

EXHIBIT LIST

DOCKET NO. 981104-ER DATE 12-2-99 CASE NAME Rule 25-6.049, Measuring Customer Service

EXHIBIT NO.	ID	AD	WITNESS AND TITLE
✓ 1			
✓ 2			See Attached
✓ 3			
✓ 4			
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10			

FLORIDA PUBLIC SERVICE COMMISSION
RULE HEARING
DECEMBER 2, 1999
ROOM 152
9:30 A.M.

COMPOSITE EXHIBIT

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

DOCKET NO. 981104-EU

1. FLORIDA ADMINISTRATIVE WEEKLY NOTICE AND PROPOSED RULE 25-6.049, F.A.C., SUBMITTED OCTOBER 13, 1999; PUBLISHED OCTOBER 22, 1999;
2. STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE;
STATEMENT OF FEDERAL STANDARDS;
MEMORANDUM ON STATEMENT OF ESTIMATED REGULATORY COSTS;
AS PROVIDED TO THE JOINT ADMINISTRATIVE COMMITTEE, OCTOBER 18, 1999.
3. NOTICE OF RULEMAKING ORDER NO. PSC-99-2010-NOR-EU ISSUED OCTOBER 15, 1999.
4. VALENCIA CONDOMINIUM ASSOCIATION AND POINT MANAGEMENT, INC. REQUEST FOR HEARING.
5. COMMENTS BY FLORIDA POWER AND LIGHT.
6. COMMENTS BY TAMPA ELECTRIC COMPANY.

981104#2.CMP

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104EU EXHIBIT NO. 1
COMPANY/ PSC Staff
DATE: 12-2-99

NOTICE OF PROPOSED RULEMAKING
FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 981104-EU

1

RULE TITLE: RULE NO.:

Measuring Customer Service 25-6.049

PURPOSE AND EFFECT: Clarifies that Rule 25-6.049(5)(a) only allows pre-1981 buildings to be master-metered that are not currently individually metered.

SUMMARY: Individual electric meters are not required for each separate occupancy unit of listed entities for which construction commenced before January 1, 1981, and which are not now individually metered.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since the proposed amendment clarifies an existing rule, no investor-owned utilities or individuals should be affected by the proposed amendments.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY 366.05(1), FS.

LAW IMPLEMENTED 366.05(3), FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF

THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW: (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 A.M., Thursday, December 2, 1999

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.049 Measuring Customer Service.

(1) - (4) No Change.

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

1. For each separate occupancy unit of commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction commenced

prior to January 1, 1981 and which are not currently individually metered.

24. In those portions of a commercial establishment where the floor space dimensions or physical configuration of the units are subject to alteration, as evidenced by non-structural element partition walls, unless the utility determines that adequate provisions can be made to modify the metering to accurately reflect such alterations;
32. For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems;
43. For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, motels, hotels, and similar facilities;
54. For separate, specially-designated areas for overnight occupancy at trailer, mobile home and recreational vehicle parks and marinas where permanent residency is not established.
65. For new and existing time-share plans, provided that all

of the occupancy units which are served by the master meter or meters are committed to a time-share plan as defined in Section 721, Florida Statutes, and none of the occupancy units are used for permanent occupancy. When a time-share plan is converted from individual metering to master metering, the customer must reimburse the utility for the costs incurred by the utility for the conversion. These costs shall include, but not be limited to, the undepreciated cost of any existing distribution equipment which is removed or transferred to the ownership of the customer, plus the cost of removal or relocation of any distribution equipment, less the salvage value of any removed equipment.

(b) No Change.

1. - (7) No Change.

Specific Authority 366.05(1), FS.

Law Implemented 366.05(3), FS.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: David Wheeler, Division of Electric and Gas

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: October 5, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume

24, Number 44, October 30, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, 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).

PUBLIC SERVICE COMMISSION

DOCKET NO. 981104-EU

TITLE:

Measuring Customer Service

RULE NO.:

25-6.049

PURPOSE AND EFFECT: Clarifies that Rule 25-6.049(5)(a) only allows pre-1981 buildings to be master-metered that are not currently individually metered.

SUMMARY: Individual electric meters are not required for each separate occupancy unit of listed entities for which construction commenced before January 1, 1981, and which are not now individually metered.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Since the proposed amendment clarifies an existing rule, no investor-owned utilities or individuals should be affected by the proposed amendments.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY 366.05(1) FS.

LAW IMPLEMENTED 366.05(3) FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, AND PLACE SHOWN BELOW: (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 a.m., Thursday, December 2, 1999

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6245

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.049 Measuring Customer Service.

(1) through (4) No change.

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

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

~~2. In those portions of a commercial establishment where the floor space dimensions or physical configuration of the units are subject to alteration, as evidenced by~~

non-structural element partition walls, unless the utility determines that adequate provisions can be made to modify the metering to accurately reflect such alterations;

~~3. For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems;~~

~~4. For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, motels, hotels, and similar facilities;~~

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

~~6. For new and existing time-share plans, provided that all of the occupancy units which are served by the master meter or meters are committed to a time-share plan as defined in Section 721, Florida Statutes, and none of the occupancy units are used for permanent occupancy. When a time-share plan is converted from individual metering to master metering, the customer must reimburse the utility for the costs incurred by the utility for the conversion. These costs shall include, but not be limited to, the undepreciated cost of any existing distribution equipment which is removed or transferred to the ownership of the customer, plus the cost of removal or relocation of any distribution equipment, less the salvage value of any removed equipment.~~

(b) No change.

1. through (7) No change.

Specific Authority 366.05(1) FS. Law Implemented 366.05(3) FS. History—Amended 7-29-69, 11-26-80, 12-23-82, 12-28-83, Formerly 25-6.49, Amended 7-14-87, 10-5-88, 3-23-97.

NAME OF PERSON ORIGINATING PROPOSED RULE:

David Wheeler, Division of Electric and Gas

NAME OF SUPERVISOR OR PERSONS WHO APPROVED

THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY

HEAD: October 5, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT

PUBLISHED IN FAW: Vol. 24, No. 44, October 30, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, 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.

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2

Rule 25-6.049
Docket No. 981104-EU

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

Amendment clarifies that Rule 25-6.049(5)(a) does not require individual metering for each separate occupancy unit of listed entities for which construction commenced prior to January 1, 1981 and which are not currently individually metered.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

MEMORANDUM

May 19, 1999

TO: DIVISION OF APPEALS (BELLAK)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *CBH / R. Alford*

SUBJECT: REVISED STATEMENT OF ESTIMATED REGULATORY COST FOR PROPOSED AMENDMENTS TO RULE 25-6.049(5)(a), F.A.C., MEASURING CUSTOMER SERVICE, DOCKET NO. 981104-EU

SUMMARY OF THE RULE

Currently, Rule 25-6.049, F.A.C., contains the requirements for metering customer consumption of electricity with certain exemptions for special uses and conditions. In particular, the rule requires individual meters for each separate occupancy unit in facilities for which construction began after January 1, 1981. The policy supporting the rule is that individual meters would encourage conservation.

The proposed rule amendment would clarify that the current rule allows only those facilities beginning construction prior to January 1, 1981, and built with master metering, to continue to have master metering. The implicit intent of the cutoff date was to require those buildings constructed after that date to install individual metering for each separate occupancy unit. The current rule was not intended to allow conversion to master metering in older buildings where individual unit metering is already installed. The Commission has been consistent with that policy over the years and reaffirmed it in Order No. PSC-98-0449-FOF-EL.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

The five investor owned electric utilities (IOUs) are required to comply with Rule 25-6.049, F.A.C, Measuring Customer Service. Any customer receiving electric service from these entities is subject to the service conditions of complying IOUs. Because the proposed amendment clarifies an existing rule, no IOUs or individuals should be affected.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The proposed rule amendment clarifies the existing policy and rule, and the Commission should not incur any additional implementation and enforcement costs. There also should be no impact on revenues of the agency or other government entities.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES REQUIRED TO COMPLY

There should be no transactional costs, because the proposed clarifying amendment would cause no material change in measuring customer service.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There should be no cost to small businesses, cities or counties, because the proposed clarifying amendment would make no material change.

REASONABLE ALTERNATIVE METHODS AND LOWER COST REGULATORY ALTERNATIVES

The proposed clarifying amendment to the rule is necessary, because a misreading of the rule led to a switch of a condominium from individual unit metering at a residential rate to master metering with a commercial rate. Although it has been reported that this has reduced the monthly electric bills for these condominium customers, a complete cost/benefit study has not been performed.

Existing rates and tariffs have been developed to equitably share customer costs and energy costs among comparable rate classes. Allowing switching at will from individual metering at a residential rate to master metering at a commercial rate could shift costs from some ratepayers onto other ratepayers in a discriminatory manner. If there is a net benefit from lower customer service charges from combining multiple bills into one master bill, a tariff could be developed to allow that alternative, with energy charges paid at the appropriate residential rate.

One interested party proposed that a lower cost alternative would be to not adopt the proposed rule change. That proposed lower cost alternative is rejected because it does not have a lower cost. There are two reasons that this alternative is not a lower cost alternative: (1) with no rule change, the possibility of misreading the rule would continue with possible further hearings and litigation costs; and (2) additional conversions of condominiums from individual metering to master metering are not allowed under the existing rule and Order No. PSC-98-0449-FOF-EI unless one of the exceptions in the rule are met. Therefore, condominium dwelling customers would not be able to reduce their electric bills by conversion to a master meter in the absence of a rule change.

CBH:tf/e-mstmtr
cc: David Wheeler

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

3

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

DOCKET NO. 981104-EU
ORDER NO. PSC-99-2010-NOR-EU
ISSUED: October 15, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-6.049, Florida Administrative Code, relating to measuring customer service.

The attached Notice of Rulemaking will appear in the October 22, 1999 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., December 2, 1999
Betty Easley Conference Center
Room 152, 4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than November 12, 1999.

By ORDER of the Florida Public Service Commission, this 15th day of October, 1999.

ORDER NO. PSC-99-2010-NOR-EU
DOCKET NO. 981104-EU
PAGE 2

BLANCA S. BAYÓ, Director
Division of Records & Reporting

/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.

(S E A L)

RCB

DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

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Specific Authority 366.05(1), FS.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: David Wheeler, Division of Electric and Gas

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: October 5, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 24, Number 44, October 30, 1998

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APP

MOYLE, FLANIGAN, KATZ, KOLINS, RAYMOND & SHEEHAN, P.A.
ATTORNEYS AT LAW

The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

Telephone: (850) 681-3828
Facsimile: (850) 681-8788

④

JON C. MOYLE, JR.
E-mail: jmoylejr@moylelaw.com

November 11, 1999

West Palm Beach Office
(561) 659-7500

RECEIVED
99 NOV 15 AM 10:24
FLORIDA PUBLIC SERVICE COM. DIVISION OF APPEALS

BY HAND DELIVERY

Blanca S. Bayo, Director
Records and Reporting
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Bayo:

981104

On behalf of my clients, Valencia Condominium Association and Point Management, Inc., I would like to request that a public hearing be conducted regarding the proposed changes to Rule 25-6.049, *Florida Administrative Code*, the Commission's master metering rule. Moreover, my clients request that a statement of estimated regulatory costs be prepared by the Commission regarding its proposed rule changes. There has been little justification or support as to how this proposed rule achieves the purposes of the law from which it purports to derive its rulemaking authority. As a lower cost alternative to the proposed rule as required per Section 120.541, F.S., my client would propose that the Commission not adopt the proposed rule. Indeed, in cases previously considered by this Commission (Redington Towers, Docket No. 971542-EI), filings were made which indicated that using a master meter as compared to individual metering resulted in lower costs to the end consumer. Your proposed rule amendment, which purports not to permit buildings constructed prior to 1981 to seek master metering, unduly imposes a higher regulatory cost on the regulated public.

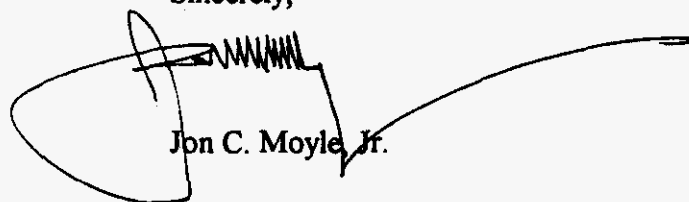
Additionally, on behalf of my clients, I would like to request that the Commission hold a workshop/hearing in the South Florida area, so that concerns about the proposed rule change can be voiced by those most likely affected. Many of these people find it burdensome to travel to Tallahassee and it would be unreasonable to deny them a meaningful opportunity to present testimony and otherwise participate in the workshop/hearing due to their difficulty in making the trip to Tallahassee.

DOCUMENT NUMBER DATE
13910 NOV 12 99
FPC-RECORDS/REPORTING

Blanca S. Bayo
November 11, 1999
Page 2

Thank you for your attention to this matter. If you have any questions or need additional information, please let me know.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a series of vertical, wavy lines on the right, followed by a long horizontal stroke extending to the right.

Jon C. Moyle, Jr.

JCM/jd

cc: Mary Ann Helton, Esquire
David Smith, Esquire
(both by telefax)

MOYLE, FLANIGAN, KATZ, KOLINS, RAYMOND & SHEEHAN, P.A.
ATTORNEYS AT LAW

The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

Telephone: (850) 681-3828
Facsimile: (850) 681-8788

JON C. MOYLE, JR.
E-mail: jmoylejr@moylelaw.com

November 11, 1999

West Palm Beach Office
(561) 659-7500
RECEIVED
99 NOV 15 AM 10:21
FLORIDA PUBLIC SERVICE COMM.
DIVISION OF APPEALS

BY HAND DELIVERY

Blanca S. Bayo, Director
Records and Reporting
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 981104-Proposed Amendment of Rule 25-6.049, F.A.C.,
Measuring Customer Service**

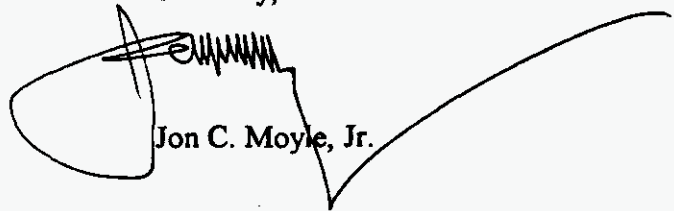
Dear Ms. Bayo:

Please be advised that the correct address for Valencia Condominium Association and Point Management, Inc. is as follows:

7000 W. Atlantic Avenue
Delray Beach, FL 33446

If you have any questions or need additional information, please let me know.

