metered at the time.

15 While that may not have been before the
16 Commission in 1980, the point that's overlooked is it
17 was clearly before the Commission in 1998. That was
18 the basis for the request for declaratory statement
19 that Florida Power made and it certainly was the basis
20 for the decision that the Commission came out with in
21 response to that petition. That order is now a final
22 order. It clearly established the dual criteria. And
23 that was the basis for my statement that the point
24 we're at right now, we're essentially taking care of a
25 housekeeping matter.

1 The Commission has already spoken on the
2 proper interpretation of that language that's in the
3 rule. We just need to take the following step that
4 can't be done in a declaratory statement proceeding
5 and make sure that that interpretation is properly
6 reflected in the language that's contained within the
7 rule.

8 The additional matters that have taken up a
9 good bit of our time this morning, as we've said
10 before, are the subject of a broad-based generic
11 proceeding. All of the considerations that have been
12 mentioned by Mr. Moyle earlier are properly within the
13 scope of that proceeding and can be addressed there.
14 I don't think there's any reason why we should not go
15 forward and simply adopt in the rule the clarification
16 the Commission has already made. Certainly if that
17 had been before the Commission in 1980, we probably
18 wouldn't be here today. That was the reason for the
19 declaratory statement in 1988; very recent decision in
20 March of 1988 by the Commission. We simply need to
21 take the following concluding step and make sure
22 that's reflected in the rules that people look to find
23 out what the policies of this Commission are.

24 Thank you.

25 **MS. HELTON:** Mr. Hoffman or Mr. Laux, do you

1 want to say anything?

2 **MR. HOFFMAN:** Your Honor, very briefly, we
3 support the proposed rule amendment. I would adopt
4 the statement that Mr. McGee just made. I think he
5 hit the nail on the head. And we support his
6 statement.

7 I would only briefly reiterate that we do
8 have the continuing objection, including questions,
9 respectfully, Your Honor, that you raised concerning
10 cost of service, differing rates and so forth as we
11 believe those are beyond the scope of the rulemaking.

12 The other request -- and I'm starting to get
13 procedural here, Your Honor -- is that I would ask if
14 I could reserve the right to submit a late-filed
15 exhibit once I have an opportunity to get a copy of
16 the transcript from that rulemaking proceeding, to put
17 potentially some additional portions of that
18 transcript into this record. There may be no need to
19 do that but I would like to get a copy of that
20 transcript, review it and reserve the right to put it
21 before Your Honor.

22 **MR. LAUX:** Tampa Electric would encourage
23 you that you move forward and adopt the proposed
24 language.

25 **MS. HELTON:** Okay. Mr. Moyle, you also have

1 procedural things you said?

2 MR. MOYLE: I wanted to make one just quick
3 statement, if I could.

4 MS. HELTON: One quick statement.

5 MR. MOYLE: Strangely enough, I think I
6 would adopt largely what counsel for Florida Power
7 Corp said, which was he recognized that this was not
8 before the Commission in 1980, the requirement that
9 you be built prior to 1981, and that you be on a
10 master meter. So to now, 18 years later, say, well,
11 we're just clarifying something, when admittedly it
12 wasn't before the Commission in 1980, there's no
13 evidence that it ever was, is a significant change,
14 which is a point I tried to make earlier.

15 I would like to thank you for your time and
16 your indulgence, and you've conducted this hearing
17 fairly. And I also would like to, on the record,
18 thank you for forgiving me for being a couple minutes
19 tardy this morning.

20 Thank you.

21 MS. HELTON: So as I see it then, the
22 procedural matter that we have at issue is whether you
23 can file late-filed exhibits. You were thinking along
24 my lines. I think that would be perfectly fine for
25 anyone to go and look at the record of the '79 docket,

1 790866, and what their posthearing comments file --
2 anything they find in there that they think I should
3 know about in my making my recommendation to the
4 Commission.

5 Does anyone have an objection to that?

6 **MR. WHEELER:** I think that Docket
7 No. 780886.

8 **MS. HELTON:** I'm sorry. I'm obviously very
9 dyslexic today.

10 **MR. MOYLE:** It would be limited to the
11 record before the Commission, correct? In terms of
12 exhibits that could be provided?

13 **MS. HELTON:** As far as late-filed exhibits?

14 **MR. MOYLE:** Right.

15 **MS. HELTON:** I would say so, unless -- what
16 did you have --

17 **MR. MOYLE:** That's fine. I just wanted to
18 have that one clarified.

19 **MS. HELTON:** Also, too, I believe that you
20 said something earlier about a statement of estimated
21 regulatory costs.

22 **MR. MOYLE:** I had two other procedural
23 matters. That was one of them.

24 We've requested a Statement of Estimated
25 Regulatory Costs and I was wondering where we were in

1 that process.

2 **MR. HEWITT:** Craig Hewitt, Commission Staff.

3 We are going to prepare one because you
4 asked for one, but I'd also invite you to submit any
5 estimated costs that you might have from the current
6 policy in adopting this rule amendment.

7 **MR. MOYLE:** I think in my letter I did do
8 that. The statute recognizes that one of the proposed
9 alternatives can be to not adopt the rule. I think in
10 light of the testimony that's been provided here
11 today, particularly with the Redington situation, that
12 savings result from having a master meter as compared
13 to an individual meter. I would stand by that and say
14 that doing nothing is a cost savings as compared to
15 going forward with this rule.

16 **MR. HEWITT:** I understand your position.
17 And we'll have our opinion and it will be stated in
18 the Statement of Estimated Regulatory Costs.

19 **MR. MOYLE:** Okay. Thank you. The other
20 question I had, if I may, is I'm trying to figure out
21 when the final public hearing on this rule is and I
22 think there are really two choices: Today, or when
23 you bring this matter back before the full Commission,
24 and it has some legal significance in timing, and
25 that's why I need to have that clarified and

1 stipulated to if we can as to that.

2 **MS. HELTON:** I can tell you what my position
3 is and what I believe my peer's positions are that
4 also do rulemaking with me, that the final public
5 hearing -- when I take my recommendation to the
6 Commission and the Commission votes. I don't have
7 final authority than this; the Commission does.

8 **MR. MOYLE:** That's fine. If that could be
9 stipulated to by counsel then I think we would be in
10 good shape.

11 **MR. BELLAK:** I'm sorry? What's the issue?

12 **MR. MOYLE:** When the final public hearing is
13 on this proposed rule. And it's been indicated from
14 the bench that the view is is that the final public
15 hearing will be when the proposed recommendations are
16 brought back before the full Commission.

17 **MS. HELTON:** You need to understand
18 something about that process.

