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June 23, 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

RECEIVED-FPSC
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 RECORDS AND REPORTING
 HAND DELIVERY

Re: Docket No. 000643-EU

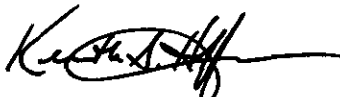
Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company ("FPL"), are the following documents:

1. Original and fifteen copies of FPL's Petition to Intervene and Request for Informal Administrative Hearing; and
2. A disk in Word Perfect 6.0 containing a copy of the Petition.

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

Sincerely,



Kenneth A. Hoffman

A.P. 1
 CAF _____
 CMP _____
 COM _____
 GTR _____
 ECR Charles
 LEG _____
 OPC _____ Enclosures
 PAI _____
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 OTH Stacy

gone b/s/b/r

DOCUMENT NUMBER-DATE

07685 JUN 23 8

FPSC-RECORDS/REPORTING

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement)
regarding Applicability of Individual Meter)
Rule Exemption in Rule 25-6.049(5)(a)3.,)
Florida Administrative Code, to Valencia)
Area Condominium Association, Inc.)
_____)

Docket No. 000643-EU

Filed: June 23, 2000

**FLORIDA POWER & LIGHT COMPANY'S
PETITION TO INTERVENE AND REQUEST FOR
INFORMAL ADMINISTRATIVE HEARING**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel and pursuant to Rules 25-22.039, 28-105.003 and 28-106.201, Florida Administrative Code, and Sections 120.569 and 120.57(2), Florida Statutes (1999), hereby petitions to intervene in opposition to the Petition for Declaratory Statement filed by Valencia Area Condominium Association, Inc. ("Valencia") in the above-referenced docket and requests that the Commission conduct an informal administrative hearing to consider and resolve the questions of law raised in Valencia's Petition which potentially affect the substantial interests of FPL. In support of its Petition to Intervene and Request for Informal Administrative Hearing, FPL states as follows:

1. The name and the address of the affected agency is the Florida Public Service Commission ("Commission"), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32302. The Commission's file or identification number is Docket No. 000643-EU.

2. The name and address of the Intervenor is:

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

DOCUMENT NUMBER-DATE

07685 JUN 23 8

FPSC-RECORDS/REPORTING

3. For purposes of this proceeding, FPL's address and telephone number should be considered those of its undersigned counsel and all correspondence, documents, pleadings, motions, staff recommendation and orders filed, entered or served in this proceeding should be provided to the following on behalf of FPL:

Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

4. FPL provides electrical service to the individual condominium units at Valencia in accordance with FPL's duly filed and Commission approved tariffs. On May 25, 2000, Valencia, a condominium facility, filed a Petition for Declaratory Statement ("Petition") asking the Commission "... to issue a declaratory statement determining that the individual meter rule exemption in Rule 25-6.049(5)(a)3., F.A.C., applies to Valencia so that it may have a master meter installed (by FPL)." Under paragraph (3) of Rule 25-6.049(5)(a) (the "Rule"), individual electric meters are not required:

3. 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. Valencia has never submitted a formal request to FPL to convert its condominium units from individual residential meters to master metering on the grounds that the condominium

units at Valencia qualify for master metering under paragraph (3) of the Rule. Had Valencia submitted and followed through on a request for master metering under paragraph (3) of the Rule, FPL would have had the opportunity to consider any and all information provided by Valencia in support of its request and would have been able to either accept or deny the request. If FPL denied the request, Valencia could have then filed a complaint against FPL with the Commission seeking reversal or modification of the decision.

6. Valencia has bypassed the standard practice of requesting the serving utility to determine whether Valencia qualifies for master metering under paragraph (3). Instead, Valencia seeks a direct determination from the Commission based on the "facts" alleged and assumed in its Petition for Declaratory Statement. The procedural approach chosen by Valencia does not provide a viable mechanism for resolving any factual issues regarding Valencia's allegations that it is eligible for master metering under subsection (3) of the Rule. Nonetheless, FPL seeks to participate and to be heard in this proceeding on the questions of law arising out of the "facts" alleged in Valencia's Petition.