Sincerely,



Jon C. Moyle, Jr.

JCM/jd

cc: All Parties of Record

MOYLE, FLANIGAN, KATZ, KOLINS, RAYMOND & SHEEHAN, P.A.
ATTORNEYS AT LAW

The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

Telephone: (850) 681-3828
Facsimile: (850) 681-8788

JON C. MOYLE, JR.
E-mail: jmoylejr@moylslaw.com

November 11, 1999

West Palm Beach Office
(561) 659-7500

BY HAND DELIVERY

Blanca S. Bayo, Director
Records and Reporting
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Bayo:

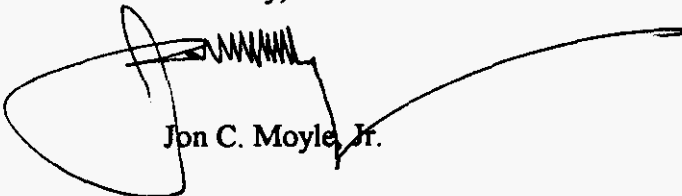
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Blanca S. Bayo
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Sincerely,



Jon C. Moyle, Jr.

JCM/jd

cc: Mary Ann Helton, Esquire
David Smith, Esquire
(both by telefax)

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

5

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

November 12, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

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FLORIDA PUBLIC SERVICE COM.
DIVISION OF APPEALS

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

KAH/rl
Enclosures
Trib.3

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

Docket No. 98-0449-FOF-EI)
DIVISION OF APPEALS)
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.

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

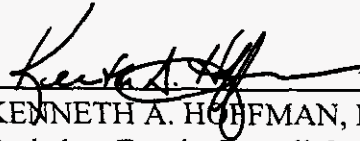
master metering.¹ The Commission appropriately recognized at the October 5 Agenda that it has opened a generic investigation in Docket No. 990188-EI to address issues concerning individual versus master metering.

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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CERTIFICATE OF SERVICE

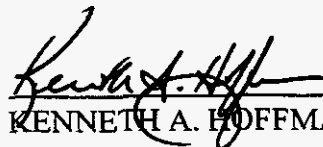
I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 12th day of November, 1999:

Mary Anne Helton, Esq.
Richard Bellak, Esq.
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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.

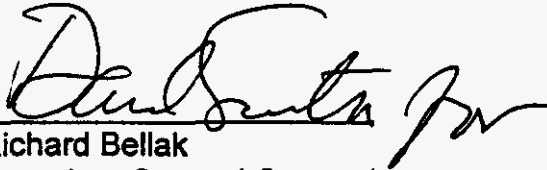
During the rule hearing there was some questioning of the staff regarding the origins and purposes of the prohibition against master metering found in Rule 25-6.049(5)(a), Florida Administrative Code. Staff believes that there are valid public policy goals that are

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,



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Tallahassee, FL 32399-0862
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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 24. 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

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

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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James A. McGee
Florida Power Corporation
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Kenneth A. Hoffman
Rutledge, Ecenia, Underwood,
Purnell & Hoffman
Post Office Box 551
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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 13th day of June, 1999.

Respectfully submitted,

MOYLE, FLANIGAN, KATZ,
KOLINS, RAYMOND & SHEEHAN, P.A.
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(850) 681-3828 -- Telephone
(850) 681-8788 -- Facsimile
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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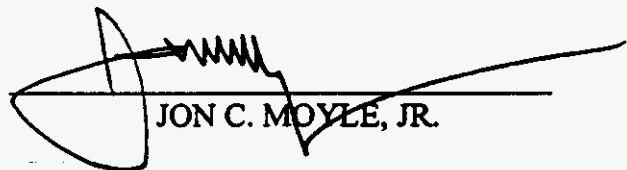
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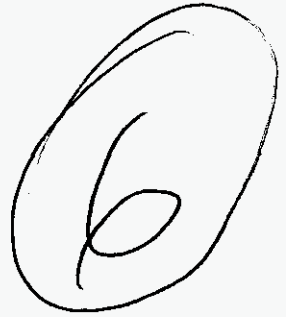
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Rutledge, Ecenia, Underwood, Purnell
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Tallahassee, FL 32301


JON C. MOYLE, JR.

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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November 12, 1999

HAND DELIVERED

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

Re: Proposed Amendment of Rule 25-6.049, F.A.C., - Measuring Customer Service
FPSC Docket No. 981104-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Written Comments on Proposed Rule.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosure

cc: All Parties of Record (w/enc.)

DOCUMENT NUMBER-DATE

13882 NOV 12 99

FPSC-RECORDS/REPORTING

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: November 12, 1999

**TAMPA ELECTRIC COMPANY'S
WRITTEN COMMENTS ON PROPOSED RULE**

Tampa Electric Company supports the proposed amendment of Rule 25-6.049, F.A.C., as described in the Notice of Rulemaking, issued on October 15, 1999.

Tampa Electric Company believes the proposed amendment is a clarification of the existing rule consistent with past practices and in keeping with the intent of the rule, and therefore does not believe a hearing is needed at this time.

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

BEFORE: MARY ANNE HELTON
Hearing Officer

DATE: March 15, 1999

TIME: Commenced at 9:30 a.m.
Concluded at 9:50 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
FPSC Commission Reporter
(850) 413-6736

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104 EU EXHIBIT NO. 2
COMPANY/ STH
WITNESS: [Signature]
DATE 12-2-99

1 APPEARANCES:

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

6 JON C. MOYLE, JR., Moyle, Flanigan, Katz,
7 Kolins, Raymond & Sheehan, 210 South Monroe Street,
8 Tallahassee, Florida 32301, appearing on behalf of
9 Valencia Condominium Association and Point
10 Management Inc.

11 MARK LAUX, 101 North Monroe Street, Suite
12 1060, Tallahassee, Florida 32301, appearing on behalf
13 of Tampa Electric Company.

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EXHIBITS

NUMBER	ID.
Composite Exhibit No. 1	5
CERTIFICATE OF REPORTER	14

P R O C E E D I N G S

(Hearing convened at 9:30 a.m.)

MS. HELTON: Good morning. My name is Mary Anne Helton. I'm an associate general counsel with the Commission and will be the hearing officer today. This hearing will be conducted according to the rulemaking provisions of Section 120.54 Florida Statutes.

Today we are concerned with proposed amendments to Rule 25-6.049. The Rule amendments were proposed in a Notice published in the Florida Administrative Weekly on February the 19th, 1999.

The purpose of the hearing is to allow the Commission to inform itself of matters bearing upon the proposed rule amendments by giving affected persons an opportunity to present evidence and argument on the merits of the ruling amendment. First, let's start out by taking appearances.

MR. MOYLE: Jon Moyle, Jr., on behalf of Valencia Condominium Association and Point Management.

MR. BELLAK: Richard Bellak representing the Commission Staff.

MR. LAUX: Mark Laux, Tampa Electric Company.

MS. HELTON: Ms. Adams, are you just an

1 observer?

2 (Response from audience.)

3 MR. BELLAK: Mr. Bellak, I understand you
4 have an exhibit?

5 MR. BELLAK: That's correct.

6 MS. HELTON: Composite Exhibit No. 1, which
7 I believe contains the F.A.W. Notice that was
8 submitted on February the 10th and published on the
9 19th, and the matters that were provided to the Joint
10 Administrative Committee, which were a Statement of
11 Facts and Circumstances Justifying the Rule, a
12 Statement of Federal Standards, a Memorandum on the
13 Statement of Estimated Regulatory Costs, the Notice of
14 Rulemaking Order which was issued on February the
15 11th, and then finally, the Request for Hearing
16 submitted by Valencia Condominium Association and
17 Point Management, Inc.

18 MR. BELLAK: And we've also added the Notice
19 of Proposed Rule Development.

20 MS. HELTON: Okay. Then as an addendum that
21 will be part of the Composite Exhibit.

22 (Composite Exhibit No. 1 entered into the
23 record.)

24 MS. HELTON: In a rulemaking proceeding any
25 person may present comments or make suggestions

1 concerning the rule. Those making presentations are
2 subject to questioning from others.

3 Today we'll proceed informally without
4 swearing witnesses. And I believe before we even get
5 to that point that you have a procedural matter that
6 you wanted to bring up, Mr. Moyle.

7 MR. MOYLE: In conversations with counsel
8 for the Commission, we have discussed and I believe
9 reached agreement between us, obviously subject to
10 your discretion and decision, that in light of the
11 fact that I believe on April 22nd there's going to be
12 a workshop on master metering, that it would make some
13 sense, we believe anyway, to continue this proceeding
14 until after that workshop on April 22nd.

15 Like I say, we've talked with Mr. Bellak
16 about it. I don't know that he has any objection to
17 doing that and I think the sense is, is that given the
18 notice of that workshop, there can be some issues
19 developed in that workshop that may impact this rule
20 hearing proceeding.

21 So with that, we would request that this
22 public hearing be continued until after the hearing
23 on -- I'm sorry, it's April 14th, which is the docket
24 number 990188, the generic investigation into the
25 requirement for individual electric metering by

1 investor-owned electric utilities.

2 MS. HELTON: Say that title one more time.
3 I didn't hear it. General investigation into what?

4 MR. MOYLE: It's a generic investigation
5 into the requirement for individual electric metering
6 by investor-owned utilities pursuant to
7 Rule 25-6.049(5)(a) Florida Administrative Code.

8 MS. HELTON: Has the Notice been published?

9 MR. MOYLE: It has. I have a copy of the
10 Notice.

11 MS. HELTON: What does the purpose of the
12 workshop state?

13 MR. MOYLE: The purpose of the workshop is
14 to provide interested persons an opportunity to
15 comment on any and all issues related to the
16 requirement of Rule 25-6.049(5)(a) Florida
17 Administrative Code that certain structures be master
18 metered by the investor-owned electric utility that
19 serves them.

20 MS. HELTON: My concern is that it's my
21 understanding when this rule was proposed that the
22 Commission voted to move forward with the amendments
23 that are -- or the amendment that is at issue today.
24 And they had knowledge at the time of their vote that
25 Staff did want to look more generically at the

1 requirement.

2 MR. BELLAK: That's correct, Your Honor, but
3 at the point in time when the agenda conference was
4 held, there was no date fixed for the generic issue
5 workshop and so delaying this process might have
6 resulted in an open-ended delay. Now we find that
7 that workshop is going to be held on April 14, which
8 is certainly timely, and to lose the opportunity to
9 coordinate between the two facets of consideration of
10 individual metering versus master metering might
11 possibly result in unnecessary litigation. So it
12 seems to be a reasonable strategy to at least attempt
13 to coordinate the two sides of this issue to the
14 extent of this very slight delay in the process.

15 And I might point out that as to the current
16 rulemaking, that there is no ambiguity with respect to
17 the Commission's enforcement of that rule and there
18 hasn't been for some time. So the process that we're
19 involved in is a process of perfecting a Commission
20 policy as to which there has not been any ambiguity.
21 So there's no pressing need in terms of this
22 particular process.

23 On the other hand, the workshop that is
24 coming up on the 14th may significantly alter what the
25 Commission's current and future policy may be. So it

1 seems to be a reasonable strategy to --.

2 MS. HELTON: Is that a Staff workshop or a
3 Commission workshop?

4 MR. MOYLE: Appears to be -- the notice I'm
5 holding, which I can introduce -- I'd like to actually
6 introduce as an exhibit along with the copy of my
7 letter requesting a hearing which I previously
8 provided to the reporter.

9 MS. HELTON: I believe, Mr. Moyle, that that
10 letter is part of the composite exhibit so I don't
11 think you need to put that in again.

12 MR. MOYLE: All right. I hadn't had a
13 chance to look at the composite exhibit until right
14 now. So, you know, it's a Staff workshop is what the
15 Notice purports to be. And I'm not sure whether
16 that's intended to be followed by Commission workshops
17 on the matter or not.

18 MS. HELTON: Does anyone in here object to
19 continuing the hearing?

20 MR. LAUX: I don't believe -- from Tampa
21 Electric's viewpoint I don't believe that there's an
22 overall objective -- or objection to continuing the
23 hearing, although there is some uncertainty as to why
24 you would need to do that.

25 This particular change to this rule at this

1 point in time I believe came from a request by Florida
2 Power Corporation to have a clause in it clarifying
3 the reason they needed that clarification was because
4 of different customers asking for service under --
5 potentially to be able to take service under this
6 rule, i.e., to have it master metered.

7 We, at Tampa Electric, also run into that
8 same problem occasionally and we supported the
9 Commission's approach to clarify exactly what this
10 rule meant as to what ability was -- whether or not it
11 was -- needed to be constructed before 1981 or whether
12 or not the rule went forward from 1981.

13 And at this point in time we see no reason
14 why the clarification on this rule cannot go forward.
15 And the other issues that are being brought up can be
16 dealt with in the Staff workshop and depending on the
17 outcome of that workshop you can go back in and modify
18 a number of different rules that it may impact.

19 So we don't strongly object to having it
20 carried over, but at this point we think the work
21 that's done so far as to clarifying the rule in which
22 the Commission voted on, there should be no reason not
23 to go forward with that.

24 MS. HELTON: Well, I will agree to continue
25 the hearing but only to the point where it's continued

1 for, say, a week or two weeks past the workshop
2 scheduled on April the 14th.

3 I do that because that workshop date is -- I
4 don't believe it will lengthen the process that much
5 more since it is so close to today's date, and it will
6 also, I believe, give all the parties interested in
7 this rule time to adequately address some of the
8 issues raised in Mr. Moyle's letter requesting the
9 hearing.

10 We will -- I don't have a date as of yet, so
11 what we will do is -- I believe probably the best
12 thing to do is to notice in the F.A.W. again the
13 continuation of the hearing and to set the time and
14 place and date then.