19 The way we deal with it here is that it's me
20 and the Commissioners. You get your say to me today
21 and in your posthearing comments. I take that, think
22 about it, make my recommendation to the Commission,
23 and any conversation then will be between me and the
24 Commissioners. You won't necessarily have a
25 opportunity to talk to them again.

1 **MR. MOYLE:** At the agenda conference.

2 **MS. HELTON:** At the agenda. You have to
3 remember, too, there is no prohibition against
4 ex parte discussions for rulemaking, so to the extent
5 you can beat on their doors, that's completely lawful.

6 **MR. MOYLE:** Okay. If Mr. Bellak would
7 agree, that the final public hearing would be when you
8 take your recommendations back to the full Commission
9 then I think I would be done.

10 **MR. BELLAK:** I concur in that, but it
11 doesn't necessarily mean that it's participation.

12 **MR. MOYLE:** No. That's fine.

13 **MS. HELTON:** I'm not done because we need to
14 talk about a schedule.

15 Today is May the 5th, and generally it takes
16 two weeks to do the transcript, so would that to be a
17 problem to have the transcript by May the 19th?

18 **THE REPORTER:** It won't be a problem to have
19 the transcript the end of the week, if you need a
20 shorter period of time.

21 **MS. HELTON:** Okay. Do you want to say the
22 transcript will be by May 7th. May the 7th for the
23 transcript.

24 I think that it would be in my mind, and I'd
25 be willing to hear from you -- in my mind it would be

1 fair for Mr. Hewitt to make his statement of estimated
2 regulatory cost and give everyone an opportunity to
3 comment on that in their posthearing comments. Does
4 anyone see a problem with that procedure?

5 **MR. MOYLE:** I guess the only thing that I
6 have with that is in my mind they are different
7 animals. That this is a public hearing under a
8 process. The Statement of Estimated Regulatory Costs
9 and their request for that is something separate and
10 apart.

11 **MS. HELTON:** I have a hard time believing
12 that, Mr. Moyle, given the fact that we spent a good
13 part of this morning talking about the costs
14 associated with this rule.

15 **MR. MOYLE:** Here's the thing -- you're
16 saying put something down, and we have an opportunity
17 to respond to it?

18 **MS. HELTON:** Yes.

19 **MR. HEWITT:** The purpose of the SERC is for
20 the Commission to consider different costs that a rule
21 change or proposed rule would have on all of the
22 parties. I don't think it's necessary that you have
23 to comment on that.

24 **MR. MOYLE:** Okay. I think I'm okay. I just
25 don't want to have something come out that then I have

1 no opportunity to respond to or to talk to the
2 Commission about at the agenda conference. But if
3 you're saying that what we would do is you would
4 prepare your statement and then we would have a
5 opportunity to respond to it, I think I'm okay on
6 that.

7 **MR. HEWITT:** That's what the hearing officer
8 is suggesting.

9 **MS. HELTON:** I think he's disagreeing with
10 me.

11 **MR. HEWITT:** We can do it that way. I can
12 tell you right now, though, that our position is that
13 this is a clerical change. The policy is already
14 placed. There's no change in cost, okay. But in the
15 SERC I'm going to state your position; that you think
16 that there is a major change here going back to 1980.

17 **MR. MOYLE:** That's fine. Then we'll have a
18 opportunity with the evidence adduced here today to
19 make the argument to you with his Statement of
20 Estimated Regulatory cost before us, correct?

21 **MS. HELTON:** I think Mr. Hewitt is
22 disagreeing with me, that you all should be able to
23 comment on the Statement of Estimated Regulatory Cost.
24 I think I disagree with him.

25 **MR. HEWITT:** I'm not strong on that feeling.

1 **MS. HELTON:** Pardon?

2 **MR. HEWITT:** I don't feel strongly about
3 that.

4 **MS. HELTON:** Let's ask you this: How long
5 will it take you to prepare the statement?

6 **MR. HEWITT:** This would be a rush job;
7 probably two weeks.

8 **MS. HELTON:** Let's give you three. Okay
9 transcripts will be ready May the 7th. Mr. Hewitt
10 will have his SERC ready by May the 28th. And how
11 long after that do you all need to file posthearing
12 comments? Two weeks? Three weeks?

13 **MR. MCGEE:** Two weeks is fine by Florida
14 Power.

15 **MR. HOFFMAN:** (Indicating)

16 **MS. HELTON:** I can't see your fingers.

17 **MR. HOFFMAN:** Three weeks.

18 **MR. MOYLE:** Three would be fine.

19 **MS. HELTON:** That's June the 18th
20 posthearing comments.

21 If I could ask in your comments if you
22 summarize your positions and your testimony, if you
23 had any, that you presented here today. And also,
24 too, if you'd keep in mind that any recommendation
25 that I make to the Commission based on -- concerning

1 the rule amendment has to be based on the record from
2 the proceeding here today or from something that's
3 contained in your posthearing comments. Is there
4 anything --

5 **MR. MOYLE:** You can't put additional
6 evidence in in the comments.

7 **MS. HELTON:** Other than what we've already
8 talked about as far as the late-filed exhibits go.

9 **MR. MOYLE:** Which are limited to the
10 transcript of the previous rule hearing before the
11 PSC.

12 **MS. HELTON:** Not necessarily. I guess the
13 rulemaking materials because there may have been
14 exhibits to the transcript and also you found that
15 summary -- I'm not sure --

16 **MR. MOYLE:** No. I just don't want an
17 exhibit that's dated tomorrow to all of a sudden come
18 in nad be part of the record.

19 **MS. HELTON:** That's not what I intended.

20 **MR. MOYLE:** Okay.

21 **MS. HELTON:** Is there anything further?

22 **MR. HOFFMAN:** Your Honor, could we take like
23 a two-minute break because I need to discuss some
24 issues with my clients before we adjourn.

25 **MS. HELTON:** Sure.

1 (Brief recess taken.)

2 - - - - -

3 MS. HELTON: Has everybody conferred with
4 their client?

5 MR. HOFFMAN: Your Honor, I have, and I have
6 a question of you, and depending on your response, I
7 may want to make a brief statement or two going back
8 to the issues.

9 For the purposes of preparing our
10 posthearing comments, my question is: Have you made a
11 ruling on the issue of whether or not the statements
12 concerning cost of service, differing rates, differing
13 load factors and so forth are within the scope of this
14 hearing?

