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November 12, 1999

ORIGINAL

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HAND DELIVERY

Re: Docket No. 981104-EU

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Power & Light Company's ("FPL") are the following document:

- 1. Original and fifteen copies of FPL's Comments in Response to Notice of Rulemaking;
and
- 2. A disk in Word Perfect 6.0.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

AFA	_____
APP	_____ <u>2</u>
CAF	_____
CMU	_____
CTR	_____
EAG	_____
LEG	_____
MAS	_____ KAH/rl
OPC	_____ Enclosures
PAI	_____ Trib.3
SEC	_____ <u>1</u>
WAW	_____
OTH	_____ <i>mg</i>

to Harry Done 11/17/99

DOCUMENT NUMBER-DATE
13083 NOV 12 99
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Proposed amendment of Rule 25-)
6.049, F.A.C., Measuring Customer)
Service.)
_____)

Docket No. 981104-EU
Filed: November 12, 1999

**FLORIDA POWER & LIGHT COMPANY'S
COMMENTS IN RESPONSE TO
NOTICE OF RULEMAKING**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby files its Comments in Response to Order No. PSC-99-2010-NOR-EU (Notice of Rulemaking) issued October 15, 1999.

The Notice of Rulemaking appends a proposed amendment to Rule 25-6.049, Florida Administrative Code. This rule, adopted in November, 1980, requires individual electric metering for specific types of buildings (i.e., condominiums) or other multi-unit occupancy facilities (i.e., mobile home and recreational vehicle parks) for which construction was commenced after January 1, 1981. The rule also allows any such buildings or multi-unit facilities that were master metered prior to the January 1, 1981 date to remain master metered. This is the so-called "grandfather" provision for master metering in the rule.

The proposed amendment to the rule simply clarifies long standing Commission policy and application of the rule as confirmed in In re: Petition for Declaratory Statement Regarding Eligibility of Pre-1981 Buildings for Conversion to Master Metering by Florida Power Corporation, Order No. 98-0449-FOF-EI, 98 F.P.S.C. 3:389 (1998). The proposed clarification to the rule has already been through the rulemaking process and due process rights, including the right to a rulemaking hearing, have already been provided to interested parties.

DOCUMENT NUMBER-DATE

13883 NOV 12 99

FPSC-RECORDS/REPORTING

In response to the initial publication to the proposed clarification to the rule, Valencia Condominium Association and Point Management, Inc. ("Valencia/Point Management") requested a rulemaking hearing. That request was granted and a rulemaking hearing was commenced on March 15, 1999, continued and then reconvened and completed on May 5, 1999. Valencia/Point Management was given broad latitude, over the objection of FPL and other investor-owned utilities, to explore issues in the rulemaking hearing well beyond the simple clarification and codification of existing policy, *i.e.*, that the rule was intended to allow buildings built prior to 1981 that were master metered to remain master metered and not be subject to the requirements of individual metering set forth in the rule.

The grounds supporting the proposed clarification to the rule are set forth in the Post Hearing Comments filed by FPL and the Commission Staff, both of which were filed following the rulemaking hearing in support of the proposed clarification to the rule. FPL hereby adopts those comments, copies of which are attached hereto as Composite Exhibit A, in support of the proposed clarification to the rule.

FPL also notes that the Notice of Rulemaking issued October 15, 1999 provides that written requests for hearing on the rule must be received by the Commission no later than November 12, 1999. Valencia/Point Management already has requested and received a hearing on this simple clarification to the existing rule. At the October 5, 1999 Agenda Conference, the Commission rejected Valencia/Point Management's continuing attempt to expand the limited scope of this rulemaking clarification into a second generic investigation into the pros and cons of individual and

master metering.¹ The Commission appropriately recognized at the October 5 Agenda that it has opened a generic investigation in Docket No. 990188-EI to address issues concerning individual versus master metering.

With the Commission having clearly severed the generic investigation and its broad scope of issues from the limited clarification codifying existing policy of the instant rulemaking docket, there is simply no justifiable reason for Valencia/Point Management or any other person to delay these proceedings further by requesting a second, duplicative rulemaking hearing. Indeed, there is nothing in the rulemaking provisions of Chapter 120, Florida Statutes, which even authorizes a second rulemaking hearing on the same proposed rule amendment. In any case, the Commission has unequivocally determined that issues such as rates, costs, conservation impacts and other issues raised in the generic docket have no bearing or relevancy whatsoever in the instant rulemaking docket and should not be used by any party as a vehicle to obstruct or delay approval by the Commission and filing of the simple clarification to the existing rule for adoption.