7. Under Rule 25-22.039, Florida Administrative Code, an intervenor is entitled to participate in a Commission proceeding if the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478 (Florida 2nd DCA 1981). Valencia's Petition acknowledges that the Valencia residents receive their electric service from FPL. As such, FPL's substantial interests are directly and immediately affected by any Commission determination of the manner in which Valencia's condominium unit owners and residents should receive service. Although the nature of the relief requested by Valencia, i.e., a Commission order determining that

the individual condominium units at Valencia qualify for an exemption from the individual metering requirement pursuant to paragraph (3) of the Rule, is best addressed through a formal administrative hearing, Rule 28-105.003, Florida Administrative Code, limits the Commission to conducting an informal administrative hearing.

8. Recent decisions of Florida appellate courts recognize that the 1996 amendments to Section 120.565, Florida Statutes, providing, among other things, that the agency provide notice of the filing of a petition for a declaratory statement and the resolution of the petition in the Florida Administrative Weekly¹

... accounts for the possibility that a declaratory statement may, in a practical sense, affect the rights of other parties and allows any substantially affected party to intervene in the declaratory statement proceeding before the agency.

See, 1000 Friends of Florida, Inc. v. State of Florida, Department of Community Affairs, 25 Fla.L.Weekly D283, 284 (Florida 1st DCA, January 25, 2000), quoting Florida Dept. of Business & Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach, 24 Fla.L.Weekly S520, S524-525 (Fla. Nov. 4, 1999) and Chiles v. Dept. of State, Division of Elections, 711 So.2d 151, 155 (Fla. 1998). The right to intervene and participate in a declaratory statement proceeding as discussed and confirmed in the Chiles, Investment Corp., and 1,000 Friends decisions provides protection for "any other concerned parties"² such as parties similarly situated to the party seeking the declaratory statement who would be affected by the precedent established by the declaratory statement. In the present case, the substantial interests of FPL go well beyond that

¹See Ch. 96-159, Sec. 17, Laws of Florida.

²Chiles, 711 So.2d at 155.

of a similarly situated "concerned" party who wishes to shape the outcome of an important precedent. Here, FPL's substantial interests could be affected not only by the precedent which would result from the granting of Valencia's Petition but also by a potential request for a change in service by FPL to Valencia residents. Valencia's Petition seeks a Commission order which, at least according to Valencia, would determine the conduct of FPL. FPL denies that this proceeding, which is not the forum for resolving disputed issues of fact, can conclusively determine the type of service to be provided to Valencia. A declaratory statement is "not the appropriate means for determining the conduct of another person..."³ and cannot be used to circumvent a right to a formal administrative hearing on factual issues that may be in dispute.

9. Accordingly, FPL submits that the numerous disputed issues of material fact arising out of Valencia's Petition which potentially determine the conduct of FPL make the request posed by Valencia inappropriate for a declaratory statement and require denial of Valencia's Petition on procedural grounds. At minimum, should the Commission entertain and rule on Valencia's Petition, the Commission should abide by Rule 28-105.003, Florida Administrative Code, and expressly state that it takes no position with regard to the validity of the "facts" alleged in Valencia's Petition.

10. Moreover, Valencia's request for a declaratory statement from the Commission that it is eligible for master metering under paragraph 3 of the Rule contravenes the direct assertion made by Valencia in a related rule challenge filed by Valencia. The question presented by Valencia in its Petition for Declaratory Statement is whether it is eligible for master metering under paragraph (3) of Rule 25-6.049(5)(a). Yet, Valencia fails to disclose that it has filed a rule challenge petition with

³See Fla. Admin. Code R. 28-105.001.

the Division of Administrative Hearings challenging the Commission's proposed clarification to a different section of the Commission's individual metering rule where Valencia has stated, without equivocation, that

it is eligible for a master meter under the existing rule, pursuant to the exemption in Rule 25-6.049(5)(a)3, F.A.C.

See Valencia's Petition for Administrative Determination of Invalidity of Proposed Rule filed in DOAH Case No. 00-1752RP, a copy of which is attached hereto as Exhibit A. In other words, Valencia has represented to an Administrative Law Judge that it is entitled to a master meter under paragraph (3) of the Rule. There is no indication in the allegations of Valencia's rule challenge petition that it is necessary for the Commission to determine that Valencia is so eligible.