15 MS. HELTON: No, I don't think I have made a
16 ruling.

17 Let me, I guess, explain to you where I'm
18 coming from. I believe that the issue in this hearing
19 is whether the Commission should adopt the proposed
20 amendments as they were set forth in the Florida
21 Administrative Weekly on whatever date. But I also
22 believe that if there is some problem with the policy
23 that is set out in those rule amendments, such that
24 they would be an invalid exercise of delegated
25 legislative authority as that is defined in 120.52(8),

1 then I don't think the Commission has any business
2 adopting whatever is in the amendments. So that's the
3 extent of my interest in the cost issue.

4 If there is a legitimate gripe with what a
5 condominium association or what condominium members
6 would pay versus an apartment dweller or homeowner,
7 then I think that that is something that I would
8 definitely consider in making my recommendation to the
9 Commission. However, let me say that I don't know
10 that I have been persuaded that there is a problem as
11 far as costs go with the policy that's set out in the
12 amendment, proposed amendment to this rule.

13 **MR. HOFFMAN:** Thank you, Your Honor.

14 **MS. HELTON:** Does that help, Mr. Hoffman?

15 **MR. HOFFMAN:** Yes, it does. With your
16 indulgence, very briefly, Mary Morley with FPL will
17 give her position and make a very brief statement.

18

- - - - -

19

MARY MORLEY

20 appeared as a witness and testified as follows:

21

DIRECT STATEMENT

22 **MS. MORLEY:** I just wanted to comment on the
23 I think it was 38% savings that was quoted earlier for
24 Redington Tower. And I believe Mr. Klamar mentioned
25 that that may be not accurate to the extent that it

1 does not reflect the costs that customers have to pay
2 for the submetering and so forth.

3 I just wanted to add I don't know what the
4 savings would be, or if there even would be any
5 savings, if it were in Florida Power and Light's
6 territory, knowing the differences between our two
7 rates. It would really depend on a number of things.
8 It would depend on what DSM programs the residential
9 customers were taking advantage of. It would depend
10 on what rate they go for and so forth.

11 I think we mentioned earlier some numbers on
12 the customer charge. As was stated earlier, Florida
13 Power and Light has, I believe, the lowest customer
14 charges a residential customers four IOUs. And also I
15 think figures were quoted of a customer charge for
16 commercial customers of maybe no more than twice as
17 large, and that probably would not be the case for our
18 company. So we just wanted to add the 38%, whether
19 it's accurate or not for Florida Power Corp, is
20 definitely not what we probably expect for Florida
21 Power and Light. And, again, it would depend on many
22 different things.

23 **MR. MOYLE:** Are you going to accept that as
24 evidence for the basis of your recommendations?

25 **MS. HELTON:** To the extent that --

1 **MR. MOYLE:** If so, I'd like ask questions.
2 She said FPL, the cost may not be there, and there
3 were a whole bunch of things in there that I --

4 **MS. HELTON:** To the extent this is all part
5 of the record, yes, I will consider that and if you
6 have questions for her, that would be fine for you to
7 ask them now.

8 **EXAMINATION**

9 **BY MR. MOYLE:**

10 **Q** I believe you indicated that the cost to
11 let's say a condominium for example, that you
12 reference the Redington 38% savings that Florida Power
13 and Light does not -- is not sure whether there would
14 be 38% savings because there's a cost of submetering,
15 correct?

16 **A** Yes.

17 **Q** Do you know what the cost of submetering
18 would be?

19 **A** No. And to add to my earlier answer, the
20 38%, as discussed by Mr. Klamar, may not be accurate
21 for Florida Power Corp because of submetering. Were
22 it in Florida Power & Light's territory, not only
23 would that be an issue, but the difference between our
24 rates for Florida Power & Light are different than
25 Florida Power Corp.

1 Q If somebody had a master meter -- let's say
2 Redington Tower situation occurred in Florida Power
3 and Light territory and you had a condominium and had
4 a master meter, what rate would they take under?

5 A I think you'd have to tell me the size of
6 the load at Redington Towers.

7 Q It's 150-unit condominium complex
8 hypothetically.

9 A I'm sorry, you'd have to tell me the load.

10 Q Well, Florida Power Corp said that they --
11 when somebody takes a -- has a master meter, they put
12 them on a commercial account. Do you have a similar
13 practice?

14 A Yes. And we have several different
15 commercial rates, depending on the size of the load.

16 Q So they would go on a commercial rate if
17 they were able to obtain a master meter under your
18 current tariff structure?

19 A The current tariff, yes.

20 Q Are all of your commercial tariffs at a
21 reduced -- less than your residential tariff?

22 A In what sense? In a cent-per-kilowatt-hour?

23 Q Correct.

24 A Probably. But it would also depend on
25 possibly some DSM programs.

1 Q Let's just put DSM off to the side. I just
2 want a straight rate comparison. Would the commercial
3 rates that FPL has be less than the residential rate?

4 A In general, yes. But it would depend on the
5 specifics of the customers involved.

6 Q How do you determine your commercial
7 customer charge?

8 A That's a very broad question. I'd say in
9 general it depends on the load characteristics of the
10 rate class and the cost to serve.

11 Q You had made the statement that the
12 commercial customer charge would be, I think, more
13 than two times the customer charge for a residential.
14 And I was trying to understand the basis for that.

15 A A number of things. Primarily, the big
16 driver in the customer charge is probably the metering
17 involved and the demand meters are more expensive than
18 nondemand meters.

19 Q How much more expensive?

20 A It depends. What I can tell you is as
21 mentioned earlier, the customer charge is \$5.65 for
22 residential. Medium commercial could be around like
23 \$170.

24 Q Per month?

25 A Yes.

1 Q Okay. So given those numbers if you had a
2 complex, be it an apartment or condominium, that had
3 40 units in it, they would save money based on the
4 metering the customer metering charge if they were
5 able to take under a master meter on a medium
6 commercial rate as compared to individual metering; is
7 that correct?

8 A Looking at the customer charge alone, yes.
9 You have to the also consider there are other
10 components to the rate, specifically the demand charge
11 that the commercial customer would pay that a
12 residential customer would not have to pay.

13 Q And how would you figure out the demand
14 charge?

15 A The base demand charge is \$6.25, and added
16 on top of that is our capacity clause, which roughly
17 is I want to say just under \$2 now. It varies.

18 Q Would that be on a monthly basis?

19 A Dollar-per-kilowatt month.

20 Q And just for the record, that calculation
21 was pretty simple. It was \$170 per month for the
22 medium commercial; \$6.25 per kW and then this \$2
23 charge as compared to a \$5.65 charge for individual
24 customer charge. So if you take a 40-unit complex and
25 multiply it by 5.65 you get in excess of --

1 **A** I'm not sure you're doing the math right.
2 The \$6.25 has to be multiplied by the kilowatt-hour --
3 I'm sorry, the kilowatts of load. That's why I said
4 it depends on the size of the building. It's not just
5 \$6.25; it's 6.25 per kilowatt-month, and the same
6 thing for the capacity clause.