15 MR. MOYLE: That's fine. And we'll be in
16 touch with respect to a date that I think is mutually
17 agreeable to the people that have appeared thus far,
18 if that's okay. I had a question for the hearing
19 officer, if I could?

20 MS. HELTON: Sure.

21 MR. MOYLE: With respect to when we do
22 reconvene and have the proceeding, I think you had
23 mentioned in your comments and I think 120 provides
24 for the ability for the person requesting the hearing
25 to ask questions of PSC Staff with respect to the rule

1 amendment. Who would be the person that would be
2 offered so that those questions might be posed?

3 MS. HELTON: I do not know. I'm here in a
4 hearing officer capacity. Mr. Bellak would be the, I
5 think, person to ask that question of. He is the
6 Staff member or Staff counsel that is heading up
7 Staff's position on this.

8 My guess would be it would be Mr. David
9 Draper. Not Draper. I don't know why I wanted to
10 call you that. Mr. David Wheeler or Connie Kummer.

11 MR. MOYLE: Okay. We'll just proceed
12 informally and I will have the ability to ask them
13 questions with respect to the history of the rule, the
14 decision with respect to this being a clarifying
15 amendment only and that sort of thing. So with that
16 clearly understood, then I appreciate your
17 consideration of our request for a continuance.

18 MS. HELTON: And if we're talking about
19 mutually agreeable dates, let's talk about that right
20 now. I want to go ahead and get this noticed. I
21 don't believe it should be -- April the 14th is a
22 Wednesday. How many of you in here are involved in
23 the legislature?

24 MR. MOYLE: I am.

25 MS. HELTON: How about the week of May the

1 3rd, which is the week after the legislature ends?

2 MR. MOYLE: So long as it's later in that
3 week. I think that would probably work. They have
4 been known sometimes to carry over, though they
5 haven't done it in recent years.

6 MS. HELTON: What is the -- there's a
7 Commissioner Workshop Operational Support Systems. Is
8 that an electric or is that a phone rule or do you all
9 know?

10 MR. BELLAK: It's probably telephone.

11 MS. HELTON: Let's say either then May the
12 5th or May the 6th depending on hearing room
13 availability.

14 MR. MOYLE: Okay.

15 MS. HELTON: Does anyone else have any
16 further comments to make?

17 Well, with that, this hearing is continued
18 until either May the 5th or 6th as will be noticed in
19 the Florida Administrative Weekly.

20 MR. MOYLE: Thank you.

21 MR. BELLAK: Thank you.

22 (Thereupon, the hearing concluded at
23 9:50 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, KIMBERLY K. BERENS, CSR, RPR, Official
4 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 by me; and that this transcript,
11 consisting of 13 pages, constitutes a true
12 transcription of my notes of said proceedings.

13 DATED this 15th day of March, 1999.

14 _____
15 KIMBERLY K. BERENS, CSR, RPR
16 Florida Public Service Commission
17 Official Commission Reporter
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FLORIDA PUBLIC SERVICE COMMISSION
RULE HEARING
MARCH 15, 1999

#2

COMPOSITE EXHIBIT

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

DOCKET NO. 981104-EU

1. FLORIDA ADMINISTRATIVE WEEKLY NOTICE AND PROPOSED RULE 25-6.049, F.A.C., SUBMITTED FEBRUARY 10, 1999; PUBLISHED FEBRUARY 19, 1999;
2. STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING RULE;
STATEMENT OF FEDERAL STANDARDS;
MEMORANDUM ON STATEMENT OF ESTIMATED REGULATORY COSTS;
AS PROVIDED TO THE JOINT ADMINISTRATIVE COMMITTEE, FEBRUARY 12, 1999.
3. NOTICE OF RULEMAKING ORDER NO. PSC-99-0281-NOR-EU ISSUED FEBRUARY 11, 1999.
4. VALENCIA CONDOMINIUM ASSOCIATION AND POINT MANAGEMENT, INC. REQUEST FOR HEARING.

NOTICE OF PROPOSED RULEMAKING
FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 981104-EU

RULE TITLE: RULE NO.:
Measuring Customer Service 25-6.049

PURPOSE AND EFFECT: Clarifies that Rule 25-6.049(5)(a) only allows pre-1981 buildings to be master-metered that are not currently individually metered.

SUMMARY: Individual electric meters are not required for each separate occupancy unit of listed entities for which construction commenced before January 1, 1981 and which are not now individually metered.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Preparation of a SERC was found to be unnecessary.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY 366.05(1), FS.

LAW IMPLEMENTED 366.05(3), FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING

WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW: (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 A.M., March 15, 1999

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.049 Measuring Customer Service.

(1) - (4) No Change.

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

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

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

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

43. For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, motels, hotels, and similar facilities;

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

65. For new and existing time-share plans, provided that all of the occupancy units which are served by the master meter or meters are committed to a time-share plan as defined in

Section 721, Florida Statutes, and none of the occupancy units are used for permanent occupancy. When a time-share plan is converted from individual metering to master metering, the customer must reimburse the utility for the costs incurred by the utility for the conversion. These costs shall include, but not be limited to, the undepreciated cost of any existing distribution equipment which is removed or transferred to the ownership of the customer, plus the cost of removal or relocation of any distribution equipment, less the salvage value of any removed equipment.

(b) No Change.

1. - (7) No Change.

Specific Authority 366.05(1), FS.

Law Implemented 366.05(3), FS.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Reese Goad

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: February 2, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

October 30, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing,

if held, 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).

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

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

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

22 (5) (a) Individual electric metering by the utility shall be
23 required for each separate occupancy unit of ~~new~~ commercial
24 establishments, residential buildings, condominiums, cooperatives,
25 marinas, and trailer, mobile home and recreational vehicle parks

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

1 ~~for which construction is commenced after January 1, 1981.~~

2 Individual electric meters shall not, however, be required:

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

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

14 32. For electricity used in central heating, ventilating and air
15 conditioning systems, or electric back up service to storage
16 heating and cooling systems;

17 43. For electricity used in specialized-use housing accommodations
18 such as hospitals, nursing homes, living facilities located on the
19 same premises as, and operated in conjunction with, a nursing home
20 or other health care facility providing at least the same level and
21 types of services as a nursing home, convalescent homes, facilities
22 certificated under Chapter 651, Florida Statutes, college
23 dormitories, convents, sorority houses, fraternity houses, motels,
24 hotels, and similar facilities;

25 54. For separate, specially-designated areas for overnight

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

1 occupancy at trailer, mobile home and recreational vehicle parks
2 and marinas where permanent residency is not established.

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

15 (b) For purposes of this rule:

16 1. "Occupancy unit" means that portion of any commercial
17 establishment, single and multi-unit residential building, or
18 trailer, mobile home or recreational vehicle park, or marina
19 which is set apart from the rest of such facility by clearly
20 determinable boundaries as described in the rental, lease, or
21 ownership agreement for such unit.

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

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

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

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

13 (6) (a) Where individual metering is not required under
14 Subsection (5) (a) and master metering is used in lieu thereof,
15 reasonable apportionment methods, including sub-metering may be
16 used by the customer of record or the owner of such facility solely
17 for the purpose of allocating the cost of the electricity billed by
18 the utility.

19 (b) Any fees or charges collected by a customer of record for
20 electricity billed to the customer's account by the utility,
21 whether based on the use of sub-metering or any other allocation
22 method, shall be determined in a manner which reimburses the
23 customer of record for no more than the customer's actual cost of
24 electricity.

25 (7) Each utility shall develop a standard policy governing

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

1 | the provisions of sub-metering as provided for herein. Such policy
2 | shall be filed by each utility as part of its tariffs. The policy
3 | shall have uniform application and shall be nondiscriminatory.

4 | Specific Authority: 366.05(1), F.S.

5 | Law Implemented: 366.05(3), F.S.

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

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

Rule 25-6.049
Docket No. 981104-EU

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

Amendment clarifies that Rule 25-6.049(5)(a) does not require individual metering for each separate occupancy unit of listed entities for which construction commenced prior to January 1, 1981 and which are not currently individually metered.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

MEMORANDUM

January 11, 1999

99 JAN 11 8:22

TO: DIVISION OF APPEALS (BELLAK)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *OG* *AM*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 981104-EU, PROPOSED REVISIONS TO RULE 25-6.049, F.A.C., MEASURING CUSTOMER SERVICE

Currently, Rule 25-6.049, F.A.C., Measuring Customer Service, contains the requirement for individual electric metering of occupancy units in facilities where construction commenced after January 1, 1981.

The proposed rule amendment would clarify that the metering exception for occupancy units constructed prior to January 1, 1981, only applies to those facilities with existing master metering. The existing rule was not intended to allow conversion of a facility to master metering solely because construction commenced prior to January 1, 1981.

The Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, because the proposed rule change would be for clarification purposes and because there should be no significant additional costs or negative impacts on utilities, small businesses, small cities, or small counties, a SERC will not be prepared for the proposed rule change.

Please keep my name on the CASR.

CBH:tf/e-memo99

cc: Mary Andrews Bane
Hurd Reeves
Reese Goad

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
ORDER NO. PSC-99-0281-NOR-EU
ISSUED: February 11, 1999

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-6.049, Florida Administrative Code, relating to measuring customer service.

The attached Notice of Rulemaking will appear in the February 19, 1999 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at the following time and place:

Florida Public Service Commission
9:30 a.m., Monday, March 15, 1999
Room 148, Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, no later than March 12, 1999.

ORDER NO. PSC-99-0281-NOR-EU
DOCKET NO. 981104-EU
PAGE 2

By ORDER of the Florida Public Service Commission, this 11th
day of February, 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.

(S E A L)

RCB

ORDER NO. PSC-99-0281-NOR-EU
DOCKET NO. 981104-EU
PAGE 3

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 981104-EU

RULE TITLE:

RULE NO.:

Measuring Customer Service

25-6.049

PURPOSE AND EFFECT: Clarifies that Rule 25-6.049(5)(a) only allows pre-1981 buildings to be master-metered that are not currently individually metered.

SUMMARY: Individual electric meters are not required for each separate occupancy unit of listed entities for which construction commenced before January 1, 1981 and which are not now individually metered.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: Preparation of a SERC was found to be unnecessary.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY 366.05(1), FS.

LAW IMPLEMENTED 366.05(3), FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21

ORDER NO. PSC-99-0281-NOR-EU
DOCKET NO. 981104-EU
PAGE 4

DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW: (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

TIME AND DATE: 9:30 A.M., March 15, 1999

PLACE: Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:
Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.049 Measuring Customer Service.

(1) - (4) No Change.

(5) (a) Individual electric metering by the utility shall be required for each separate occupancy unit of ~~new~~ commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks ~~for which construction is commenced after January 1, 1981.~~

Individual electric meters shall not, however, be required:

1. For each separate occupancy unit of commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and

recreational vehicle parks for which construction commenced prior to January 1, 1981 and which are not currently individually metered.

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

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

43. For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, motels, hotels, and similar facilities;

54. For separate, specially-designated areas for overnight occupancy at trailer, mobile home and recreational vehicle

parks and marinas where permanent residency is not established.

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

(b) No Change.

1. - (7) No Change.

Specific Authority 366.05(1), FS.

Law Implemented 366.05(3), FS.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Reese Goad

ORDER NO. PSC-99-0281-NOR-EU
DOCKET NO. 981104-EU
PAGE 7

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: February 2, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

October 30, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, 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).

MOYLE, FLANIGAN, KATZ, KOLINS, RAYMOND & SHEEHAN, P.A.
ATTORNEYS AT LAW

210 South Monroe Street
Tallahassee, Florida 32301

Telephone: (850) 681-3828
Facsimile: (850) 681-8788

Other Offices:
West Palm Beach, FL
(561) 659-7900
Palm Beach Gardens, FL
(561) 625-6480

JON C. MOYLE, JR.
E-mail: jmoylejr@moylelaw.com

March 12, 1999

BY HAND DELIVERY

Blanca S. Bayo, Director
Records and Reporting
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Ms. Bayo:

981104-EL

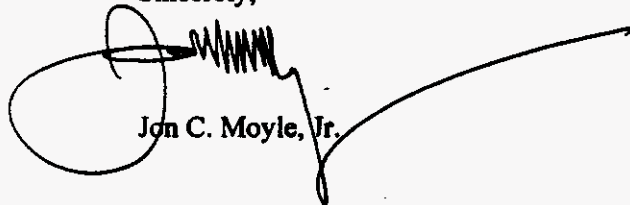
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99 MAR 12 PM 12:46
RECORDS AND REPORTING

On behalf of my clients, Valencia Condominium Association and Point Management, Inc., I would like to request that a public hearing be conducted regarding the proposed changes to Rule 25-6.049, *Florida Administrative Code*, the Commission's master metering rule. Moreover, as a lower cost alternative to the proposed rule, my client would propose that the Commission not adopt the proposed rule. Indeed, in cases previously considered by this Commission (Redington Towers, Docket No. 971542-EI), filings were made which indicated that using a master meter as compared to individual metering resulted in lower costs to the end consumer. Your proposed rule amendment, which would not permit buildings constructed prior to 1981 to seek master metering, unduly imposes a higher regulatory cost on the regulated public. Furthermore, my clients request that a statement of estimated regulatory costs be prepared by the Commission regarding its proposed rule changes. There has been little justification or support as to how this proposed rule achieves the purposes of the law from which it purports to derive its rulemaking authority.

Additionally, on behalf of my clients, I would like to request that the Commission hold a workshop/hearing in the South Florida area, so that concerns about the proposed rule change can be voiced by those most likely affected. Many of these people find it difficult to travel to Tallahassee.

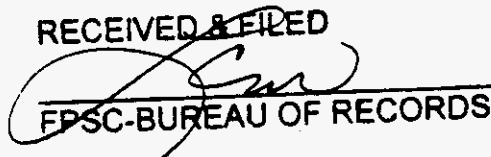
Thank you for your attention to this matter. If you have any questions or need additional information, please let me know.

Sincerely,



Jon C. Moyle, Jr.