WHEREFORE, for the foregoing reasons, FP&L supports the adoption of the proposed clarification to the rule and requests that any request for a second rulemaking hearing be denied.

¹Following the submission of the post hearing comments, staff apparently allowed the statutory time for Commission approval and filing of the rule clarification to expire. At the October 5, 1999 Agenda Conference, the Commission rejected staff's recommendation to withdraw the proposed clarification to the rule and consolidate the proposed clarification into the generic investigation, and ordered the staff to simultaneously withdraw and republish the proposed rule clarification.

Respectfully submitted,



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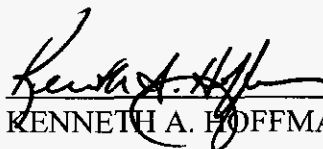
I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 12th day of November, 1999:

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KENNETH A. HOFFMAN, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-6.049, F.A.C., Measuring Customer Service.

DOCKET NO. 981104-EU
FILED: June 18, 1999

POSTHEARING COMMENTS OF STAFF

The staff of the Florida Public Service Commission submits the following posthearing comments on the proposed amendment of Rule 25-6.049, Florida Administrative Code:

The purpose of the hearing was to address a rule amendment proposed by staff at the February 2, 1999 Agenda Conference. The amendment was proposed as a clarification to Rule 25-6.049, Florida Administrative Code, concerning the applicability of the individual metering requirement to buildings whose construction commenced prior to January 1, 1981. The hearing convened initially on March 15, 1999 and was continued on May 5, 1999.

Staff proposed the rule amendment in response to Commission Order No. PSC-098-0449-FOF-EI issued on March 30, 1998 in Docket Number 971542-EI. In that docket, Florida Power Corporation (FPC) requested a declaratory statement on the applicability of the individual electric metering requirement to buildings whose construction commenced prior to 1981. In Order No. PSC-098-0449-FOF-EI, staff was instructed to initiate rulemaking to determine whether paragraph (5)(a) of Rule 25-6.049 should be amended to clarify the application of 1981 cut-off date.

Docket No. 981452-EI

At issue was whether the rule allowed those multiple-occupancy buildings that were built before 1981, but are currently individually metered by the utility, to convert to a single master meter. FPC's request cited a specific instance where they had allowed a pre-1981 residential condominium (Redington Towers Two) which was individually metered, to be converted to a master meter. FPC subsequently came to believe that this conversion request was granted in error, and should have been denied based on the requirements of the rule. FPC then denied requests by two similarly situated condominiums (Redington Towers One and Three) to convert to master metering. They subsequently filed a request for a declaratory statement that would clarify the meaning of the provision regarding pre-1981 buildings.



The Redington Towers case involved two distinct interpretations of the rule for facilities constructed before January 1, 1981. The interpretation used by FPC to allow the Redington Towers Two conversion would essentially allow all pre-1981 buildings, regardless of whether they were originally master metered or individually metered, to opt for master metering at any time. This interpretation creates a special class of customers who, solely by virtue of their age, can choose between master and individual metering at any time.

The second interpretation views the pre-1981 language as a grandfather provision intended to mitigate any hardships that would have been created for existing master metered buildings at the time of the effective date of the individual metering requirement. The January 1, 1981 date was chosen to follow closely the November 26, 1980 effective date of the individual metering requirement in Rule 25-6.049, Florida Administrative Code. Under this interpretation, facilities that were master metered at the time the requirement for individual metering was imposed would not be forced to undergo potentially costly conversion to individual metering. However, the rule would not allow pre-1981 buildings to convert from existing individual metering to master metering. In these situations, the application of the new individual metering requirement imposes no conversion costs, because the facilities are already individually metered.

It is this latter interpretation that the Commission adopted in its order on FPC's request for a declaratory statement. In that order, the Commission declared that the individual occupancy units in Redington Towers Condominiums One and Three are not eligible for conversion to master metering. In addition, the Commission directed the staff to initiate rulemaking to decide whether paragraph 5(a) of Rule 25-6.049, Florida Administrative Code should be amended.

Proposed Rule Change

The staff's proposed amendment clarifies the pre-1981 provision in the rule to comport with the Commission's decision in the cases of Redington Towers One and Three by making clear that pre-1981 buildings that are currently individually metered by the utility are not eligible for conversion to master metering. Staff believes that this proposed rule amendment reflects the only logical interpretation of the pre-1981 provision. The pre-1981 provision was adopted to avoid imposing hardship on those facilities that were already master metered at the time the prohibition was enacted. It was not intended to allow the creation of additional master metered facilities.