7 **MS. HELTON:** I think you also, too, have a
8 more fundamental problem than that. You haven't
9 convinced me that persons living in a condominium
10 share load characteristics that are similar to
11 entities that may be on a commercial rate.

12 **MR. MOYLE:** The Public Service Commission
13 doesn't have any evidence that they don't from what
14 Mr. Wheeler said.

15 **MS. MORLEY:** Since we're on that point, is
16 similar to Florida Power, FPL has looked at our
17 residential load research sample and looked at those
18 that are just related to single-family entities versus
19 those that are apartment/condos, and we find the load
20 shape between the two are very similar, as Mr. Klamar
21 was mentioning; basically the same pattern. One's
22 just smaller than the other. We find a very similar
23 load factor. Very similar percent of kilowatt-hours
24 during the on-peak period and so forth.

25 **Q** **(By Mr. Moyle)** How often do you look at

1 that data?

2 A This is annually.

3 Q And do you file it with the Public Service
4 Commission?

5 A Not by the categories I've talked about,
6 single-family versus condos and apartments.

7 Q But you do gather it that way?

8 A Yes. When we do the load research sample,
9 there's a code for how served.

10 Q In your service territory, let's say down in
11 that old part of Miami, I know there's some houses
12 down there that people use as office buildings, do you
13 treat that as a residence or as a commercial property?

14 A I'm not sure of the old office buildings --

15 Q No. Just an old house, for instance?

16 A Yeah.

17 Q What do you treat that as a residence or as
18 a commercial account?

19 **MR. HOFFMAN:** Your Honor, I'm going to
20 object. Our purpose here was to allow Ms. Morely to
21 provide a brief statement, to give us some flexibility
22 in our posthearing comments to address cost issues and
23 rate issues, which as I said, we believe are outside
24 the scope of this proceeding.

25 She made those comments. Mr. Moyle has had,

1 I think, more than enough latitude in following up
2 with questions.

3 The purpose of her comments was very simple:
4 To simply state that it's virtually impossible,
5 without having the specifics of a particular
6 situation, to draw a conclusion that one, that a
7 customer would save by going to -- by going from
8 individual metering to master metering. We're well
9 beyond that now and I would object.

10 **MS. HELTON:** I think I'm inclined to agree
11 with you, Mr. Hoffman.

12 And let me say, too, just so you understand
13 where I'm coming from, I think there's a certain
14 amount of common sense that needs to be looked at
15 here. And I don't think it's a very -- I don't think
16 it's a stretch at all to say that someone that lives
17 in a condominium has a different load characteristic
18 or a load shape than the Burger King down the street.

19 **MR. MOYLE:** It may be. But from what the
20 Commission has in its possession, it doesn't know.
21 And that's the evidence that Mr. Wheeler talked about.
22 And I don't think there's any evidence as to what
23 happens when these folks pack up for the summer
24 months. A lot of these condominiums have people in
25 them that are only in them for the winter months. How

1 do those load characteristics look? They are getting
2 hit for a meter charge for six months when they are
3 not here.

4 **MS. HELTON:** What does that matter? The
5 Commission should clarify what it believes its policy
6 has been for the last 18 years as far as the
7 grandfather provision in the rule, I guess, is where
8 I'm coming from.

9 **MR. MOYLE:** I guess where I'm coming from is
10 I don't think that pre-1981 is a clarification. I
11 believe that, as has happened in some other places,
12 that to the extent that you can allow people to master
13 meter and then submeter, that you'll realize some
14 savings from that process.

15 I believe that from the record that is
16 before you in terms of the Redington situation, and as
17 Mr. Wheeler, I think, discussed, there are some
18 savings that can be realized, number one, from having
19 the master meter and not having to pay the customer
20 charge of the individual meters, and number two,
21 because you're on a better rate. I think Florida
22 Power and Light affirmed if somebody is able to have a
23 master meter, then they are going to be able to take
24 at a better rate as well.

25 So I don't want to make my posthearing

1 arguments here before you today. But, again, you're
2 going to be looking at the record before you today and
3 the previous rulemaking record. You're going to have
4 a Statement of Estimated Regulatory Cost. The law is
5 clear that costs need to be considered in the
6 rulemaking, and that's why I think these questions and
7 points and this line of the inquiry is relevant.

8 **MS. HELTON:** Does anybody else have anything
9 further?

10 **MR. LAUX:** I have a couple of questions, if
11 I may.

12 **MR. MOYLE:** Just for the record, am I not
13 going to be able to ask her any more questions based
14 on Mr. Hoffman's objection?

15 **MS. HELTON:** Not on the last line of
16 questioning that you were following. Do you have
17 additional questions?

18 **MR. MOYLE:** She was talking about costs.
19 I'm trying to make sure I understand, you know, the
20 difference in costs. She said they got load studies.
21 That the load studies showed the condos and apartments
22 are different from --

23 **MS. HELTON:** And I think you were asking
24 about an old house. And I was having a hard time
25 understanding where we were going with that. Do you

1 have any more questions that are not related to an old
2 house?

3 **MR. MOYLE:** The old house thing, you get a
4 commercial rate because you run your law office out of
5 an old house. I'm not sure if you live in your old
6 house, are the load characteristics such they identify
7 them, that you say, "Wait a minute. You shouldn't be
8 on a commercial rate. You should be on a residential
9 rate." How do you --

10 **MS. HELTON:** I've always thought that it's
11 by not necessarily -- it's by the use of the dwelling,
12 not necessarily what the dwelling is. So to the
13 extent that your question is related to that, I will
14 allow you to ask it. If it's not, then it's just that
15 we for forward with a different line.

16 **Q (By Mr. Moyle)** Is it related to the use
17 and not what the dwelling is?

18 **A** Yes.

19 **Q** Okay. You do your load studies based on the
20 use and not what the dwelling is, correct?

21 **A** Actually the load studies are by rate class.

22 **Q** And how do you determine rate class, based
23 on use?

24 **A** Several things. In the case of commercial,
25 it's not just the fact it's a commercial-type use. It

1 could depend on their size. It could depend on the
2 voltage level they are served off of.