- ACK _____
- AFA _____
- APP L
- CAF _____
- CMU _____
- CTR _____
- EAG L
- LEG _____ JCM/jd
- LIN _____ ec: Rob Vandiver
- O _____ David Smith
- RCH L (both by telefax)
- SEC L
- WAS _____
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RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
03187 MAR 12 99
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO: 981104-EU

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

NOTICE OF PROPOSED RULE DEVELOPMENT

TO

ALL INTERESTED PERSONS

ISSUED: _____

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes, that the Florida Public Service Commission staff has initiated the development of Rule 25-6.049, Florida Administrative Code, to amend provisions relating to measuring customer service.

The attached Notice of Proposed Rule Development will appear in the October 30, 1998, edition of the Florida Administrative Weekly. A rule development workshop will be held at the following time and place:

Florida Public Service Commission
9:30 a.m. December 17, 1998
Betty Easley Conference Center
Room 152, 4075 Esplanade Way
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 hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

By Direction of the Florida Public Service Commission, this
__ day of _____, _____.

BLANCA S. BAYÓ, Director
Division of Records & Reporting

(S E A L)

RCB

DOCKET NO. 981104-EU
PAGE 2

NOTICE OF PROPOSED RULE DEVELOPMENT

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO: 981104-EU

RULE TITLE:	RULE NO.:
Measuring Customer Service	25-6.049

PURPOSE AND EFFECT: Clarifies that, under grandfather provision which exempts facilities for which construction began prior to January 1, 1981 from the individual metering requirement, only those pre-1981 facilities with existing master metering are exempt from the individual metering requirement.

SUBJECT AREA TO BE ADDRESSED: Individual metering requirement and limitation of exemptions from that requirement to pre-1981 facilities with existing master metering.

SPECIFIC AUTHORITY: 366.05(1), FS

LAW IMPLEMENTED: 366.05(3), FS

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 a.m., December 17, 1998

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

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 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: David Wheeler, Division of Electric and Gas, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-6.049 Measuring Customer Service.

(1) - (4) No Change.

(5) (a) Individual electric metering by the utility shall be required for each separate occupancy unit of ~~new~~ commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks ~~for which construction is commenced after January 1, 1981.~~

Individual electric meters shall not, however, be required:

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

2~~1~~. In those portions of a commercial establishment where the floor space dimensions or physical configuration of the units are subject to alteration, as evidenced by non-structural element partition walls, unless the utility determines that adequate provisions can be made to modify the metering to accurately reflect such alterations;

3~~2~~. For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage

heating and cooling systems;

43. For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, motels, hotels, and similar facilities;

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

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

(b) - (7) No Change.

Specific Authority 366.05(1) FS.

DOCKET NO. 981104-EU
PAGE 5

Law Implemented 366.05(3) FS.

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

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

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.

25

1 I N D E X

2 WITNESSES

3	NAME	PAGE NO.
4	DAVID WHEELER	
5	Direct Statement	25
6	Examination By Mr. Moyle	25
7	TOM KLAMAR	
8	Direct Statement	67
9	Examination By Mr. Moyle	67
10	MARY MORLEY	
11	Direct Statement	88
12	Examination By Mr. Moyle	89

13 EXHIBITS

14	NUMBER	PAGE NO.
15	2 Workshop Notice for	20
16	Docket 980188-EU	
17	3 Notice of May 5, 1999,	20
18	Continuation of Hearing	
19	4 Excerpt of testimony of	28
20	R. E. Lloyd in	
21	Docket 780886	
22	5 Summary of Public Hearing	30
23	in Docket 780886	
24	6 Redington Order	33
25	PSC-98-0449-FOF-EI	
26	7 Redington Towers Brief	35
27	filed in Docket 971542	
28	CERTIFICATE OF REPORTER	100

P R O C E E D I N G S

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

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

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

Mr. Hoffman.

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

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

- - - - -

3

DAVID WHELLER

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 "Effectuated 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. MOYLE: 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 and 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

23 MS. MORLEY: I just wanted to comment on the
24 I think it was 38% savings that was quoted earlier for
25 Redington Tower. And I believe Mr. Klamar mentioned
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)

CERTIFICATE OF REPORTER

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
at the time and place herein stated; it is further

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

DATED this 6th day of May, 1999.

10
11
12 _____
JOY KELLY, CSR, RPR
13 Chief, Bureau of Reporting
Official Commission Reporter
14 (850) 413-6732
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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.

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.

(S E A L)

MAH

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).

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :

POSTED COMM. CLERK

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

DOCKET NO. 780886-Rule

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.

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 con-
2 cerning the Proposed Rule 6.49(5)?

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 con-
10 struction is started or finished after the relevant date.
11 Moreover, it would be burdensome for a utility to have to
12 determine something as nebulous as a construction commence-
13 ment or completion date. FPL recommends the date when the
14 building permit is issued should be determinative, as this
15 is much more easily ascertained. The date chosen (January
16 1, 1981) also causes a problem. Presumably this is intended
17 to be a date shortly after the adoption of the rule amend-
18 ment and would serve to "grandfather" in all buildings
19 started before the rule amendment was adopted. However, it
20 is not certain that the rule amendment will be adopted by
21 January 1, 1981. FPL recommends this date be revised as
22 necessary to fall approximately one month after adoption of
23 the rule amendment.
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

7 0 5
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

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.

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.

ORDER NO. PSC-98-0449-FOF-EI
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)

MAH

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.

7

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

DOCUMENT NUMBER-DATE

00988 JAN 16 1998

FPEC-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)

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 cursive script, appearing to read "Richard Bellak", written in black ink over a horizontal line.

Richard Bellak
Associate General Counsel
Florida Bar No. 341851
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0862
(850) 413-6092

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 24. 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

CODING: Words underlined are additions; words in
~~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

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

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

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

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

13 | **Specific Authority 366.05(1) FS.**

14 | **Law Implemented 366.05(3), 366.05(1), FS.**

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

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

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

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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 13th day of June, 1999.

Respectfully submitted,

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By:


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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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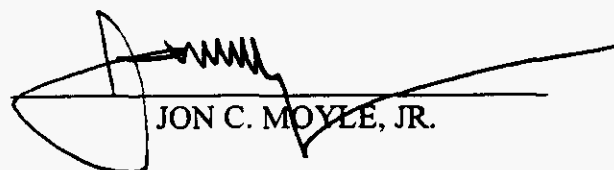
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 981104-EU

Filed: June 18, 1999

**FLORIDA POWER AND LIGHT COMPANY'S
POST-HEARING COMMENTS**

Florida Power & Light Company ("FP&L"), by and through its undersigned counsel, hereby files its post-hearing comments in the above-referenced rulemaking proceeding.

A. INTRODUCTION

This docket involves a proposed clarifying amendment to paragraph (5)(a) of Commission Rule 25-6.049, Florida Administrative Code, which requires individual electric metering for each separate occupancy unit of commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction is commenced after January 1, 1981. This rulemaking proceeding was initiated by the Commission pursuant to the Order on Declaratory Statement issued in response to a petition for declaratory statement filed by Florida Power Corporation ("FPC")¹, where the Commission clarified its existing rule by determining that the pre-January 1, 1981 "grandfather" provision was intended to permit master metering only if the pre-1981 building was not individually metered. The Commission instructed its staff to initiate rulemaking to determine whether paragraph (5)(a) of the Rule should be amended to provide notice of the Commission's clarifying construction of the existing rule.

Since the issuance of the Order on Declaratory Statement, the Commission has opened two

¹Order No. PSC-98-0449-EI issued March 30, 1998 in Docket No. 971542-EI (Ex. 6).

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FPSC-RECORDS/REPORTING

dockets. The first docket, Docket No. 981104-EU, was opened for the purpose of proposing the clarifying amendment to paragraph (5)(a) of the Rule consistent with the Order on Declaratory Statement. The second docket, Docket No. 990188-EI, was opened as a generic investigation into requirements for individual electric metering by investor-owned electric utilities. A staff workshop was held in the generic docket. A host of issues concerning individual versus master metering, investor-owned utility practices in applying the existing rule, and issues relating to residential and commercial rates and cost of service were discussed at the workshop.

The request for a rulemaking hearing by Valencia Condominium Association and Point Management, Inc. ("Valencia/Point Management") ultimately amounted to nothing more than an attempt to transform the instant rulemaking docket into a second, broad-based generic docket. The Commission has issued an Order on Declaratory Statement clarifying its existing rule and has properly instituted rulemaking to adopt the clarifying amendment. The proposed clarifying amendment is entirely consistent with the Order on Declaratory Statement and entirely supported by the record of the public hearing.

STATEMENT OF THE CASE AND FACTS

As stated by staff witness Wheeler at the public hearing, Rule 25-6.049, Florida Administrative Code, Measuring Customer Service, was originally adopted in 1969. The Rule was amended November 26, 1980 in a 1978 rulemaking docket, Docket No. 780886-Rule, in furtherance of the conservation goals and requirements of then recently enacted federal legislation, the Public Utilities Regulatory Policies Act of 1978 ("PURPA").² The intent of the rule amendments were to

²See 16 U.S.C. §§2601-2645.

"grandfather" permission to master meter buildings constructed prior to 1981 only if they were not already individually metered. The rule amendments became effective November 26, 1980 and employ a January 1, 1981 grandfather date to closely follow the effective date of the then new individual metering requirement of the Rule. (Tr. 21-24, 26-27).³

Since the adoption of the rule amendments effective November 26, 1980, the Commission has seen relatively little activity concerning the grandfather provision in the individual metering rule. However, in August of 1997, FPC mistakenly allowed Redington Towers II, a condominium constructed prior to January 1, 1981 that was on individual metering, to convert to master metering for its residential users. (Tr. 271; Exhibit 7, at 2). The mistake of the FPC field account representative in authorizing the conversion to master metering for Redington Towers II triggered similar requests from the Redington Towers I and Redington Towers III condominiums. FPC properly denied the requests of Redington Towers I and III to convert to master meters as these buildings, although constructed prior to January 1, 1981, were already individually metered. In an abundance of caution and to confirm its interpretation and application of paragraph (5)(a) of the Rule to the Redington Towers I and III condominiums, FPC filed a petition for declaratory statement in Docket No. 971542-EI. Redington Towers I and III filed briefs in the FPC declaratory statement docket but elected not to seek intervention.

On March 30, 1998, the Commission issued the Order on Declaratory Statement. Rejecting the arguments of Redington Towers I and III, the Commission concluded:

What was intended (by paragraph (5)(a) of Rule 25-6.049) was to

³Citations to the transcript refer to the transcript of the rule hearing commenced on March 15, 1999 and concluded on May 5, 1999.

allow master metered buildings constructed before 1981 to remain master metered to avoid retroactive application of the rule.

Order on Declaratory Statement, at 3. The Commission granted FPC's declaratory statement, with the modifications reflected in the Order on Declaratory Statement, holding "that the individually metered occupancy units in Redington Towers I and III 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." Id. Finally, the Commission instructed its staff to initiate rulemaking to determine whether paragraph (5)(a) of the rule should be amended in order to more clearly state the Commission's intention.

The Commission published notice of a proposed clarifying amendment in the February 19, 1999 edition of the Florida Administrative Weekly. By letter dated March 12, 1999, Valencia/Point Management requested a public hearing concerning the proposed clarifying amendment, offered a non-supported lower cost alternative in the form of a request that the Commission not adopt the proposed clarifying amendment, and requested the Commission to issue a statement of estimated regulatory costs. (See Composite Exhibit 1). Following the issuance of a Notice of Rulemaking on February 11, 1999, a rulemaking hearing was scheduled for March 15, 1999.⁴ The rulemaking hearing was convened on March 15, 1999. However, at the request of Valencia/Point Management, the rulemaking hearing was continued. (Tr. 6, 7, 10, 11, 13). On March 18, 1999, the Commission issued a Notice of Continuance of Rulemaking Hearing, rescheduling the rulemaking hearing for May 5, 1999. (Exhibit 3). On May 5, 1999, the remainder of the rulemaking hearing was conducted before the staff hearing officer.

⁴Order No. PSC-99-0821-NOR-EU issued February 11, 1999.

Although the rulemaking hearing was requested by Valencia/Point Management, there is no evidence in the record, not even in Valencia/Point Management's March 12 letter requesting the rulemaking hearing, establishing that Valencia/Point Management are affected by the clarifying amendment.⁵ Although Valencia/Point Management requested the hearing, Valencia/Point Management presented no testimony at the hearing and, therefore, did not even seek to establish that Valencia or Point Management own or operate condominiums or other facilities which will be affected by the clarifying amendment. Nor did Valencia/Point Management present any evidence as to the location of their buildings, the electric utility providing service, or the rate classification under which customers residing in such buildings receive electric service.

Following the conclusion of the rulemaking hearing, the Commission staff issued a Revised Statement of Estimated Regulatory Costs ("SERC") supporting the proposed clarifying amendment. The Revised SERC provides, in pertinent part: (1) that the proposed clarifying amendment is necessary because a misreading of the rule has already resulted in the erroneous switch of a condominium from individual unit metering at a residential rate to master metering with a commercial rate; (2) that existing rates and tariffs have been developed to equitably share customer costs and energy costs among comparable rate classes and that allowing switching, at the election of a customer, from individual metering at a residential rate to master metering at a commercial rate, could shift costs from some ratepayers onto other ratepayers in a discriminatory manner; and (3) that Valencia/Point Management's proposed lower cost alternative is rejected because it does not result in lower costs but, instead, would enhance the prospect of additional misinterpretations of the Rule

⁵Section 120.54(3)(c), Florida Statutes, limits participation in agency rulemaking hearings to "affected persons."

with possible additional hearings and litigation costs.

ARGUMENT

The Commission's clarifying amendment to the Rule is supported by the record at the rulemaking hearing and should be adopted by the Commission. Valencia/Point Management's attempt to convert this rulemaking hearing into a second generic investigation should be rejected.

The Order on Declaratory Statement reflects the Commission's determination that the 1980 amendments to the rule were "intended... to allow master metered buildings constructed before 1981 to remain master metered to avoid retroactive application of the rule" - - not to allow condominiums or other multi-tenant buildings or facilities to "... switch back and forth between individual and master meters simply because they were constructed prior to 1981." Order on Declaratory Statement, at 3. As stated by FPC in the declaratory statement proceeding and reiterated by the Commission in its Order, "[t]he concept of grandfathering simply tolerates pre-existing non-conforming uses, it does not condone the creation of new ones." Order on Declaratory Statement, at 2.