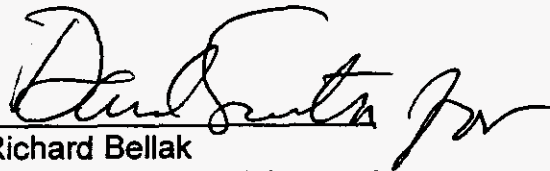
During the rule hearing there was some questioning of the staff regarding the origins and purposes of the prohibition against master metering found in Rule 25-6.049(5)(a), Florida Administrative Code. Staff believes that there are valid public policy goals that are

DOCKET NO. 981104-EU
JUNE 18, 1999
PAGE 3

advanced through the prohibition of master metering, including the encouragement of conservation and consumer protections; however, staff believes that a discussion of the merits of the master metering are not relevant to the proposed rule amendment that was the subject of this hearing, since the amendment merely clarifies the provisions of the existing rule with regard to buildings constructed before 1981.

Staff also believes that section 366.05(1), Florida Statutes should be included in the "Law Implemented" notice. That statutory section gives the commission the authority to prescribe "standards of quality and measurements," such as the individual metering requirement at issue.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard Bellak", written over a horizontal line.

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1 | **25-6.049 Measuring Customer Service.**

2 | (1) All energy sold to customers shall be measured by
3 | commercially acceptable measuring devices owned and maintained by
4 | the utility, except where it is impractical to meter loads, such as
5 | street lighting, temporary or special installations, in which case
6 | the consumption may be calculated, or billed on demand or connected
7 | load rate or as provided in the utility's filed tariff.
8 |

9 | (2) When there is more than one meter at a location the
10 | metering equipment shall be so tagged or plainly marked as to
11 | indicate the circuit metered. Where similar types of meters record
12 | different quantities, (kilowatt-hours and reactive power, for
13 | example), metering equipment shall be tagged or plainly marked to
14 | indicate what the meters are recording.

15 | (3) Meters which are not direct reading shall have the
16 | multiplier plainly marked on the meter. All charts taken from
17 | recording meters shall be marked with the date of the record, the
18 | meter number, customer, and chart multiplier. The register ratio
19 | shall be marked on all meter registers. The watt-hour constant for
20 | the meter itself shall be placed on all watt-hour meters.
21 |

22 | (4) Metering equipment shall not be set "fast" or "slow" to
23 | compensate for supply transformer or line losses.

24 | (5) (a) Individual electric metering by the utility shall be
25 | required for each separate occupancy unit of ~~new~~ commercial

CODING: Words underlined are additions; words in
~~struck through~~ type are deletions from existing law.

1 establishments, residential buildings, condominiums, cooperatives,
2 marinas, and trailer, mobile home and recreational vehicle parks
3 ~~for which construction is commenced after January 1, 1981.~~

4 Individual electric meters shall not, however, be required:
5

6 1. For each separate occupancy unit of commercial establishments,
7 residential buildings, condominiums, cooperatives, marinas, and
8 trailer, mobile home and recreational vehicle parks for which
9 construction commenced prior to January 1, 1981 and which are not
10 currently individually metered.

11
12 21. In those portions of a commercial establishment where the
13 floor space dimensions or physical configuration of the units are
14 subject to alteration, as evidenced by non-structural element
15 partition walls, unless the utility determines that adequate
16 provisions can be made to modify the metering to accurately reflect
17 such alterations;

18 32. For electricity used in central heating, ventilating and air
19 conditioning systems, or electric back up service to storage
20 heating and cooling systems;

21 43. For electricity used in specialized-use housing accommodations
22 such as hospitals, nursing homes, living facilities located on the
23 same premises as, and operated in conjunction with, a nursing home
24 or other health care facility providing at least the same level and
25

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~~struck through~~ type are deletions from existing law.

1 types of services as a nursing home, convalescent homes, facilities
2 certificated under Chapter 651, Florida Statutes, college
3 dormitories, convents, sorority houses, fraternity houses, motels,
4 hotels, and similar facilities;

5 54. For separate, specially-designated areas for overnight
6 occupancy at trailer, mobile home and recreational vehicle parks
7 and marinas where permanent residency is not established.