3 MR. MOYLE: Okay. That will do it. Thanks.

4 MS. HELTON: Mr. Laux.

5 MR. LAUX: He got to my questions. I have
6 no need to ask them now.

7 MS. HELTON: Okay. Mr. Hoffman, you look
8 like you want to say something.

9 MR. HOFFMAN: What is your position with
10 FPL?

11 MS. MORLEY: I'm rate development manager.

12 MR. HOFFMAN: Thank you.

13 MS. HELTON: It looks like we can adjourn
14 before noon unless anybody has anything else they want
15 to bring up?

16 Okay. This hearing is adjourned.

17 (Thereupon, the hearing concluded at
18 11:50 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

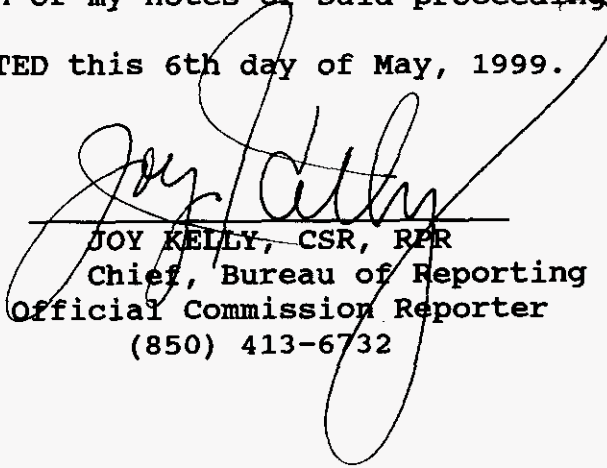
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3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Rule Hearing in
6 Docket No. 981104-EU was heard by the Hearing Officer
7 at the time and place herein stated; it is further

8 CERTIFIED that I stenographically reported
9 the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 99 pages, constitutes a true
12 transcription of my notes of said proceedings.

13 DATED this 6th day of May, 1999.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF STAFF WORKSHOP

TO

FLORIDA POWER & LIGHT COMPANY
FLORIDA POWER CORPORATION
FLORIDA PUBLIC UTILITIES COMPANY
GULF POWER COMPANY
TAMPA ELECTRIC COMPANY

AND

ALL OTHER INTERESTED PERSONS

RE: DOCKET NO. 990188-EI - GENERIC INVESTIGATION INTO REQUIREMENT FOR INDIVIDUAL ELECTRIC METERING BY INVESTOR-OWNED ELECTRIC UTILITIES PURSUANT TO RULE 25-6.049(5)(A), FLORIDA ADMINISTRATIVE CODE.

ISSUED: March 10, 1999

NOTICE is hereby given that the Staff of the Florida Public Service Commission will conduct a workshop, in the above-referenced docket, to which all persons are invited, at the following time and place:

9:30 a.m., Wednesday, April 14, 1999
Room 182, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

PURPOSE

The purpose of this workshop is to provide interested persons an opportunity to comment on any and all issues related to the requirement of Rule 25-6.049(5)(a), Florida Administrative Code, that certain structures be master metered by the investor-owned electric utility that serves them.

If you wish to comment but cannot attend the workshop, please file your comments with the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on or before April 7, 1999, specifically referencing Docket No. 990188-EI - Generic Investigation into Requirement for Individual Electric Metering by Investor-owned Electric Utilities Pursuant to Rule 25-6.049(5)(A), Florida Administrative Code.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104-EU EXHIBIT NO. 2
COMPANY/ Staff
WITNESS: Staff
DATE: 15-5-99

NOTICE OF STAFF WORKSHOP
DOCKET NO. 990188-EI
PAGE 2

A copy of the agenda for this workshop is attached. Additional copies may be obtained by writing to the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least 48 hours prior to the workshop. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1-800-955-8771 (TDD).

JURISDICTION

Jurisdiction is vested in this Commission pursuant to Chapter 366, Florida Statutes. The workshop will be governed by the provisions of that Chapter and Chapters 25-6, 25-17, 25-22 and 28-106, Florida Administrative Code.

By DIRECTION of the Florida Public Service Commission, this 10th day of March, 1999.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the notice may be obtained by calling 1-850-413-6770.

(S E A L)

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NOTICE OF STAFF WORKSHOP
DOCKET NO. 990188-EI
PAGE 3

AGENDA

FLORIDA PUBLIC SERVICE COMMISSION STAFF WORKSHOP

DOCKET NO. 990188-EI
GENERIC INVESTIGATION INTO THE REQUIREMENT FOR INDIVIDUAL
ELECTRIC METERING BY INVESTOR-OWNED ELECTRIC UTILITIES PURSUANT
TO RULE 25-6.049(5)(A), FLORIDA ADMINISTRATIVE CODE

9:30 A.M., WEDNESDAY, APRIL 14, 1999
BETTY EASLEY CONFERENCE CENTER
4075 ESPLANADE WAY, ROOM 182
TALLAHASSEE, FLORIDA

THIS MEETING IS OPEN TO THE PUBLIC

9:30 A.M.--Call to Order

Discussion of possible modification of the individual metering
requirement of Rule 25-6.049(5)(a), Florida Administrative Code.

Adjournment

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
NOTICE OF CONTINUANCE OF RULEMAKING HEARING

TO

ALL ELECTRIC UTILITIES
VALENCIA CONDOMINIUM ASSOCIATION
POINT MANAGEMENT, INC.

AND

ALL OTHER INTERESTED PERSONS

DOCKET NO. 981104-EU

IN RE: PROPOSED AMENDMENT OF RULE 25-6.049,
F.A.C., MEASURING CUSTOMER SERVICE.

ISSUED: March 18, 1999

NOTICE is hereby given that the Florida Public Service Commission has continued the March 15, 1999, Section 120.54, Florida Statutes, rulemaking hearing in the above docket to May 5, 1999. Accordingly, the public hearing will be continued to the following time and place:

9:30 a.m., Wednesday, May 5, 1999
Room 152, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0850

The attached Notice of Continuance of Rulemaking Hearing will appear in the March 26, 1999, edition of the Florida Administrative Weekly.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104-EU EXHIBIT NO. 3
COMPANY/
WITNESS: Staff
DATE 5-5-99

DOCKET NO. 981104-EU
PAGE 2

By ORDER of the Florida Public Service Commission, this 18th
day of March, 1999.

BLANCA S. BAYÓ, Director
Division of Records & Reporting

By: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed
copy of the order may be obtained
by calling 1-850-413-6770.

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DOCKET NO. 981104-EU

PAGE 3

The FLORIDA PUBLIC SERVICE COMMISSION announces that the Section 120.54, Florida Statutes, rulemaking hearing held on March 15, 1999, in Docket No. 981104-EU, will be continued as set out below. All interested persons are invited to attend.