The testimony of the staff witness at the rulemaking hearing confirmed that the amendments adopted in 1980 were driven by the conservation goals of the PURPA legislation as well as studies conducted during the 1979-80 rulemaking hearing which indicated that there were energy conservation savings associated with individual as opposed to master metering. (Tr. 39-40, 55).

Valencia/Point Management offered no evidence demonstrating where their buildings are located, when they were built, whether they are individually or master metered, whether they receive electric service from an investor-owned electric utility, municipal electric utility or rural electric cooperative and under what rate classification. Although Valencia/Point Management offered no

witnesses, it was clear that they oppose the rule amendment on two grounds: (1) their belief that the Commission was required to specifically address the issue addressed in the 1998 Order on Declaratory Statement when the rule amendments were originally adopted in 1980; and (2) that allowing individually metered buildings to convert to master metering would produce lower rates for residential customers residing in such buildings.

With respect to their first position, the evidence presented by Valencia/Point Management through cross-examination of the staff witness proved nothing. Valencia/Point Management presented an excerpt from the testimony of an FP&L witness from the 1978 rulemaking docket (Exhibit 4) for the purpose of noting that the FP&L witness did not specifically raise the issue of whether the "grandfather" provision would extend to pre-1981 buildings that were individually metered. Valencia/Point Management's assertion is irrelevant. This specific issue was not raised in the 1978 rulemaking docket which led to the existing individual metering rule. More importantly, the issue was before the Commission in 1998 and formed the basis for the Order on Declaratory Statement. The Commission has spoken on this issue and the proposed clarifying amendment is entirely consistent with that Order and the Commission's directive to initiate rulemaking to adopt the clarifying amendment.⁶

The Commission's rulemaking authority is quasi-legislative in nature and must be considered with deference to that function. Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So.2d 759, 762 (Fla. 1st DCA 1978); General Tel. Co. of Fla. v. Fla. Pub. Serv., 446

⁶As staff witness Wheeler confirmed, the issue concerning whether a pre-January 1, 1981 building could be converted from individual metering to master metering did not arise prior to the FPC declaratory statement proceeding. (Tr. 37-38).

So.2d 1063, 1067 (Fla. 1984). The Commission's quasi-legislative action in proposing the clarifying amendment is more than adequately justified by the need to insure that the FPC/Redington II Towers episode is not repeated. Moreover, the quasi-legislative nature of the Commission's rulemaking authority is obviously akin to a legislative amendment of a statute. In that regard, a recent decision of the Florida Supreme Court supports the adoption of the clarifying amendment. In Metropolitan Dade County v. Chase Federal Housing Corporation, 24 Fla.L.Weekly S267 (Fla. June 10, 1999), the court held:

This Court has recognized that when "an amendment to a statute is enacted *soon after controversies as to the interpretation of the original act arise*, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof." *Lowry v. Parole and Probation Comm'n*, 473 So.2d 1248, 1250 (Fla. 1985) (emphasis supplied); see *Finley v. Scott*, 707 So.2d 1112, 1116 (Fla. 1998). The Third District's opinion in this case was issued on January 3, 1998, see *Chase Federal Housing Corp.*, 705 So.2d at 674, five months before the Legislature passed this law in May 1998. See ch. 98-189, §18, at 1670, *Laws of Fla.* (codified at §376.3078(1)(e), Fla. Stat. (Supp. 1998)). Therefore, this amendment can be reasonably read as clarifying the legislative intent that the immunity provisions of the Act be construed in favor of real property owners.

Metropolitan Dade County, *supra*, 24 Fla.L.Weekly S267 at S269.

Likewise, in this case, the proposed clarifying amendment was drafted by staff in January, 1999 and proposed by the Commission in February, 1999, as a result of the March 30, 1998 Order on Declaratory Statement and pursuant to the directive in that Order. Under the Metropolitan Dade County decision, and consistent with the testimony of the staff witness at the rulemaking hearing, the proposed clarifying amendment is an appropriate quasi-legislative interpretation of the 1980 rule amendment and not, as asserted by Valencia/Point Management, a substantive change thereof.

As to Valencia/Point Management's second point, there is simply no factual or legal basis for the broad-brush position that conversion to master metering results in lower rates. Valencia/Point Management failed to present any expert testimony in support of this position. Moreover, issues concerning residential and commercial rates and their attendant costs of service are far outside the scope of this clarifying amendment which, as a matter of law, is to be properly construed as a clarifying amendment and not a substantive change.

The only "evidence" offered by Valencia/Point Management in support of their position was the Redington Towers I Brief for Declaratory Statement filed in the FPC declaratory statement proceeding. The author of the brief asserted that the difference in FPC's residential and commercial rates is about 38% (Exhibit 4). The author of the brief, however, was not presented as a witness and was not available for cross-examination. Although FPC's witness at the hearing did concur in the estimate of the difference in FPC's rates alleged by Redington Towers I, the FPC witness emphasized that there are other costs which would be borne by the Redington II Towers customers under a commercial rate including the costs of metering, submetering, meter reading, meter maintenance, and the expense of maintaining all of the electric facilities behind the master meter (Tr. 72).

FP&L's rate development manager, Rosemary Morley, confirmed that rate and bill differentials could only be derived with significantly more information and must be evaluated on a case-by-case basis. In order to evaluate rate and bill differentials between residential and commercial customers, an analysis would have to be conducted addressing such factors as: (1) the demand side management programs subscribed to by the residential customers; (2) the applicable commercial customer charge which would depend on which of the more than one dozen commercial

customer rates the customer might be served under in a master metering scenario;⁷ (3) the applicable commercial rate under a master meter scenario which would depend on the size of the load, factoring in the demand charge for a commercial customer which is not applicable to a residential customer, and the capacity clause charge which will vary depending on the kilowatts of load, i.e., the size of the building. (Tr. 90-92).

Moreover, as noted by staff hearing officer Helton, the assumed savings condominium dwellers would receive if allowed to master meter and take service under a commercial rate ignores the issue of whether a commercial service rate is really appropriate for these customers. As Ms. Helton stated, "I think you also, too, have a more fundamental problem than that. You haven't convinced me that persons living in a condominium share load characteristics that are similar to entities that may be on a commercial rate." (Tr. 93). In point of fact, load research indicates that condominiums and apartments share similar load characteristics with other residential customers as opposed to commercial customers. In the event the generic docket results in a directive to allow pre-January, 1981 individually metered condominiums to convert to master meters, customers would remain "residential" in nature and the rates these customers would be served under should reflect this fact.

CONCLUSION

For the reasons stated above, and consistent with its decision and directive in the Order on Declaratory Statement, the Commission should adopt the proposed clarifying amendment paragraph (5)(a) of Rule 25-6.049, Florida Administrative Code.

⁷FP&L's customer charge of \$5.65 for residential customers is the lowest among the four investor-owned utilities. (Tr. 91).

Respectfully submitted,



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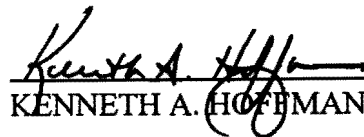
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-M-E-M-O-R-A-N-D-U-M-

DATE: AUGUST 19, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (BELLACK, HELTON) *nat DS RCB*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (HEWITT) *JDT DMK*
 DIVISION OF ELECTRIC AND GAS (WHEELER) *RUE FOR GIAT*
 DIVISION OF LEGAL SERVICES (JAYE)

RE: DOCKET NO. 981104-EI - PROPOSED AMENDMENT OF RULE 25-6.049, F.A.C., MEASURING CUSTOMER SERVICE.

AGENDA: 8/31/99 - REGULAR AGENDA - RULE WITHDRAWAL - INTERESTED PERSONS MAY PARTICIPATE

RULE STATUS: WITHDRAWAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\981104WD.RCM

CASE BACKGROUND

The genesis of this docket was the Commission's Order on Declaratory Statement construing, at Florida Power Corporation's (FPC's) request, the grandfather clause in Rule 25-6.049(5)(a), Florida Administrative Code. 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). Paragraph (5)(a) of Rule 25-6.049 currently requires individual electric metering by a utility:

[F]or 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.

FPC sought a declaration from the Commission that individually metered buildings, which were constructed prior to 1981, did not automatically become eligible for master metering simply because of the construction date. FPC argued that the concept of grandfathering simply tolerates pre-existing non-conforming uses, it does not condone the creation of new ones. 98 F.P.S.C. at 3:390.

The Commission did not make the declaration sought by FPC because it was too broad. Instead, the Commission tailored its declaration to the two condominium associations at issue, and declared:

[T]he 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.

Id. at 391. The Commission also directed staff to "initiate the rulemaking process to determine whether paragraph (5)(a) of Rule 25-6.049 should be amended." Id.

The staff initiated rulemaking, and published a notice of proposed rule development to clarify the rule. At staff's recommendation, the Commission proposed the following amendment to paragraph (5)(a) to clarify the language in the rule:

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

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

Valencia Condominium Association and Point Management, Inc. (the condominium associations) requested a hearing on the proposed rule, recommended as a lower cost alternative that the Commission not adopt the proposed amendments, and requested a Statement of Estimated Regulatory Costs be prepared.

A Section 120.54, Florida Statutes, rulemaking hearing was held on March 15, 1999, and continued on May 5, 1999, before an attorney from the Division of Appeals acting as the hearing officer. Representatives from Florida Power and Light Company (FPL), Florida Power Corporation (FPC), Tampa Electric Company (TECO), Commission staff, and the condominium associations participated in the hearing. FPL, staff, and the condominium associations filed post-hearing comments. The utilities and staff supported adoption of the proposed amendment arguing that the Commission was simply clarifying its already existing policy. The condominium associations opposed adoption of the proposed amendment arguing that the amendment constitutes an invalid exercise of delegated legislative authority because it contravenes the statute implemented and it is not based on competent substantial authority. The condominium association urged the Commission to withdraw the proposed amendment until the outcome of the generic investigation 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), Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission withdraw the proposed amendments to Rule 25-6.049, F.A.C., Measuring Customer Service?

RECOMMENDATION: Yes, the proposed amendments to Rule 25-6.049, F.A.C., should be withdrawn because the rulemaking process exceeded the statutory time limits set out in Section 120.54(3)(e)2., Florida Statutes. Staff should reconsider its recommendation to propose the clarifying amendment to Rule 25-6.049(5)(a) in the ongoing 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.

STAFF ANALYSIS: When staff established the rulemaking hearing schedule for the proposed amendment, it was unaware that the Joint Administrative Procedures Committee (JAPC) interprets Section

120.54(3)(e)2., Florida Statutes, to require publication of notice of the agenda conference at which the Commission votes to adopt a rule if the proposed rule will not be adopted within 90 days of the first notice proposing the rule or 45 days from the date of the last noticed hearing. No such notice was published, and the time for doing so has expired. JAPC will not certify the rule amendment, and the Secretary of State will not accept the rule amendment. The only further action that the Commission can take is to withdraw the rule and start the rulemaking process over again.

Staff recommends that the Commission withdraw the proposed amendments to Rule 25-6.049. In proposing the rule amendment considered in this docket, staff believed it was simply implementing the Commission's decision in the Redington Towers docket on the application of the individual metering requirement to pre-1981 construction. Subsequent discussions have raised additional issues which Staff believes should be more thoroughly explored before making a decision on any rule amendments. Therefore, instead of repropounding the amendment at this time, staff recommends that the question of the need for the clarifying amendment be merged into the ongoing generic investigation in Docket No. 990188-EI. A workshop has already been held in the generic docket and the participants have answered data requests. Staff would like additional time to analyze cost savings and other factors before making a recommendation to the Commission concerning the master metering policy.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, the rule should be withdrawn and the docket closed. The issue of the need for the clarifying amendment should be merged into the ongoing 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.

STAFF ANALYSIS: After a Notice of Withdrawal is published in the Florida Administrative Weekly, the docket may be closed. The issue of grandfathering should be merged into the generic Docket No. 990188-EI.

(2) Applicants who are first certified when there is more than one-half of their initial biennial certification period remaining, shall only be required to complete a minimum of seven (7) classroom hours of continuing education courses, which shall include a minimum of one (1) classroom hour in the area of accessibility, prior to the end of their initial biennial certification period as a condition of the initial renewal of all certifications held by the certificate holder.

(3) Applicants who are first certified when there is one-half or less of their initial biennial certification period remaining, shall not be required to complete any hours of continuing education courses as a condition of the initial renewal of all certifications held by the certificate holder.

(4) For those certificate holders who are certified in more than one certification category, completion of the minimum number of hours of continuing education course requirements as set forth above shall be sufficient for the biennial renewal of all certifications held by the certificate holder.

Specific Authority 455.2124, 468.606, 468.627 FS. Law Implemented 455.2124, 468.606(2), 468.627 FS. History—New 5-23-94, Amended 5-21-95, 11-28-95, 6-9-97.

NAME OF PERSON ORIGINATING PROPOSED RULE: Building Code Administrators and Inspectors Board
NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Building Code and Inspectors Board
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 1, 1999
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 27, 1999

Section III Notices of Changes, Corrections and Withdrawals

DEPARTMENT OF INSURANCE

RULE NO.: 4-127
RULE TITLE: Fees and Procedures Regarding Department Informational Services

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule(s), as noticed in Vol. 25, No. 15, April 16, 1999, in the Florida Administrative Weekly, have been withdrawn.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Animal Industry

RULE CHAPTER NO.: 5C-23
RULE CHAPTER TITLE: Transporting Animal Carcasses/ Refuse

RULE NOS.: 5C-23.003, 5C-23.004
RULE TITLES: Vehicle and Container Requirements; Transporting or Hauling Animal Carcasses or Refuse Procedures; Records; Equipment; Quarantine

NOTICE OF WITHDRAWAL

Notice is hereby given that the proposed Rule 5C-23.003, F.A.C., as originally published in the Florida Administrative Weekly, Vol. 25, No. 28, July 16, 1999, is withdrawn. Rule 5C-23.004, FAC, as originally published in the Florida Administrative Weekly, Vol. 25, No. 28, July 16, 1999 has been changed, as noticed in the Florida Administrative Weekly, Vol. 25, No. 36, September 10, 1999, to reflect renumbering to 5C-23.003.