11. Subject to further development of its positions, FPL states as ultimate facts and conclusions of law that Valencia's condominium units do not qualify for the individual metering requirement under paragraph (3) of Rule 25-6.049(5)(a), Florida Administrative Code.

WHEREFORE, FPL respectfully requests that the Commission:

a. Enter an order granting FPL's Petition to Intervene and authorizing FPL to participate with full party rights in this proceeding;

b. Conduct an informal administrative hearing concerning Valencia's allegations that it qualifies for the exemption from the individual metering requirement set forth in Rule 25-6.049(5)(a)3., Florida Administrative Code, based on and without taking a position on the validity of the "facts" alleged in Valencia's Petition for Declaratory Statement; and

c. Enter a final order determining that:

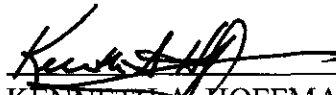
(1) the relief sought by Valencia is not appropriate for a declaratory statement; and

(2) that based on the "facts" alleged in Valencia's Petition, Valencia does not qualify for the exemption from the individual metering requirement set forth in Rule 25-6.049(5)(a)3., Florida Administrative Code, and is otherwise not eligible for a master meter under Rule 25-6.049(5)(a), Florida Administrative Code.

d. Alternatively, should the Commission grant Valencia's Petition for Declaratory Statement based on the "facts" alleged therein, FPL requests that the final order clearly and expressly state that the Commission's determination:

- (1) is not based on the validity or invalidity of the "facts" alleged in Valencia's Petition;
- (2) has no precedential effect on any subsequent attempt or request by Valencia to secure a master meter from FPL; and
- (3) is without prejudice to FPL's legal right to raise disputed issues of material fact and challenge Valencia's request for an exemption from the individual metering requirement set forth in Rule 25-6.049(5)(a), Florida Administrative Code, pursuant to the formal administrative hearing procedures set forth in Sections 120.569 and 120.57(1), Florida Statutes.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.

J. STEPHEN MENTON, ESQ.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302

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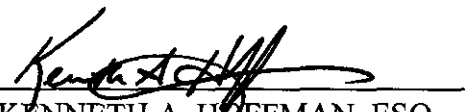
Attorneys for Florida Power & Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail this 23rd day of June, 2000, to the following:

Jon C. Moyle, Jr., Esq.
Cathy M. Sellers, Esq.
Moyle, Flanigan, Katz, Kolins,
Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301

Richard Bellak, Esq.
Associate General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 301F
Tallahassee, FL 32399-0850


KENNETH A. HOFFMAN, ESQ.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

VALENCIA AREA CONDOMINIUM
ASSOCIATION INC.,

Petitioner,

vs.

DOAH Case No. 00-1752 RP

FLORIDA PUBLIC SERVICE COMMISSION,

Respondent.

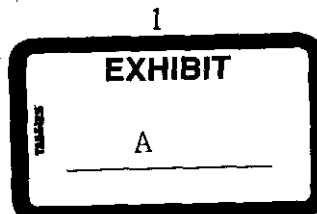
PETITION FOR ADMINISTRATIVE DETERMINATION
OF INVALIDITY OF PROPOSED RULE

Petitioner, Valencia Area Condominium Association, Inc. (hereafter "Valencia"), pursuant to Sections 120.56(1) and (2), Florida Statutes (1999), hereby requests an administrative determination of the invalidity of a rule proposed by the Florida Public Service Commission to amend Rule 25-6.049(5)(a), Florida Administrative Code. In support of this Petition, Valencia states the following:

Identification of the Parties

1. The name and address of the affected agency is the Florida Public Service Commission (hereafter "Commission" or "PSC"), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and the Commission's file or identification number is Docket No. 981104-EU.

2. Petitioner, Valencia Area Condominium Association, Inc. (hereafter "Valencia"), is the residential association for condominium buildings known as Valencia A-I. Valencia's



address is 7000 W. Atlantic Avenue, Delray Beach, Florida 33446, and its telephone number is (561) 499-3335. For purposes of this proceeding, Valencia's address and telephone number should be considered those of its undersigned attorneys.