DOCKET NO. 981104-EU - Proposed Amendment of Rule 25-6.049, F.A.C., Measuring Customer Service

THE CONTINUED RULEMAKING HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., Wednesday, May 5, 1999

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

PURPOSE: A notice of rulemaking was published in the February 19, 1999, edition of the Florida Administrative Weekly, which offered a rulemaking hearing upon request. A rulemaking hearing was requested and was held on March 15, 1999. This rulemaking proceeding will be continued on May 5, 1999. This continuance will enable interested persons to participate in the staff workshop in Docket No. 990188-EI - Generic Investigation into Requirement for Individual Electric Metering by Investor-Owned Electric Utilities Pursuant to Rule 25-6.049(5)(a), F.A.C., prior to closing the record for the rulemaking hearing in Docket No. 981104-EU. In addition, the continuance should allow all participants to address the concerns raised in the hearing request filed by Valencia Condominium Association and Point

DOCKET NO. 981104-EU
PAGE 4.

Management, Inc.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

4

(1-110.) ORIGINAL FILE COPY

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

POSTED COMM. CLERK

In the Matter of :

DOCKET NO. 780886-Rule

Adoption of Amendment of Rule
25-6.49, Florida Administrative
Code, Measuring Customer Service.

RECEIVED
OFFICE OF COMMISSION CLERK

OCT 20 1980

122 Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32301

Florida Public Service Commission

Friday, September 26, 1980

Met pursuant to notice at 9:30 a.m.

BEFORE: VIRGINIA REBER, Associate General Counsel

PARTICIPANTS:

ARLEN CRUTTENDEN, Tampa Electric Company, Post Office
Box 111, Tampa, Florida 33601, Telephone No. (813) 879-4111.

KENNETH R. HART, ESQUIRE, Ausley, McMullin, McGehee,
Carothers & Proctor, Post Office Box 391, Tallahassee, Florida
32302, Telephone No. (904) 224-9115, on behalf of Tampa Electric
Company.

R. E. LLOYD, G. J. SANTEIRO, Florida Power & Light
Company, Post Office Box 529100, Miami, Florida 33152, Tele-
phone No. (305) 552-3552.

JOHN T. BUTLER, ESQUIRE, Steel, Hector & Davis, 1400
Southeast First National Bank Building, Miami, Florida 33131,

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 981104-EU EXHIBIT NO. 4

COMPANY/ WITNESS: Valencia Gaudin
DATE: 5-5-99

7 2 4 1
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 780886-RULE

FLORIDA POWER & LIGHT COMPANY

TESTIMONY OF R. E. LLOYD, JR.

1 Q. Please state your name and business address.

2 A. R. E. Lloyd, Jr., 9250 West Flagler Street, Miami, Florida.
3

4 Q. Who is your employer and what position do you hold?

5 A. I am employed by Florida Power & Light Company (FPL) and
6 hold the position of Director of Commercial Operations.
7

8 Q. Please describe your educational background and business
9 experience.

10 A. In 1958 I graduated from the University of Florida with a
11 Bachelors Degree in Industrial Engineering, and in 1967 I
12 received a Bachelors Degree in Business Administration from
13 the University of Miami. In 1974 I completed the Harvard
14 Business School Program for Management Development. I am a
15 registered Professional Engineer in the State of Florida
16 and a member of the National Association of Professional
17 Engineers, the Florida Engineering Society and the American
18 Institute of Industrial Engineers. I joined FPL in 1958.
19 Since that time, I have served in various capacities within
20 Company district offices before assuming the duties of
21 District Manager of our Hollywood office in 1971. Later I

1 Q. Do you have any comments and recommendations to make concerning the Proposed Rule 6.49(5)?

2
3 A. Yes. While the Proposed Rule is basically sound, there are
4 a few problem areas I'd like to discuss.

5
6 First, Proposed Rule 6.49(5) is supposed to be applicable
7 only to buildings or facilities "constructed after
8 January 1, 1981." This creates two problems. It is unclear
9 what "constructed after" means. This could mean that construction is started or finished after the relevant date.
10 Moreover, it would be burdensome for a utility to have to
11 determine something as nebulous as a construction commencement or completion date. FPL recommends the date when the
12 building permit is issued should be determinative, as this
13 is much more easily ascertained. The date chosen (January
14 1, 1981) also causes a problem. Presumably this is intended
15 to be a date shortly after the adoption of the rule amendment and would serve to "grandfather" in all buildings
16 started before the rule amendment was adopted. However, it
17 is not certain that the rule amendment will be adopted by
18 January 1, 1981. FPL recommends this date be revised as
19 necessary to fall approximately one month after adoption of
20 the rule amendment.
21
22
23

24
25 Secondly, the use of "dwelling unit" is confusing in
26 Proposed Rule 6.49(5). The reference to "non-transient,
27 multi-dwelling unit" in subsection (a) would appear to refer

5

Summary of Public Hearing
in Docket No. 780886-RULE
Amendment to Rule 25-6.49
Measuring Customer Service

Initially, and as an editorial comment, I would like to say that in my opinion, the public hearing in this docket was an excellent one. Staff and participants cooperated and debated, but worked together well to hammer out a really viable rule.

The hearing took place on Friday, September 26, 1980. It began at 9:30 a.m. in Room 122, with staff's assertion that individual metering meets PURPA requirements (TR 3).

The discussion then focused on specifics; the first being the issues of when construction would be deemed to have begun for the purpose of ascertaining what buildings would be subject to the rule. (TR 8-29). The most viable alternative presented requires tying the construction date into the date that the permit for structure is issued, and the moderator indicated that that would be her recommendation to the Commission (TR 29). No objections were forthcoming to that recommendation.

The next issue concerned the apparent prohibition against individual metering for buildings with temporary walls. The participants suggested that if master metering was to be discouraged it made more sense to allow flexibility for the installation of individual metering on quasi-temporary walls, such as are found in shopping centers. (TR 30-43). Staff supported the participants' suggestion (TR 43-47), and the moderator indicated that she would recommend a rule which would allow the desired flexibility (TR 48-53).

The third item of discussion focused on the interpretation of proposed amendments (5)(a) 2 and 3. (TR 53,66). There was a

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 981104-EM EXHIBIT NO. 5
COMPANY/ WITNESS: Valencia Condominium
DATE 5-5-99

difference of opinion. One staff member felt that the proposed amendment required master metering in all cases where central heat and air and back-up service were used. Another staff member, no. participants and the moderator believed that the rule allowed a master meter only for the electricity of those items but required individual metering for all other electricity.