STATE BOARD OF ADMINISTRATION

RULE NO.: 19-8.014
RULE TITLE: Auditing Procedures

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule, as noticed in Vol. 25, No. 34, August 27, 1999, Florida Administrative Weekly, has been withdrawn.

PUBLIC SERVICE COMMISSION

RULE NO.: 25-6.049
RULE TITLE: Measuring Customer Service

NOTICE OF WITHDRAWAL

Notice is hereby given that the Notice of Rulemaking published in Vol. 25, No. 7, February 19, 1999, issue of the Florida Administrative Weekly, has been withdrawn. The Notice of Proposed Rulemaking is being re-published in this issue of the Florida Administrative Weekly. Docket No. 981104-EU.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RULE NO.: 61-11.008
RULE TITLE: Licensure Examination Format and Procedures for Candidates with Disabilities

NOTICE OF WITHDRAWAL

Notice is hereby given that the above rule amendments as published in Vol. 25, No. 1, January 8, 1999, Florida Administrative Weekly have been withdrawn.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

RULE NO.: 61-11.017
RULE TITLE: Candidates' Post Exam Review of Examination Questions, Answers, Papers, Grades and Grading Key

✓ Bob Valdey
K. Hoffman¹

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Proposed amendment of Rule 25-6.049, F.A.C.,
Measuring Customer Service. (Deferred from the 8/31/99
Commission Conference.)

DOCKET NO. 981104-EI

COPY

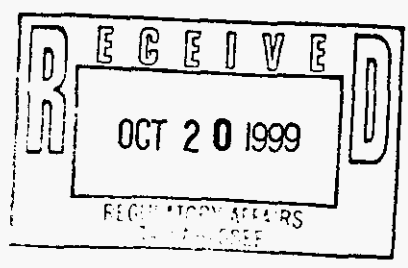
BEFORE: CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 3**

DATE: October 5, 1999

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida



ACCURATE STENOGRAPHY REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850) 878-2221

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104-EI EXHIBIT NO. 3
COMPANY/ Staff
WITNESS: 10
DATE: 12-2-99

APPEARANCES:

KEN HOFFMAN, Esquire, representing FPL
JOHN MOYLE, Esquire, representing Lindsey Condominiums
and Point Management.

STAFF RECOMMENDATION

Issue 1: Should the Commission withdraw the proposed amendments to Rule 25-6.049, F.A.C., Measuring Customer Service?

Recommendation: Yes. The proposed amendments to Rule 25-6.049, F.A.C., should be withdrawn because the rulemaking process exceeded the statutory time limits set out in Section 120.54(3)(e)2., Florida Statutes. Staff should reconsider its recommendation to propose the clarifying amendment to Rule 25-6.049(5)(a) in ongoing 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.

Issue 2: Should this docket be closed?

Recommendation: Yes. The rule should be withdrawn and the docket closed. The issue of the need for the clarifying amendment should be merged into ongoing 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.

P R O C E E D I N G S

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CHAIRMAN GARCIA: Item Number 3.

MS. HELTON: Item Number 3 is a recommendation to withdraw the proposed amendments to the meter rule for individual metering because of some procedural problems, and to roll over the need for that amendment into an ongoing generic investigation into the meter rule. I believe that --

COMMISSIONER CLARK: I have a question. Is this something new that JAPC is requiring?

MS. HELTON: This is because of -- the last big round of amendments to the APA, and we have just never been caught with this problem before, or I had never been -- Mr. Bellak and I had never been caught with this problem before. I think they have always required rules to be adopted within 90 days, but they have always had also a requirement that as long as we filed the rule for adoption 21 days -- I think it is 21 days after the last hearing, that we were okay. We have already considered our agenda conference to be the last hearing, and there was no intermediary notice required. Now there is one.

COMMISSIONER CLARK: When did that happen?

MS. HELTON: I think that it was in the '96/'97 time frame. I can't remember when was the last --

1 COMMISSIONER CLARK: See, I have been aware of
2 the fact that the law was changed to allow our agenda
3 conference to be considered part of the hearing
4 process. I was unaware that we were required to put
5 out a second notice if we exceeded the 90-day
6 requirement. And I'm just trying to find out if that
7 has always been a requirement and we just missed it
8 this time or what.

9 MS. HELTON: It is my understanding that that was
10 not a requirement prior to the last big revision of
11 the APA, and I think that was the '96 time frame. The
12 dates are kind of merging.

13 COMMISSIONER CLARK: Well, let me put it this
14 way. I would like the staff to come explain to me
15 what the requirements are now for the rule. And if
16 we, in fact, by law have to provide that notice, or is
17 this something the committee is simply requesting that
18 we do.

19 MS. HELTON: The committee is interpreting
20 Section 120 -- I mean, I could do it now if you would
21 like, or I can do it in your --

22 COMMISSIONER CLARK: You can just come see me.
23 That will be fine.

24 MS. HELTON: Okay.

25 COMMISSIONER CLARK: I also have a question as to

1 why we don't start the process again and why it has
2 been official to simply roll this into an on-going
3 investigation. What do we think -- why is it
4 efficient, and is there a concern that we would come
5 to a different result?

6 MS. HELTON: I can tell you why I joined in on
7 this recommendation and maybe that will help you. I
8 was planning on writing a recommendation for the
9 Commission to adopt the proposed amendments. I was
10 the Hearing Officer. When we found out about the
11 procedural problem, obviously that wasn't an option
12 anymore so we then decided that we needed to withdraw
13 the proposed amendments.

14 And in doing so I went and talked to staff and
15 told them what the problem was. And in talking to
16 staff, Mr. Jenkins told me that he had some concerns
17 about the need for the master meter requirements that
18 we have set out in the proposed amendments, and he
19 wondered whether they are necessary, number one, and
20 whether there is any data to support them.

21 And based on his professional judgment, I agreed
22 to join in on the recommendation to withdraw the
23 proposed amendments and roll it into the generic
24 docket so that they could then look at that matter
25 more closely.

1 COMMISSIONER CLARK: Let me ask you one more
2 question. Would it be your legal opinion, though,
3 that in the meantime the type of declaratory statement
4 we issued and as mentioned in the rec, we could still
5 issue declaratory statements coming to the same
6 result?

7 MS. HELTON: My opinion has always been that the
8 grandfather clause in the rule prohibits buildings
9 that are individually metered to become master
10 metered, and that would have been my opinion
11 regardless of whether there had been a declaratory
12 statement issued or not. So, yes, I believe we can
13 issue more declaratory statements.

14 COMMISSIONER CLARK: Okay. Have you run across a
15 provision in the APA that may call into question our
16 authority to modify this rule?

17 MS. HELTON: Mr. Moyle has brought one to my
18 attention, but I have discussed it with Mr. Smith and
19 he doesn't seem concerned by it.

20 COMMISSIONER CLARK: Okay.

21 COMMISSIONER JACOBS: Could you explain that for
22 me?

23 COMMISSIONER CLARK: Mr. Chairman, I may have --
24 it may be appropriate to hear from the parties and
25 then let Ms. Helton answer those questions.

1 COMMISSIONER JACOBS: Okay.

2 CHAIRMAN GARCIA: Okay. Mr. Hoffman.

3 MR. HOFFMAN: Thank you, Mr. Chairman,
4 Commissioners. My name is Kenneth Hoffman. I am here
5 this morning on behalf of Florida Power & Light
6 Company, and I am also authorized to represent that
7 Tampa Electric Company supports the comments I'm about
8 to make.

9 FPL opposes the staff recommendation, and we
10 believe that the appropriate and lawful course of
11 action consistent with your intent when you first
12 decided this issue in March of 1998, and consistent
13 with the requirements of Chapter 120, would be to deny
14 the staff's recommendation and to move forward with
15 adoption of the proposed clarification to your
16 existing rule.

17 Let me begin with some background on this issue.
18 The Commission has had a rule in place dating back to
19 November of 1980, and the rule requires individual
20 metering for certain buildings, including
21 condominiums, where construction commenced after
22 January 1 of 1981. Now, as you have stated, a number
23 of orders over the course of the years, the rule was
24 driven by PURPA goals of promoting conservation, which
25 could best be achieved by a rule requiring individual

1 metering, and therefore accountability for
2 consumption, which would promote conservation.

3 The pre-1981 date that is laid out in the rule
4 was essentially a grandfather provision, which allowed
5 buildings that were built before 1981 and were master
6 metered to remain master metered and not be subject to
7 the individual metering requirements. That is really
8 all this issue is.

9 Now, in 1997, Florida Power Corporation
10 mistakenly granted a request of a condominium building
11 that had been built prior to 1981 to convert from
12 individual to master metering. Now, after that
13 happened, the two sister buildings in that condominium
14 also asked to be allowed to convert their pre-1981
15 individually metered building to master metering.
16 Florida Power Corporation, knowing that they had made
17 a mistake, three wrongs don't make a right, they filed
18 a petition for declaratory statement to confirm the
19 correct interpretation of the rule, which, as you
20 know, is that a building that was built before 1981
21 that is individually metered cannot convert to master
22 metering.

23 Now, there was fairly substantial argument on the
24 declaratory statement in March of 1998 at your agenda
25 conference. And Mr. Moyle did appear on behalf of his

1 clients, and he argued that Florida Power
2 Corporation's petition was not limited to the two
3 condominium buildings at issue and essentially
4 requested a broader policy statement that would apply
5 across the industry. So Mr. Moyle argued in March of
6 1998 that it was appropriate to go to rulemaking.

7 Florida Power Corporation, therefore, at the
8 agenda agreed to limit their petition to the two
9 buildings at issue. Commissioner Clark at that agenda
10 conference ultimately provided the basis for the order
11 that granted the declaratory statement as limited.

12 First, Commissioner Clark stated that when we
13 issue decisions, she was referring to declaratory
14 statements, they have precedential value, but they do
15 not strictly apply to everyone. Commissioner Clark
16 then went on to state that the order has to be clear
17 that it only applies to the applicant in this
18 situation. It needs to be specific. And then she
19 said I would recommend that we go forward and amend
20 the rule so it is clear that for those buildings that
21 were individually metered prior to 1981, the rule does
22 not allow them to go to master metering.

23 So the Commission then issued its order on March
24 30th of 1998, granted the request for declaratory
25 statement as limited to the two buildings. The

1 Commission concluded that the reading of the rule that
2 was sought by Redington Towers One and Three would
3 result in an interpretation in which they could switch
4 back and forth between master meters simply because
5 the buildings were constructed before 1981. And that
6 was not the intent of the master metering grandfather
7 provision.

8 The last thing that the Commission says in the
9 order is an instruction to staff to initiate the
10 rulemaking process to determine whether a particular
11 paragraph of the rule should be amended, and that is
12 what the staff did. The staff issued a notice of
13 proposed rulemaking in February of 1999.

14 The clarification was consistent with the
15 Redington Towers declaratory statement. It was
16 published and Mr. Moyle requested a public hearing.
17 Having asked for a rulemaking proceeding in the March
18 1998 declaratory statement, Mr. Moyle switched
19 positions and took a position against the rule.

20 Now, in the meantime, in 1999, the Commission
21 opened a generic investigation docket to look at
22 master metering, individual metering issues. A public
23 hearing at Mr. Moyle's request was begun in March of
24 this year. It was postponed at his request, and then
25 it was reconvened in May. Mr. Moyle raised a number

1 of issues that are very broad in nature and
2 comprehensive in nature about the issue, basically
3 focusing on individual versus master metering.

4 In post-hearing comments, the staff stated that a
5 discussion of the merits of master metering are not
6 relevant to the proposed rule amendment that was the
7 subject of the hearing, since the amendment merely
8 clarifies the existing rule.

9 That brings me to the recommendation which is
10 before you this morning, and the staff takes two
11 positions. The first thing that staff says is that
12 the staff allowed the rulemaking time frames under
13 Chapter 120 to expire. And then, secondly, the staff
14 says rather than republish the rule and move forward
15 consistent with the testimony of Mr. Wheeler at the
16 hearing and the post-hearing comments filed by Mr.
17 Bellak, the staff has now reversed their position, and
18 they are recommending you withdraw the rule and throw
19 this into the generic docket, a docket which has no
20 CASR, no list of issues, no hearing date, it's just
21 sort of sitting there.

22 So let me address the Chapter 120 issue first. I
23 have discussed this issue with the lawyers with the
24 Joint Administrative Procedures Committee, and they
25 have confirmed to me that the Commission would be in

1 compliance with Chapter 120 rulemaking requirements if
2 the Commission were to simultaneously publish a notice
3 of withdrawal of the proposed rule together with a new
4 notice of the proposed rule. And then the Commission,
5 within the framework of Chapter 120, could conclude
6 this process within 28 days of that dual publication.

7 Now, Mr. Moyle could request another hearing,
8 could request another hearing. I don't know why he
9 would, but he could. But he has had his hearing and I
10 don't know what other issue he might try to raise that
11 wasn't fully explored in the May hearing.

12 The point I guess I'm trying to make is that
13 understanding that the statutory deadlines may have
14 passed, FPL does not think that that is an excuse to
15 not move forward with fulfilling the Commission's
16 direction to adopt an industry-wide application and
17 clarification of this rule.

18 The second point that I would like to make is
19 under the rulemaking requirements of Chapter 120, the
20 Commission is actually required, in my opinion, to
21 move to rulemaking. The Commission would only be
22 allowed to not go to rulemaking if it could show that
23 related matters are not sufficiently resolved to
24 enable the agency to address a statement by
25 rulemaking.

1 Now, the staff has already concluded that other
2 matters concerning the merits of master metering are
3 not relevant to the proposed clarification to the
4 rule. And even if they were, the resolution or
5 nonresolution of those particular issues would not
6 prevent the Commission from simply doing what it
7 intended to do back in '98, which is to clarify your
8 existing rule.