Identification of the Challenged Rule

3. This Petition challenges the validity of the Commission's proposed amendment to Rule 25-6.049, F.A.C., entitled Measuring Customer Service, and specifically to the proposed amendment to Rule 25-6.049(5)(a), F.A.C., to strike existing rule language and add a new paragraph 1. to the rule.

4. The proposed amendment to Rule 25-6.049(5)(a), F.A.C., was noticed by publication in Volume 25, No. 42, *Florida Administrative Weekly*, dated October 22, 1999. A copy of the proposed rule amendment and notice is attached hereto and incorporated as Exhibit "A." Following publication of the proposed rule, a hearing was held on December 2, 1999 pursuant to Section 120.54(3)(c)1., F.S. The Commission voted to adopt the rule as proposed, with a modification that was supported by Commission staff and the Legal Environmental Assistance Foundation. The proposed amendment to Rule 25-6.049(5)(a), F.A.C., thus was modified, and that modification was noticed pursuant to a Notice of Change published in Volume 26, No. 14, *Florida Administrative Weekly*, dated April 7, 2000. A copy of the Notice of Change is attached hereto and incorporated as "Exhibit B."

5. This Petition is filed as provided in Section 120.56(2)(a), F.S., which states in pertinent part that any "substantially affected person may seek an administrative determination of the invalidity of any proposed rule by filing a petition seeking such a determination with the division within ... 20 days after the date of the publication of the notice required by s.

120.54(3)(d), F.S.”

**Facts Demonstrating that Valencia is Substantially Affected by the
Proposed Amendment to Rule 25-6.049(5)(a), F.A.C.**

6. Valencia is the residential association for the residents of Valencia A-I. As such, Valencia represents the residence-related interests, including related consumer interests, of the residents of Valencia A-I, all of whom are members of Valencia.

7. Valencia’s members, the great majority of whom live on fixed income, receive their electric service from Florida Power & Light Company. Currently, Valencia’s members’ electric service is measured by individual meters in each of the residential units. Accordingly, Valencia’s members’ monthly electric bills are greater -- in many cases, substantially greater -- than if electric services provided to the units in Valencia A-I were measured by a master meter, as is currently allowed under the individual meter exemption in effect pursuant to Rule 25-6.049(5)(a)3., F.A.C.

8. The proposed amendment to Rule 25-6.049(5)(a), to strike existing rule language in Rule 25-6.049(5)(a) and to add new paragraph 1. would have the effect of rendering Valencia ineligible for master metering because Valencia A-I was constructed prior to 1981 and currently does not have a master meter in place, even though it is eligible for a master meter under the existing rule, pursuant to the exemption in Rule 25-6.049(5)(a)3., F.A.C. The proposed rule would preclude Valencia’s members from realizing savings that could be achieved through the conversion from individual electric meters in the residents’ units to a master meter for the Valencia A-1 buildings. This would effect a significant adverse impact on Valencia’s members. Accordingly, a substantial number -- in this case, all -- of Valencia’s members are substantially affected by the proposed amendment to Rule 25-6.049(5)(a), F.A.C.

9. As previously stated, Valencia represents the interests, including residential consumer-related interests, of its members, all of whom are residents of Valencia A-I. The proposed rule amendment will significantly impact the monthly electricity charges to which Valencia's members may be subject. As such, the subject matter of the proposed rule amendment is within Valencia's general scope of interest and activity.

10. Moreover, because Valencia's members are similarly situated with respect to the proposed rule's effect on them, it is cost-effective, efficient, and desirable for Valencia to represent its members and to receive the relief it has requested in this case, which is invalidation of the proposed amendment to Rule 25-6.049(5)(a), F.A.C.

11. Accordingly, under Florida Home Builders Ass'n v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), Valencia has standing in this case on behalf of its members, who are substantially affected by the individual meter rule, to challenge the proposed amendments to Rule 25-6.049(5)(a), F.A.C.