The attendees addressed the advantages and disadvantages of central control (TR 68-70), and the participants and moderator agreed (with one staff member dissenting) that the rule, as proposed, gives flexibility to the builder to use central heat and air or individual units (TR 70). Everyone agreed that as interpreted, both subparagraphs 2 and 3 were conservation effective and needed to be adopted in Florida (TR 73-74). The decision was to combine the two subparagraphs into one (TR 73) and to create a new definitions paragraph, 5(b).

This paragraph would include a definition of "occupancy unit" and a definition of the word "construction," as previously discussed (TR 77-85). Staff suggested inclusion of marinas into the definition of "occupancy unit," and the suggestion was well received (TR 78-79).

While some participants pieced together the rule which had been worked out, the moderator discussed procedural matters with the attorneys (TR 87-92). The utilities agreed either that they had not requested 120.57 hearings or that any such requests were dropped. The utilities maintained, however, that the public hearing had not been conducted in accordance with s. 351.59, F.S., which in their opinion, required either a hearing examiner or the Commission to conduct the public hearing. The moderator relied on her previous statements to the utilities in Docket No. 790010 and advised that she would maintain that position before the Commission.

The participants acknowledged that the "cut-and-paste rule" represented the discussion and agreement with regard to measuring customer service. The moderator agreed and, consequently, will recommend that version to the Commission pursuant to the public hearing suggestions and ideas (TR 108).

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
ORDER NO. PSC-98-0449-FOF-EI
ISSUED: March 30, 1998

The following Commissioners participated in the disposition of this matter:

- JULIA L. JOHNSON, Chairman
- J. TERRY DEASON
- SUSAN F. CLARK
- JOE GARCIA
- E. LEON JACOBS, JR.

ORDER ON DECLARATORY STATEMENT

BY THE COMMISSION:

Pursuant to Section 120.565, Florida Statutes, and Rule 25-22.020, Florida Administrative Code, Florida Power Corporation (FPC) filed a Petition for Declaratory Statement with the Commission on November 24, 1997. By letter dated January 21, 1998, FPC waived the 90-day statutorily required time to respond to its petition for declaratory statement.

FPC seeks a declaration concerning Rule 25-6.049(5)-(7), Florida Administrative Code, as it applies to its particular circumstances. Paragraph (5)(a) of the rule requires individual electric metering by the utility

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.

Rule 25-6.049(5)(a), Florida Administrative Code.

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104-EI EXHIBIT NO. 6
COMPANY/ Valencia Condominium
WITNESS:
DATE 4-5-99

FPC seeks the following declaration:

[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.

FPC alleges that it has received several requests from condominium associations and shopping malls to convert from individual to master meters for buildings constructed prior to 1981. In particular, FPC has received requests from Redington Towers One Condominium Association, Inc. (Redington Towers One) and Redington Towers Three Condominium Association, Inc. (Redington Towers Three) to convert from individual to master meters. FPC acknowledges that it incorrectly converted to master meters the Redington Towers Two Condominium Association, Inc., a sister condominium association to Redington Towers One and Three.

In support of its requested declaration, FPC argues 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." FPC also argues that paragraph (5)(a) should be read to be consistent with the underlying purpose behind the rule, which is to require individual metering. As stated by FPC, "[t]he concept of grandfathering simply tolerates pre-existing non-conforming uses, it does not condone the creation of new ones."

In addition, FPC argues that the declaration sought by FPC is consistent with In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by micrometer Corporation, Order No. PSC-97-0074-FOF-EU, 97 F.P.S.C. 1:450 (1997). In micrometer, we declined to amend Rule 25-6.049 to allow buildings that are currently required to be individually metered to be master metered, and then sub-metered. Among our reasons for declining to amend the rule was the mismatch that would result from residential customers taking service under a commercial rate. Id. at 1:452. We also denied the micrometer petition because it was not clear whether master metered residential condominium units would qualify for residential conservation programs. Id. One of the primary reasons we originally required individual metering was to advance conservation. In the micrometer order, we affirmed our policy to require condominium units to be individually metered. Id. at 1:453.

On January 16, 1998, Redington Towers One filed a "Brief for Declaratory Statement." Redington Towers Three filed essentially

the same brief on February 19, 1998. FPC has not responded to either filing. Section 350.042(1), Florida Statutes, allows a commissioner to hear communications concerning declaratory statements filed under Section 120.565, Florida Statutes. Because these condominium associations could have made their comments directly to the members of the Commission, we find it appropriate to include them in the record of this proceeding for our consideration. We have also considered such comments in prior declaratory statement proceedings. In re: Petition of Florida Power and Light Company for a Declaratory Statement Regarding Request for Wheeling, 89 F.P.S.C. 2:298, 300 (1989).

Concerning the merits of FPC's petition, Redington Towers One and Three argue that FPC's interpretation is arbitrary and discriminatory. In particular, the Towers One and Three argue that FPC's reference to In re: Request for amendment of Rule 25-6.049, F.A.C., Measuring Customer Service, by 38 tenants of record at Dunedin Beach Campground, Order No. 97-1352-FOF-EU, 97 F.P.S.C. 10:634 (1997), on page 4 of its petition is misleading. In addition, the Towers One and Three argue that the micrometer case is not controlling here.

We do not find these arguments to be persuasive. Moreover, the reading of the rule sought by Redington Towers One and Three would result in an interpretation in which they could switch back and forth between individual and master meters simply because they were constructed prior to 1981. This is not what we intended by paragraph (5)(a) of Rule 25-6.049. Instead, what was intended was to allow master metered buildings constructed before 1981 to remain master metered to avoid retroactive application of the rule.

While we agree with the arguments raised by FPC, we believe the declaration requested by FPC is too broad. See Regal Kitchens, Inc. v. Florida Department of Revenue, 641 So. 2d 158, 162 (Fla. 1st DCA 1994); Florida Optometric Association v. Department of Professional Regulation, Board of Opticianry, 567 So. 2d 928, 936-937 (Fla. 1st DCA 1990). Instead, we declare that the individually metered occupancy units in Redington Towers One and Three are not eligible for conversion to master metering pursuant to Rule 25-6.049 by virtue of having been constructed on or before January 1, 1981.

In addition, we instruct our staff to initiate the rulemaking process to determine whether paragraph (5)(a) of Rule 25-6.049 should be amended.