9 So I would urge you to stick with your original
10 intent. I would urge you to order the staff to move
11 forward with republication of the clarifying language.
12 I think that if you fail to do that, you are violating
13 Chapter 120, Florida Statutes, particularly Section
14 120.54. The generic docket can proceed forward.

15 COMMISSIONER CLARK: That is the one that
16 requires us to go to rulemaking?

17 MR. HOFFMAN: Yes, ma'am. It says -- the generic
18 docket can proceed forward and any changes that might
19 be made with respect to the rule could certainly be
20 applied on a prospective basis. But for now you've
21 got a rule, you have had a rule since 1980. You have
22 clarified it. Let's not leave any uncertainty in the
23 industry. Thank you.

24 COMMISSIONER GARCIA: Mr. Moyle.

25 MR. MOYLE: Thank you, Mr. Chairman. John Moyle

1 on behalf of Lindsey Condominiums and Point Management
2 (phonetic). And Mr. Hoffman has laid out a number of
3 things before you, a lot of them technical 120 rule
4 issues which are important, but I think we ought to
5 just back up for a minute and recall how we got here.

6 There was reference to the Redington Tower
7 situation down in the St. Pete area, and if you will
8 recall there were three condominiums there. One of
9 them read the rule, asked Florida Power Corporation,
10 they said the rule says if we were constructed prior
11 to 1981, we are eligible for a master meter. Could we
12 please have a master meter? Florida Power Corp
13 provided them a master meter and all of a sudden these
14 people in a large condominium, many whom I suspect are
15 probably retirees or whatnot, all of a sudden started
16 saving 30 percent off of their bills.

17 To me that is significant, and I think it is part
18 of the reason why the generic investigation was
19 launched, to see if indeed this rule makes sense,
20 given the passage of time. This was a rule that was
21 initially put in place, I guess, in the late '70s.
22 Rather than simply go ahead with the rulemaking
23 without taking a step back and say, wait a minute,
24 before we go to rulemaking, why don't we gather some
25 evidence, look at this, take a thorough full review of

1 what we have before us with respect to these master
2 meter issues, and then go forward on a comprehensive
3 basis, not doing it on a piecemeal basis.

4 We did have a public hearing. One of the
5 questions that I asked of staff was has the PSC done
6 any studies since this rule was initially adopted in
7 1981 that shows there are savings resulting from the
8 master meters versus the individual meters? The
9 answer was no. That is something that ought to be
10 explored in the generic investigation before you
11 continue with this piecemeal rulemaking process.

12 We are supportive of staff's recommendation,
13 which is to withdraw the rule and make it part of the
14 generic investigation. Without getting into any
15 specifics, there are a number of other generic
16 investigations that are going on before you all. I'm
17 not aware of any others where you have started
18 rulemaking before you have had your generic
19 investigation and gotten the results of the generic
20 investigation. It seems to me that you are putting
21 the cart before the horse by doing the rulemaking
22 before the generic investigation is allowed to run its
23 course.

24 COMMISSIONER CLARK: Mr. Moyle, let me ask you a
25 question, because you and I have discussed this and

1 you had indicated your thought that if another
2 declaratory statement came up regarding this, that we
3 would be within our authority to issue the same kind
4 of statement that says, no, you cannot go back to
5 master metering if you were individually metered prior
6 to the time this rule went into affect. It only
7 grandfathered those that were currently master
8 metered. And I think you indicated that having set
9 the precedent we could probably follow the precedent.

10 My question to you is would we be subject to an
11 allegation that we should have moved to rulemaking,
12 did not move to rulemaking, and therefore we are
13 liable for attorneys fees for any appeal of that
14 declaratory statement?

15 MR. MOYLE: Well, a couple of points in response.
16 Number one, I don't think you have had another
17 declaratory statement on this issue since the one that
18 was, I think, a couple of years ago. So it is not a
19 pressing issue that I don't believe you are going to
20 have to contend with on a regular basis.

21 Number two, a declaratory statement is designed
22 for a specific fact pattern, and I think 120 gives you
23 the ability --

24 COMMISSIONER CLARK: Well, assuming the fact
25 pattern is exactly the same and we decide exactly the

1 way we decided.

2 MR. MOYLE: My argument on your behalf in that
3 situation would be that you are engaged in the process
4 of looking at this issue in toto. You have a generic
5 investigation. I think you could argue it is
6 incipient policy that you are engaged in and that you
7 are going to go to rulemaking after -- you intend
8 probably to go to rulemaking at the conclusion of your
9 generic investigation. That would be one argument.
10 Now, I'm not advocating that.

11 CHAIRMAN GARCIA: Is there a pressing need for
12 this? I have been here awhile now. I have been here
13 awhile and I don't remember this issue coming up very
14 often. I don't think we are pressed to resolve this
15 to go to rule because we have had people clamoring --

16 MS. HELTON: I think that the individual versus
17 master metering issue has always been there. It might
18 not have been brought to your direct attention, but I
19 know that it is something that staff has to work with
20 or deal with on a fairly regular basis, at least in
21 the decade that I have been here.

22 COMMISSIONER CLARK: Let me ask you a question,
23 and you can answer the question I proposed to Mr.
24 Moyle. If we do have another, it comes to agenda on
25 exactly the same fact pattern, we decide exactly the

1 same way, and the party who is adversely affected
2 appeals that, would we be subject to an allegation
3 that we should have gone to rulemaking and it reverses
4 our decision and, by the way, you are liable for
5 attorney's fees. Is that a possibility?

6 MS. HELTON: I think Mr. Moyle is right that our
7 argument would be if you decided to roll it into the
8 generic docket, that we are looking at it and our
9 policy maybe isn't as clearly set as we thought it
10 was.

11 COMMISSIONER CLARK: Would you answer the
12 question about are you liable for attorney's fees when
13 you don't put it in a rule and the court concludes you
14 should have? It seems like we have been caught
15 before. Does anyone have any information about that?

16 MS. HELTON: Well, I think the statute says
17 rulemaking shall be presumed feasible unless the
18 agency proves that the agency hasn't had sufficient
19 time, related matters are not sufficiently resolved,
20 or the agency is currently engaged in rulemaking
21 procedures. And as I recall, I think that we are
22 liable for attorney's fees if we can't prove what are
23 those reasons for not going to rulemaking and setting
24 your policy into rules.

25 COMMISSIONER CLARK: Okay.

1 COMMISSIONER JACOBS: Let me just make sure I
2 understand. The scope of these proposed amendments is
3 to clarify an existing rule?

4 MS. HELTON: That's correct.

5 COMMISSIONER JACOBS: And to make clear its
6 application to existing circumstances?

7 MS. HELTON: That is correct.

8 COMMISSIONER JACOBS: Okay. Now, let's also
9 think through how we will arrive at a controversy over
10 that, where there are existing parties -- if parties
11 were individually metered, come here in advance of
12 choosing to convert to master metering and ask for a
13 declaratory judgment, we consider that -- and what I
14 heard you say earlier, we would probably come back
15 with a consistent ruling as we did previously. Okay.
16 So that controversy will probably not carry with it
17 much in terms of potential problems or damages for
18 those parties. What would more likely be the case --
19 what would be more likely the problem that
20 Commissioner Clark just described would be if parties
21 arrived here after having converted to master
22 metering, asserting some confusion or lack of clarity
23 with regard to our ruling and ask us to do something
24 there.

25 MS. HELTON: I'm not sure if I'm really following

1 that. I think the problem is there are -- say, for
2 instance, condominiums out there that are currently
3 individually metered, that they believe that if they
4 can be master metered, they will get a better rate
5 from the --

6 COMMISSIONER JACOBS: I understand. I'm trying
7 to understand how we will arrive at a controversy for
8 which we might -- that is, the Commission, having not
9 done a rule, okay, we might be subject to some
10 liability because the parties acted in that confusion,
11 okay. Do you understand? And we would be exactly
12 what happened here, someone would say that we deprived
13 them of that opportunity, or they went ahead and
14 changed in the confusion and now they are faced with
15 having to convert back or something of that sort.

16 My point is this. Your standing would be that
17 when we arrived at that moment, your standing would be
18 should we, could we have, and were we able to clarify
19 this rule as to its application to existing
20 circumstances. And if we could have, would we be
21 subject to that standard that you have just recited,
22 is that correct?

23 MS. HELTON: Well, I think maybe that it is a
24 little bit less clear and that we do have a generic
25 docket going on and there is some belief amongst the

1 staff that --

2 COMMISSIONER JACOBS: That is my next question.
3 What is the focus of the generic proceeding?

4 MS. HELTON: I will have to defer to Mr. Wheeler.

5 MR. WHEELER: Basically, the generic proceeding
6 was opened in order to look at the whole question of
7 individual versus master metering. The rule
8 amendment, again, focused narrowly on a grandfather
9 provision. There was some belief that perhaps in
10 light of changing circumstances that perhaps the
11 strict individual metering requirement could be
12 modified or perhaps even eliminated. So that was the
13 impetus behind opening the generic docket.

14 COMMISSIONER JACOBS: So then -- quite frankly, I
15 do not understand that. I do not understand that we
16 will -- in the generic proceeding we are going to be
17 considering retroactively going back and saying that
18 we will allow people who are individually metered to
19 now convert.

20 COMMISSIONER DEASON: I don't think there is any
21 retroactive application.

22 COMMISSIONER JACOBS: I didn't think so, either.

23 MS. HELTON: I would agree with you.

24 COMMISSIONER DEASON: Right now it seems to me we
25 have a policy and it is in a rule. There is a

1 question about the rule language itself and how that
2 is going to be interpreted. I don't think there is
3 any question about what the policy is. That is clear.

4 What we tried to do was to crystalize or make
5 clear what the policy is by the rule amendment that we
6 proposed. There was an error in the process. In the
7 meantime there has been an investigation of it, which
8 is fine. We have an obligation to look at these
9 matters from time to time. We have the investigation,
10 but right now our policy is still the same until there
11 is a change, and that investigation may result in a
12 change of policy and it may not.

13 I guess my question is what is just the most
14 efficient way to handle this? What is the rule, the
15 investigation, what is the time frame involved? Is it
16 going to be a lengthy process so that we need to go
17 ahead and clarify our rules so that's is clear to
18 everyone in the meantime? Or do we need to have
19 duplicate effort? If the time frames are going to be
20 overlapping, such as we can do this more efficiently
21 at one time, perhaps that is the best way to approach
22 this. So that is my question. What is the time frame
23 for the investigation?

24 MR. WHEELER: At this point we have conducted one
25 workshop and we have sent out data requests. The

1 staff's thinking in terms of how to proceed at this
2 point would be to hold one additional workshop to
3 discuss the results of the data requests and kind of
4 get an idea of what the parties would like to see in
5 terms of changes to the rule.

6 At the last workshop there were no -- well, the
7 utilities were basically of the opinion that if it's
8 not broke, let's not fix it. They were pretty much
9 opposed to any sweeping --

10 COMMISSIONER DEASON: I don't need their
11 position. I need the time frame. So you are going to
12 do one more workshop, is that correct?

13 MR. WHEELER: Right. We picked a tentative date
14 for November 3rd for that workshop.

15 COMMISSIONER DEASON: Is there going to be more
16 discovery after that workshop or are you going to be
17 prepared to give your recommendation?

18 MR. WHEELER: I anticipate that at that point we
19 would be prepared to write a recommendation.

20 COMMISSIONER DEASON: That would be to propose a
21 rule, perhaps. And if your recommendation is to
22 propose a rule, then we would initiate rulemaking,
23 correct?

24 MR. WHEELER: That is my understanding.

25 COMMISSIONER DEASON: Then we go through that

1 entire process, which could take months, correct?

2 MR. WHEELER: Yes.

3 MS. HELTON: It depends on how controversial the
4 changes are that come out of the process. Mr. Hoffman
5 is right that you can withdraw the rule today and
6 simultaneously propose the rule again. And as long as
7 Mr. Moyle or no other condominium, someone else who
8 doesn't represent a condominium --

9 CHAIRMAN GARCIA: Let's stop right there. Mr.
10 Moyle, are you doing to file something if we do that?

11 MR. MOYLE: I need to talk to my client about
12 that.

13 CHAIRMAN GARCIA: Go ahead.

14 MS. HELTON: But as long as no one files comments
15 or requests for hearing, 28 days after the notice of
16 rulemaking has been published in the FAW, we can file
17 a rule for adoption, and then it would become
18 effective 21 days after it has been filed. So, I
19 mean, we have already done the bulk of the work.

20 COMMISSIONER DEASON: So if we take that route
21 and we get a request for a hearing, we always can
22 consider whether we just consolidate that with the
23 investigation, or we don't have that option when it
24 has gone the rulemaking route.

25 MS. HELTON: Could you say that one more time?

1 COMMISSIONER DEASON: If we renotice the proposed
2 rule and we go that route and there is a request for
3 hearing on that after we have renoticed it, do we have
4 the option then of just combining the investigation
5 with that rule hearing, or that is not an option?

6 MS. HELTON: No.

7 COMMISSIONER DEASON: If there is a request for
8 hearing after the renotice, what is the time frame for
9 that?

10 MS. HELTON: It is a matter of when we set -- you
11 would have to set a date for the rule hearing, and we
12 could set that fairly quickly after the time for
13 requesting the hearing has passed. We would have
14 testimony at the hearing. Our typical policy is to
15 allow participants to file post-hearing comments and
16 then the hearing officer, who is normally a division
17 of appeals attorney, then would come back and make a
18 recommendation to the Commission based on what
19 happened at the hearing.

20 COMMISSIONER DEASON: Let me ask you this. You
21 know more about rulemaking than perhaps anyone here
22 and the time frames involved. Is there going to be a
23 significant overlap of time before there can be a
24 conclusion of the investigation and any rule that
25 would come out of that? I'm trying to prevent a

1 period of time where there is still ambiguity as to
2 what our current policy is.

3 MS. HELTON: And it really depends on how quickly
4 the generic docket moves. If the generic docket moves
5 quickly and you were to repropose the rule, they would
6 move on pretty much the same track except for -- I
7 think Mr. Wheeler isn't that familiar with the
8 rulemaking process. You would have to publish a
9 notice of proposed rule development and that gives
10 people an opportunity to request another workshop and
11 then we would have to prepare a cert or decide whether
12 a cert was necessary or not and then we would bring
13 the rule back to you for consideration, whether you
14 would want to propose any additional amendments to it
15 based on the generic docket.