8 65. For new and existing time-share plans, provided that all of
9 the occupancy units which are served by the master meter or meters
10 are committed to a time-share plan as defined in Section 721,
11 Florida Statutes, and none of the occupancy units are used for
12 permanent occupancy. When a time-share plan is converted from
13 individual metering to master metering, the customer must reimburse
14 the utility for the costs incurred by the utility for the
15 conversion. These costs shall include, but not be limited to, the
16 undepreciated cost of any existing distribution equipment which is
17 removed or transferred to the ownership of the customer, plus the
18 cost of removal or relocation of any distribution equipment, less
19 the salvage value of any removed equipment.
20

21 (b) For purposes of this rule:

22 1. "Occupancy unit" means that portion of any commercial
23 establishment, single and multi-unit residential building, or
24 trailer, mobile home or recreational vehicle park, or marina
25

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1 which is set apart from the rest of such facility by clearly
2 determinable boundaries as described in the rental, lease, or
3 ownership agreement for such unit.

4 2. The construction of a new commercial establishment,
5 residential building, marina, or trailer, mobile home or
6 recreational vehicle park shall be deemed to commence on the
7 date when the building structure permit is issued.

8 3. "Overnight Occupancy" means use of an occupancy unit for
9 a short term such as per day or per week where permanent
10 residency is not established.

11 4. The term "cost", as used herein means only those charges
12 specifically authorized by the electric utility's tariff,
13 including but not limited to the customer, energy, demand,
14 fuel, and conservation charges made by the electric utility
15 plus applicable taxes and fees to the customer of record
16 responsible for the master meter payments. The term does not
17 include late payment charges, returned check charges, the cost
18 of the distribution system behind the master meter, the cost
19 of billing, and other such costs.

20
21 (6)(a) Where individual metering is not required under
22 Subsection (5)(a) and master metering is used in lieu thereof,
23 reasonable apportionment methods, including sub-metering may be
24 used by the customer of record or the owner of such facility solely
25

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1 for the purpose of allocating the cost of the electricity billed by
2 the utility.

3 (b) Any fees or charges collected by a customer of record for
4 electricity billed to the customer's account by the utility,
5 whether based on the use of sub-metering or any other allocation
6 method, shall be determined in a manner which reimburses the
7 customer of record for no more than the customer's actual cost of
8 electricity.

9
10 (7) Each utility shall develop a standard policy governing
11 the provisions of sub-metering as provided for herein. Such policy
12 shall be filed by each utility as part of its tariffs. The policy
13 shall have uniform application and shall be nondiscriminatory.

14 **Specific Authority 366.05(1) FS.**

15 **Law Implemented 366.05(3), 366.05(1), FS.**

16 **History--Amended 7-29-69, 11-26-80, 12-23-82, 12-28-83, Formerly**
17 **25-6.49, Amended 7-14-87, 10-5-88, 3/23/97.**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule)
25-6.049, F.A.C., Measuring) Docket No. 981104-EU
Customer Service.)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
Posthearing Comments of Staff have been furnished by U.S. Mail this
18th day of June, 1999, to the following parties:

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RICHARD BELLAK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 981104-EU
Filed: June 18, 1999

**BRIEF OF VALENCIA AREA CONDOMINIUM ASSOCIATION
AND POINT MANAGEMENT, INC.**

This brief is filed at the request of Public Service Commission ("PSC") staff who conducted the public hearing requested by Valencia Area Condominium Association and Point Management, Inc. in the above-styled matter.

Valencia Area Condominium Association and Point Management, Inc. believe that the proposed rule change which is the subject of this above-styled docket should not go forward for the reasons set forth below:

1. Metering of customer service, including master metering and individual metering, is the subject of a generic investigation that has not yet been concluded. (See Docket No. 990188-EI.) Indeed, PSC staff has recently made certain requests for information from the state's utilities. To date, this information has not been provided to PSC staff.

It is unwise to go forward with this proposed rule change when the results of the Commission's generic investigation into master metering is unknown. Indeed, the results of the Commission's generic investigation may run counter to the proposed rule amendments that are the subject of this docket. For example, judicial notice should be taken that Joe Jenkins, the Director of the PSC's Electric and Gas Division, suggested at a public workshop in Docket No. 990188-EI held on April 14, 1999 that the entire master metering rule should be abolished since there is no credible evidence that individual metering saves electricity as compared to master

metering.

