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January 21, 2000

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

Re: Docket No. 981104-EU

Dear Ms. Bayo:

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

1. Original and fifteen copies of FPL's Post-Hearing Comments; and

2. A disk in Word Perfect 6.0 containing a copy of the Comments.

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

AFA 1
APP Hatton
CAF
CMU
CTR
EAG 1
LEG
MAS 5
OPC
RRR
SEC 1
WAW
OTH

KAH/rl
Enclosures
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ORIGINAL

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: January 21, 2000

FLORIDA POWER AND LIGHT COMPANY'S
POST-HEARING COMMENTS

Florida Power & Light Company ("FP&L"), by and through its undersigned counsel, hereby submits its post-hearing comments in connection with the rule hearing conducted on December 2, 1999 (the "December 2 Hearing"). The December 2 Hearing was conducted with respect to a proposed amendment to Rule 25-6.049, Florida Administrative Code. The amendment would codify the longstanding Commission interpretation of 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 December 2 Hearing was not the first time the Commission solicited public comment regarding the proposed language which is intended to clarify the intent of existing Rule 25-6.049. The proposed amendment at issue in this Docket is identical to the rule amendment proposed by Staff at an Agenda Conference on February 2, 1999. Following that Agenda Conference, public hearings were conducted on March 15, 1999 and May 5, 1999 regarding the proposal. During an Agenda Conference held October 5, 1999, the Commission directed that the rulemaking be restarted because of certain questions regarding compliance with Section 120.54, Florida Statutes, procedural requirements. The proposed amendment was re-published on October 22, 1999 with a new Notice of Rulemaking as directed by Order No. PSC-99-2010-NOR-EU issued October 15, 1999. The December 2 Hearing was held after Valencia Condominium Association and Pointe Management,

Inc., ("Valencia/Pointe Management") two parties who participated during the March 15 and May 5 hearings, submitted a Request for Hearing regarding the republication.

At the December 2 Hearing, the transcripts, exhibits, post-hearing comments, staff recommendation and notice of withdrawal of the initially proposed amendment from the prior proceedings were made part of the record in this Docket. See December 2 Hearing Ex.2. These documents include the Post- Hearing Comments submitted by FP&L on June 18, 1999 (the "June 18 Comments"). A copy of FP&L's June 18 Comments is attached as Exhibit A. With the exception of the one issue discussed below, the June 18 Comments discuss in depth all of the issues raised with respect to the proposed amendment. In addition, the background and facts related to the proposed rule amendment are fully summarized. Rather than belabor the record in this Docket, FP&L adopts and incorporates the positions set forth in its June 18 Comments. FP&L would renew its objection to Valencia/Pointe Management's attempt to convert this rulemaking hearing into another generic investigation of master metering. Staff's Post-Hearing Comments following the last round of hearings also concluded that the attempt to interject issues related to the merits of master metering were more appropriately addressed to the pending generic investigation, Docket No. 990188-EI, rather than this rule amendment proceeding.

The only new evidence introduced at the December 2 Hearing was provided by FP&L - - a certified copy of a September 14, 1988 "Summary of Rule" document filed with the Secretary of State which simply confirms FP&L's position that "[t]he original intent of the rule (25-6.049) was to restrict the instances where master metering could be used and thereby require individual meters wherever possible as a conservation measure." The Commission's Summary of Rule in 1988, like its subsequent March 30, 1988 Order on Declaratory Statement concerning the Redington Towers

buildings, reject the notion that the rule was intended to allow buildings built prior to January 1, 1981 which were not master metered to convert to master metering. Instead, the rule was always intended and has been consistently interpreted to provide a grandfather provision allowing buildings built before January 1, 1981 which were master metered to remain mater metered and not be subject to the individual meeting requirements of the rule.

The only additional issue raised during the December 2 Hearing was whether the proposed amendment contravenes Section 120.54(2)(f), Florida Statutes. That statute provides that "an agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute." This issue was specifically raised before the Commission during the October 5 Agenda Conference. A copy of the transcript of the October 5, 1999 Agenda Conference was introduced as Exhibit 3 during the December 2 Hearing. As reflected on page 28-29 of that Transcript, Valencia/Pointe Management suggested that Section 120.54(2)(f), Florida Statutes, precluded the adoption of the amendment because "this rule is intended to clarify a rule and the rule has this 1981 date in it..." A copy of pages 28-29 of the Transcript is attached as Exhibit B. The Commission quickly rejected this suggestion and directed that rulemaking efforts move forward on the clarifying amendment. The Commission correctly recognized that the proposed amendment merely codifies longstanding Commission interpretation of the existing rule. The proposed amendment seeks to avoid any confusion as to what the Commission's policy is and has been. Consequently, the proposed amendment would not retroactively alter the rights or obligations of any substantially affected party and would only be applied prospectively. Therefore, Section 120.54(2)(f), Florida Statutes is inapplicable.

At the December 2 Hearing, Valencia/Pointe Management provided no further elucidation as to why it believed that Section 120.54(2)(f) precluded adoption of the proposed amendment. Valencia/Pointe Management fails to note that the reference to 1981 appears in the existing rule. More importantly, the proposed amendment does not retroactively change the Commission's interpretation or application of the rule instead, it merely codifies the manner in which the Commission has consistently interpreted and applied the rule.

During the October 5 Agenda Conference, Commissioner Clark noted a more relevant directive of Chapter 120 (the "APA"). Commissioner Clark's questions highlighted that the Commission intends its interpretation of the existing rule to be consistently applied. Thus, by adopting the amendment, the Commission is appropriately following the directives of Section 120.54, Florida Statutes which directs that agency policies of general applicability be adopted as rules as soon as feasible and practicable. Because there is no question as to what the Commission's current policy is, that adoption of the amendment is feasible and practicable and the amendment will more clearly delineate the policy for those potentially affected, this issue is ripe for rulemaking and the failure to proceed potentially runs afoul of the APA.

In sum, the Commission should adopt the proposed clarifying amendment paragraph (5)(a) of Rule 25-6.049, Florida Administrative Code. This adoption of this amendment is completely consistent with the Commission's decision and directive in the Order on Declaratory Statement issued March 30, 1998 in Docket No. 971542-EI. (Exhibit 6 from the March 15 and May 5 Hearings). As recognized by the Commission during the October 5, 1999 Agenda Conference, the amendment is not intended to and does not retroactively alter any existing rights or obligations.

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 21st day of January, 2000:

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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

FLORIDA POWER AND LIGHT COMPANY'S
POST-HEARING COMMENTS

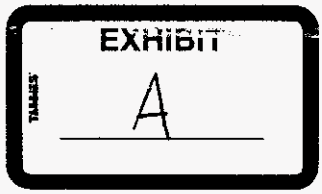
Florida Power & Light Company ("FP&L"), by and through its undersigned counsel, hereby files its post-hearing comments in the above-referenced rulemaking proceeding.

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

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



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

[2]See 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

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[3]Citations 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.

[4]Order 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

[5]Section 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

[6]As 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 Commisison'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 substantative 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.

---

[7]FP&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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CERTIFICATE OF SERVICE

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Bob Valdez
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Ex. 3

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

EXHIBIT
B

want to do.

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

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

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

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

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

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

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