16 COMMISSIONER DEASON: Commissioners, it seems to
17 me that the investigation is pretty much still at the
18 initial phase and that it could be a long process and
19 that we probably have an obligation to clarify what
20 our existing policy is. And at the risk of even
21 having another hearing and have a renoticing, I think
22 that is the appropriate thing to do and that is what I
23 would do.

24 COMMISSIONER CLARK: Second. And that is with
25 the understanding, Mr. Moyle, that once we put that in

1 a rule, if you participate in that investigation, you
2 have convinced us that we should have some other
3 policy, it is still available to you.

4 MR. MOYLE: I understand and I appreciate that.
5 Given a minute to reflect on the question about would
6 you ask for another rule, I would probably recommend
7 to my client that we do, and for the reason that we
8 have never seen, you know, a recommendation from the
9 hearing officer on the substance. We took testimony,
10 took evidence, and the recommendation said, you know,
11 a time line was blown. So I feel like I'm not sure
12 that I have a lot of choice other than to do it again,
13 which unfortunately is going to take time and cost us
14 all money.

15 MS. HELTON: Well, let me say this. I don't know
16 why -- you know, the rules of evidence don't apply to
17 the rulemaking hearing. I don't know why the hearing
18 officer, whoever that may be, and I don't know whether
19 it will be me or not, couldn't accept the record from
20 the prior rule hearing and the next rule hearing, if
21 that be the case, and that may cut down a lot on the
22 time and expense of everyone involved.

23 CHAIRMAN GARCIA: No, you're not following what
24 Commissioner Deason said.

25 MS. HELTON: I'm saying if that is what you all

1 want to do.

2 MR. MOYLE: Mr. Chairman, you kind of jumped in
3 on an argument. One point that was mentioned, but if
4 I could, you know, there was and she mentioned Mr.
5 Smith had the opinion that the legislative change to
6 Chapter 120 to the law is not applicable. Obviously I
7 would argue that it is when you have a staff
8 recommendation before you today that says that this
9 rule is intended to clarify a rule and the rule has
10 this 1981 date in it, and then the legislature says,
11 and I quote, "An agency may not adopt retroactive
12 rules, including retroactive rules intended to clarify
13 existing law, unless that power is expressed and
14 authorized by statute." That is something that has
15 transpired between the time you first considered this,
16 and --

17 COMMISSIONER DEASON: Mr. Moyle, I don't see
18 where this is a retroactive application. We have had
19 the policy in effect since the rule was adopted. The
20 rule proposed would just simply clarify and is totally
21 consistent with that. There is no change in that in
22 trying to reach back in time and apply that in a
23 retroactive fashion.

24 COMMISSIONER JACOBS: On the contrary, if we were
25 to come in with a rule that says after our generic

1 proceeding that buildings built prior to 1981 and
2 individually metered can consider this, I think we are
3 exactly in that problem.

4 CHAIRMAN GARCIA: Mr. Hoffman, you had something
5 to say?

6 MR. HOFFMAN: Just for the record only that I
7 disagree with Mr. Moyle's position concerning whether
8 or not it would be an unlawful retroactive
9 application. And, secondly, that, you know, we have
10 been through these issues already twice. We had a
11 workshop in the generic docket where we covered a host
12 of issues on master metering and individual metering.
13 The Hearing Officer allowed Mr. Moyle to basically
14 duplicate that effort in this rulemaking, even though
15 the rulemaking was confined to clarification.

16 So I would, again, urge you to just move forward,
17 adopt this clarification. No harm to Mr. Moyle's
18 clients because they have a generic docket. If they
19 can persuade you that it is time to change the policy
20 on a prospective basis, they have that opportunity do
21 that. And in the meantime, the policy is clear on an
22 industry-wide basis, it should eliminate the potential
23 for declaratory statements, each of which becomes the
24 opportunity for another platform to just get into all
25 the generic issues.

1 CHAIRMAN GARCIA: All right. We have a motion
2 and a second. All those in favor signify by saying
3 aye.

4 MS. HELTON: Can I raise one concern? Let me see
5 if Mr. Hewitt is here. We did not prepare a cert the
6 first time we proposed a rule. Mr. Moyle asked a cert
7 to be prepared and Mr. Hewitt did, so could he just
8 give you a brief overview of what that cert was so
9 that you will have considered it in making your
10 decision and that way I don't think we will have any
11 procedural problems if you decide in your vote to
12 repropose the rule.

13 MR. HEWITT: Thanks. The other alternative or
14 cost alternative presented by Mr. Moyle and his
15 clients suggested that no rule would be cheaper or a
16 lower cost alternative. But, in fact, it would not
17 be since they cannot go ahead with any kind of
18 conversion under the existing rule or no rule.

19 COMMISSIONER DEASON: I think we have just met a
20 procedural requirement perhaps, and perhaps that
21 prevented some type of avenue for challenge or appeal
22 for what action we are taking. The motion still
23 stands and the second.

24 COMMISSIONER CLARK: Second.

25 CHAIRMAN GARCIA: A motion and a second. All

1 those in favor signifying by saying aye.

2 COMMISSIONER CLARK: Aye.

3 COMMISSIONER JACOBS: Aye.

4 COMMISSIONER DEASON: Aye.

5 MR. HOFFMAN: Thank you, Commissioners.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages number 1 through 31 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 19th day of October, 1999.

Jane Faurot,
JANE FAUROT, RPR
ACCURATE STENOGRAPHY REPORTERS
100 Salem Court
Tallahassee, Florida

VOTE SHEET

OCTOBER 5, 1999

RE: DOCKET NO. 981104-EI - Proposed amendment of Rule 25-6.049, F.A.C., Measuring Customer Service. (Deferred from the 8/31/99 Commission Conference.)

Issue 1: Should the Commission withdraw the proposed amendments to Rule 25-6.049, F.A.C., Measuring Customer Service?

Recommendation: Yes. The proposed amendments to Rule 25-6.049, F.A.C., should be withdrawn because the rulemaking process exceeded the statutory time limits set out in Section 120.54(3)(e)2., Florida Statutes. Staff should reconsider its recommendation to propose the clarifying amendment to Rule 25-6.049(5)(a) in ongoing 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.

DENIED

Rule is to be repropoased.

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures in the majority column]

REMARKS/DISSENTING COMMENTS:

NOTE SHEET

OCTOBER 5, 1999

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

(Continued from previous page)

Issue 2: Should this docket be closed?

Recommendation: Yes. The rule should be withdrawn and the docket closed. The issue of the need for the clarifying amendment should be merged into ongoing 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.

DENIED

M E M O R A N D U M

September 14, 1988

TO : STEVE TRIBBLE, DIRECTOR, DIVISION OF RECORDS & REPORTING
FROM: WILLIAM H. HARROLD, ASSOCIATE GENERAL COUNSEL *WHH*
RE : DOCKET NO. 870295-EI, RULE 25-6.049

Attached please find an original and three copies of the certification of Rule 25-6.049. The Secretary of State must receive the original and two copies of the certification no later than 5:00 p.m., September 15, 1988. The Certification includes:

- (1) An original and two certified copies of Rule 25-6.049;
- (2) A summary of the rule;
- (3) A summary of the hearing on the rule; and
- (4) A written statement of the facts and circumstances justifying the rule.

WHH:kp

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FLORIDA PUBLIC SERVICE COMMISSION
DOCKET
NO. 981104-EU EXHIBIT NO. 4
COMPANY/ Staff
WITNESS: Staff
DATE: 12-2-89

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

(a) And are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

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<u>Rule No.</u>	<u>Specific Rulemaking Authority</u>	<u>Law Being Implemented, Interpreted or Made Specific</u>
25-6.049	366.05(1), F.S.	366.05(3), F.S.

Under the provision of paragraph 120.54(12)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
 (month) (day) (year)

 Steve Tribble
 Director, Division of Records & Reporting
 Title

 Number of Pages Certified

by: Kay Flynn
 Chief, Bureau of Records

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 DIVISION OF RECORDS
 DEPARTMENT OF STATE
 TALLAHASSEE, FLORIDA
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SUMMARY OF RULE

Rule 25-6.049, F.A.C., Measuring Customer Service, requires all energy sold to customers, except energy sold under flat rate schedules or for uses where it is impractical to meter loads, to be measured by commercially acceptable measuring devices owned and maintained by the utility. Currently, the rule requires individual metering, except for commercial building units with variable floor plans, storage heating and cooling systems, specialized use housing (health care facilities, dormitories, hotels, etc.) and overnight occupancy areas (recreational vehicle parks and marinas where permanent residency is prohibited). The rule further specifies that where individual metering is not required and, therefore, master metering is used, submetering may be used by the customer of record to allocate the cost of electricity among occupants/tenants of the facility.

The original intent of the rule was to restrict the instances where master metering could be used and thereby require individual meters wherever possible as a conservation measure. The rule was revised to prohibit reselling of electricity, that is, allocation of master meter charges in such a manner as to result in earned profit by the customer of record, in those cases where individual utility meters were not required. However, Rule 25-6.049 does not allow for the use of other types of cost apportionment methodologies by an owner of a facility to recover the cost of electric service. The proposed revision to the rule would permit use of other reasonable apportionment methods in addition to submetering.

SUMMARY OF HEARINGS ON THE RULE

The Commission considered the proposed rule and the comments received at its agenda conference on September 6, 1988. After deliberation the Commission voted to adopt the rule with the indicated changes, based on the comments.

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FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The rule amendment is necessary to clarify that reasonable apportionment methods, including submetering, are permissible where individual metering is not required.

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1 25-6.049 Measuring Customer Service.

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

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
12 record different quantities, (kilowatt hours and relative power,
13 for example), metering equipment shall be tagged or plainly marked
14 to 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
20 for the meter itself shall be placed on all watt-hour meters.

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

23 (5)(a) Individual electric metering by the utility shall be
24 required for each separate occupancy unit of new commercial
25 establishments, residential buildings, condominiums, cooperatives,
26 marinas, and trailer, mobile home and recreational vehicle parks
27 for which construction is commenced after January 1, 1981. This
28 requirement shall apply whether or not the facility is engaged in
29 a time-sharing plan. Individual electric meters shall not,
30 however, be required:

- 31 1. In those portions of a commercial establishment

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1 where the floor space dimensions or physical
2 configuration of the units are subject to
3 alteration, as evidenced by non-structural element
4 partition walls, unless the utility determines that
5 adequate provisions can be made to modify the
6 metering to accurately reflect such alterations;

7 2. For electricity used in central heating, ventilating
8 and air conditioning systems, or electric back up
9 service to storage heating and cooling systems;

10 3. For electricity used in specialized-use housing
11 accommodations such as hospitals, nursing homes,
12 living facilities located on the same premises as,
13 and operated in conjunction with, a nursing home or
14 other health care facility providing at least the
15 same level and types of services as a nursing home,
16 convalescent homes, facilities certificated under
17 Chapter 651, Florida Statutes, college dormitories,
18 convents, sorority houses, fraternity houses,
19 motels, hotels, and similar facilities.

20 4. For separate, specially-designated areas for
21 overnight occupancy at trailer, mobile home and
22 recreational vehicle parks where permanent residency
23 is not established and for marinas where living
24 aboard is prohibited by ordinance, deed restriction,
25 or other permanent means.

26 (b) For purposes of this rule:

27 1. "Occupancy unit" means that portion of any
28 commercial establishment, single and multi-unit
29 residential building, or trailer, mobile home or
30 recreational vehicle park, or marina which is set
31 apart from the rest of such facility by clearly

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1 determinable boundaries as described in the rental,
2 lease, or ownership agreement for such unit.

3 2. "Time-sharing plan" means any arrangement, plan,
4 scheme, or similar device, whether by membership,
5 agreement, tenancy in common, sale, lease, deed,
6 rental agreement, license, or right-to-use agreement
7 or by any other means, whereby a purchaser, in
8 exchange for a consideration, receives a right to
9 use accommodations or facilities, or both, for a
10 specific period of time less than a full year during
11 any given year, but not necessarily for consecutive
12 years, and which extends for a period of more than
13 three years.

14 3. The construction of a new commercial establishment,
15 residential building, marina, or trailer, mobile
16 home or recreational vehicle park shall be deemed to
17 commence on the date when the building structure
18 permit is issued.

19 4. The individual metering requirement is waived for
20 any time sharing facility for which construction was
21 commenced before December 23, 1982, in which
22 separate occupancy units were not metered in
23 accordance with subsection (5)(a).

24 5. "Overnight Occupancy" means use of an occupancy unit
25 for a short term such as per day or per week where
26 permanent residency is not established.

27 6. ~~(b)~~ The term "cost", as used herein means only those
28 charges specifically authorized by the electric
29 utility's tariff, including but not limited to the
30 customer, energy, demand, fuel, and conservation
31 charges made by the electric utility plus applicable

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1 taxes and fees to the customer of record responsible
2 for the master meter payments. The term does not
3 include late payment charges, returned check
4 charges, the cost of the distribution system behind
5 the master meter, the cost of billing, and other
6 such costs.

7 (6) (a) ~~6(a)~~ Where individual metering is not required under
8 Subsection (5) (a) and master metering is used in lieu thereof,
9 reasonable apportionment methods, including sub-metering may be
10 used by the customer of record or the owner of such facility
11 solely for the purpose of allocating the cost of the electricity
12 billed by the utility.

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

19 (7) ~~(e)~~ Each utility shall develop a standard policy
20 governing the provisions of sub-metering as provided for herein.
21 Such policy shall be filed by each utility as part of its
22 tariffs. The policy shall have uniform application and shall be
23 nondiscriminatory.

24 Specific Authority: 366.05(1), F.S.

25 Law Implemented: 366.05(3), F.S.

26 History: Amended 7/29/69, 11/26/80, 12/23/82, 12/28/83, formerly
27 25-6.49. No. 6(b) renumbered to No. 6., No. 6(a) renumbered and
28 amended to subsection (6) (a), subsection (6) (b) added, No. 6(c)
29 renumbered to subsection (7).
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