2. The proposed rule enlarges, modifies and contravenes a specific provision of the law implemented by the proposed rule, something that runs afoul of section 120.52(8)(c), Florida Statutes. Specifically, section 366.05(3) provides the Commission only with the ability to “provide for the examination and testing of all meters used for any product or service of a public utility” and does not purport to address, in any way, the issue of individual metering versus master metering. The Legislature has not provided the Commission with specific authority for the adoption of the proposed rule as required by the 1996 amendments to the state’s Administrative Procedures Act. Accordingly, the proposed rule is improper and an invalid exercise of delegated legislative authority. While that issue is not necessarily ripe for determination in this proceeding, this should be pointed out nevertheless since PSC staff suggested it would be considered in making recommendations to the Commission. (See public hearing transcript at page 86, line 21 to page 87, line 3.)

3. The policy of the rule as stated in the Commission’s statement of estimated regulatory costs is that “individual meters would encourage conservation.” This policy was affirmed at the public hearing by PSC witness Wheeler. (See public hearing transcript, page 40, lines 9-16.) There is little evidence that this stated policy is achieved by the proposed rule. At the recent rule hearing, the PSC witness who appeared in support of the rule, Mr. Wheeler testified that there were no studies done within the last 10 years which proved energy savings resulted from individual metering versus master metering. More strikingly, the PSC, who is proposing this rule for the stated purpose of energy conservation, has never done a study which establishes that requiring individual meters rather than master meters results in energy

conservation. (See testimony of witness Wheeler at page 55 of the public hearing transcript.)

Accordingly, the proposed rule is not supported by competent substantial evidence and should be withdrawn.

4. The regulated public would be better served by having the rule withdrawn. The documents entered into the record with respect to the Reddington Towers Two case, in which a condominium was allowed to convert from individual metering to master metering, proves, at a minimum, that in situations involving customers of Florida Power Corporation, ratepayers may realize a savings of up to 38% off their electric bill by converting from individual meters to a master meter. (See Exhibit 7.) These are significant and considerable savings that should be considered before adopting the proposed rule amendments.

5. The proposed rule is not a mere clarification of the rule as some have suggested. Indeed, Mr. Wheeler was unable to point to anything in the record of the original rule proceeding that established the exemption from individual metering only applied to buildings constructed prior to 1981 that were also master metered. The plain language of the rule goes no further than providing for an exemption from individual metering for those buildings constructed prior to 1981. Even counsel for Florida Power Corporation recognized this when he stated:

Mr. Moyle made it clear in his questioning to Mr. Wheeler that this dual criteria was not before the Commission in 1980 — by dual criteria, I mean that the building to be exempt had to be constructed prior to 1981 and had to have been — had to have been master metered at the time. (See transcript of public hearing at page 74, lines 8-14)

Since the proposed rule is a significant change from the original rule, it should be recognized as such and not termed a mere "clarification."

6. The statement of estimated regulatory costs dated May 19, 1999 is fundamentally flawed given that it views the entire proposed rule as a "clarification". The proposed rule greatly expands Rule 25-6.049(5)(a) as it currently exists. In light of the Reddington Towers situation discussed at the public hearing, wherein ratepayers realized significant savings on their electric bill, this proposed rule change will have a significant fiscal impact upon the ratepayers. The proposed change is likely to materially impact the residents of Reddington Two Condominium if forced to install individual meters. PSC staff was not sure at the public hearing whether or not the rule would apply to these individuals and could not answer the question about impacts on the residents of Reddington Two Condominium. (See public hearing transcript at page 38, line 13, through page 39, line 11.) Again, evidence provided at the public hearing established that the Reddington Two ratepayers saved 38 percent off their electric bill after switching from individual meters to a master meter. The Statement of Estimated Regulatory Costs ("SERC") dismisses this impact upon individual ratepayers with a summary statement that, "Although it has been reported that this [conversion to master meter] has reduced the monthly electric bills for these condominium customers, a complete cost/benefit study has not been performed." The purpose of the SERC is to examine this issue and, if necessary, perform a cost/benefit study. Failing to perform such a study, and thus being unaware of a rule's impact upon ratepayers is inconsistent with section 120.541 which calls for a properly prepared SERC.

Wherefore, for the reasons set forth above, the proposed rule should be withdrawn until the outcome of the generic investigation into master metering is known. Additionally, the rule should be withdrawn because it is an invalid exercise of delegated legislative authority, it will prevent certain ratepayers from achieving significant cost savings off their electric bill, is not

merely a clarifying amendment as has been previously stated, and contains an erroneous Statement of Regulatory Costs.

Dated this 18th day of June, 1999.

Respectfully submitted,

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Attorneys for PETITIONERS

By:



JON C. MOYLE JR.

Florida Bar No.: 727016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Valencia Area Condominium Association and Point Management, Inc. has been furnished by hand delivery* or by U.S. Mail to the following parties of record this 18th day of June, 1999:

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