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DOCKET NO. 971542-EI
PAGE 4

It is therefore

ORDERED by the Florida Public Service Commission that Florida Power Corporation's petition for declaratory statement is granted as modified above. It is further

ORDERED that the Florida Public Service Commission staff shall initiate the rulemaking process as discussed above. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 30th day of March, 1998.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of this order maybe obtained by calling 1-850-413-6770

(S E A L)

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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 Director, Division of Records and Reporting, 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

ORDER NO. PSC-98-0449-FOF-EI
DOCKET NO. 971542-EI
PAGE 5

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 Director, Division of Records and reporting 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.

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

Submitted for filing:
January 15, 1998

BRIEF FOR DECLARATORY STATEMENT

Redington Towers One request that the Commission consider the material in this brief as part of the deliberation with respect to Florida Power's Petition for Declaratory Statement on the interpretation of Rule 25 - 6.049 (5), F.A.C.

Introduction

1. The name of this Petitioner and his business address is:

Redington Towers One Condominium Association, Inc.
c/o Infiniti Property Management Co.
1301 Seminole Blvd., Suite 110
Largo, Florida 33770

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

Robert W. Glover - President
c/o Infiniti Property Management Co.
1301 Seminole Blvd., Suite 110
Largo, Florida 33770

Tel: (813) 585-3491
(813) 319-2073

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 981104-27 EXHIBIT NO. 7
COMPANY/
WITNESS: Valencia Condominiums
DATE 5-5-99

DOCUMENT NUMBER-DATE

00988 JAN 16 1998

FPSC-RECORDS/REPORTING

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, Redington Towers One requests a declaration by the Commission that:

Upholds and enforces Commission Rule 25-6.49(5) through (7) F.A.C. ('the Master Metering Rule' or 'the Rule').

Factual Background

5. Redington Towers One is one of a three building Condominium Complex, which is located in the Town of Redington Shores, Florida, and built prior to January 1, 1981. One of our sister buildings applied for and was granted permission to switch to master metering for residential users. This changeover was made in August of 1997. In their letter of October 10, 1997 (copy attached), Florida Power declined to provide master metering for

Redington Tower One. Letters of protest have been filed with Florida Power and the PSC Bureau of Electricity & Gas.

Basically, the problem is with a very recent re-interpretation by Florida Power of the Florida Public Service Commission Rule 15-6.049 which mandates individual metering for condos permitted after January 1, 1981. In this re-interpretation, Florida Power, citing this rule as its authority, denies the freedom of condos built earlier to switch from individual metering to master metering and thereby effectively extends the mandatory individual metering of condos permitted after January 1, 1981 to those built before. Our date is earlier than January 1, 1981. It is pertinent that, only a few months earlier, Florida Power, recognizing that older condos were not precluded from applying for master metering by this section, approved and executed the transition from individual metering to master metering for one of the three buildings of our complex.

We regard their re-interpretation as totally arbitrary and intended to keep as many customers as possible on the highest possible rate. As between our several buildings, it is obviously discriminatory, and will affect our comparative real estate values. The difference in rates is about 38%.

Moving to master metering is projected to save our families involved several thousand dollars per month.

The statement in their letter to us (copy attached) that the change to master metering would reduce the incentive for individual unit owners to conserve electricity is incorrect. As Florida Power knows because they helped develop the program in our sister building, our plan anticipates master metering to the Association followed by individual apartment metering through existing sub-metering. The Association will pass along the cost of electricity to the individual apartment owners in proportion to their actual usage. Furthermore, our plan continues Florida Power Energy Load Management / Conservation programs, with the credits from same flowing to the appropriate unit owner. The unit owners' incentives to conservation are therefore unchanged. Since Florida Power is familiar with this aspect of our program, their statement that the incentives for conservation are lost is, at best, disingenuous.

We are not breaking ground for new programs. It was stated in the July 1997 issue of a condo manager's trade magazine that master metering is common among older condos. The sub-metering we propose to retain conservation incentives may be unique.

Discussion

6. We are of the opinion that Florida Power has made some misleading and some cases incorrect assertions in their petition of November 21, 1997 and we are also of the opinion the commission should hear our side of these issues. Specifically, we contest statements made by Florida Power on page 4 of their Petition, para 7;

(Order No. PSC - 97 - 1352 - FOF - EU, issued October 27, 1997 in Docket No. 970647-EU) dealt with Dunedin Beach Campground and it is self-serving and grossly misleading to compare Redington Towers Condominium complex to a campground facility. Condominiums are self-governing entities, regulated by the State of Florida as Florida (not for profit) Corporations. The last sentence on this page suggests "no hardship" if the Rule in question were not enforced. This cannot be farther from the truth. The owners at Redington Towers have been forced to pay an unnecessarily high rate for electricity since before 1981 and to continue this injustice would be grossly unfair!

Page 5. Para 9.

Florida Power offers (Order No. PSC - 97 - 0074 - FOF - EU, issued January 24, 1997 in Docket No. 951485-EU) for comparison. This order does not reflect the circumstances prevailing here at the Redington Towers complex. Specifically in sub para (a).

Condominium owners are provided with essential services such as security guards, fire alarms, trash collection, water, sewer, etc through a licensed management company, responsible to the Condo Board of Directors of the Condominium Association. Condominium Associations must comply with Florida Condominium Statutes with respect to delivery of these services and other unit owner rights with oversight provided by the Bureau of Condominiums. The users of electricity under master metering will be afforded all of the same consumer protections as are provided now for the services listed above.

Sub Para b.

The argument that our customers, whose usage is residential in nature, should not benefit from the commercial rate discount has been largely mitigated by the implementation, by Florida Power of "load management." Participation in this program by users enables Florida Power to shed heavy electrical loads, such as air-conditioning and heating, during peak usage periods. This leveling of residential

emand makes the characteristics of residential usage more in line with the fairly level demand by commercial users. The sister building in our complex has experienced a large increase in the participation by users in the load management program because of greater incentives and better publicity by their Board of Directors.

Sub Para c

It is a falsehood for Florida Power to infer that users will lose the option to participate in conservation programs. Florida Power knows full well, because they administer these programs at the master metered building in our complex, that ALL conservation programs are still in place and are in fact being enhanced through condo Board activism.

The last Florida Power quote on page 9 of para 9 appears to have been taken out of context as we would expect that the commission's outdated policy of retaining authority over the provision of electricity to end users will soon yield to new and better ideas for the distribution of electricity under deregulation.

Therefore,

Redington Towers One requests that the Commission uphold Rule 25-6.049(5), F.A.C. in that this Rule has already withstood the test of time for 17 years and rule that Florida Power comply and allow master metering of electricity for Redington Tower One.

Respectfully submitted,

Robert W. Glover
President - Elect
Redington Towers One
Tel: (813) 585-3491 (Business Office)
(813) 319-2073 (Home)