12. Moreover, the Commission itself previously determined Valencia's interests were substantially affected for purposes of having standing to intervene and participate as a party in the Commission's generic investigation into the requirement for individual electric metering by investor-owned electric utilities pursuant to Rule 25-6.049(5)(a), F.A.C., the same rule the proposed amendment to which is being challenged in this Petition. Order Granting in Part and Denying in Part Petition for Intervention, Order No. PSC-99-1474-PCO-EI, Docket No. 990188-E1, July 29, 1999). A copy of the order finding Valencia had standing is attached as Exhibit C.

**Facts Demonstrating Invalidity of Proposed Rule
and Entitling Valencia to the Relief Requested**

13. The proposed amendment to Rule 25-6.049(5)(a), F.A.C., is an invalid exercise of delegated legislative authority, as that term is defined in Section 120.52(8), F.S., for the following reasons:

a. The proposed rule enlarges, modifies or contravenes a specific provision of the law implemented by the proposed rule. Specifically, Section 366.05(3), F.S., authorizes the Commission only 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 versus master metering. The Legislature has not granted the Commission specific authority to adopt the proposed rule, and such specific authority is required pursuant to Section 120.536(1), F.S.

b. The proposed rule is arbitrary or capricious because no rational basis has been established or demonstrated to suddenly begin disallowing conduct -- conversion of buildings on which construction commenced prior to January 1, 1981 from individual metering to master metering -- that heretofore has been authorized for years under the existing rule.

c. The proposed rule is not supported by competent substantial evidence. The Commission's ostensible policy reason for the proposed amendment to Rule 25-6.049(5)(a), as stated in its statement of estimated regulatory costs, is that "individual meters would encourage conservation." There is little to no evidence in the record supporting this premise. The Commission has not performed any studies or otherwise provided any competent substantial evidence to demonstrate that requiring individual meters, rather than allowing master meters,

would result in energy conservation.

e. The Commission has exceeded its grant of rulemaking authority, in that it is attempting to adopt a retroactive rule in violation of Section 120.54(1)(f), F.S. The plain language of the existing rule provides an exemption from individual metering for specified types of buildings if construction commenced prior to 1981; the rule does not impose any other requirements on these buildings in order to be eligible for the exemption. The proposed rule amendment would impose a new and additional limitation on the use of master meters for buildings constructed prior to 1981 -- specifically, that the building must already have a master meter as of the effective date of the rule amendment. Therefore, buildings on which construction commenced prior to 1981 but that do not yet have a master meter as of the rule amendment's effective date would no longer be eligible for master metering. As such, the proposed rule goes far beyond mere "clarification" of the existing rule, and instead reaches back in time to capture buildings constructed before 1981 for purposes of subjecting them and their residents to a new requirement that heretofore did not apply. The retroactive and inequitable effect of the proposed rule amendment becomes particularly clear when one considers that buildings built before 1981 that already use master meters may continue to use them, while buildings meeting the exact same construction date requirements that are not currently using master meters could not use master meters once the rule becomes effective. This imposes a new requirement on buildings not previously subject to that requirement. For these reasons, the proposed rule amendment contravenes Section 120.54(1)(f), F.S., which expressly provides that "[a]n agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute." Nothing in Section 366.05, F.S., or any other statute expressly

authorizes the Commission to retroactively impose new rule requirements to the use of master metering for buildings built before 1981.

f. The proposed rule imposes regulatory costs on regulated persons, including Valencia and its members, that could be reduced by the adoption of less costly alternatives, including not adopting the proposed rule. As discussed in paragraph c., above, there is no competent basis for concluding that the adoption of the proposed rule will achieve the purported energy conservation objectives of the rule, so that not adopting the rule will achieve the same result, at substantially lower cost to regulated persons.

14. Valencia states, as ultimate fact, that the proposed rule amendment to Rule 25-6.049(5)(a), F.A.C., is an invalid exercise of delegated legislative authority, as that term is defined in Section 120.52(8), F.S., and therefore Valencia is entitled to the relief requested herein, including invalidation of the proposed rule, pursuant to Section 120.56(1) and (2), F.S., and Section 366.05, F.S., the authority of which is exceeded by the proposed rule. Questions of law and fact addressed herein should be determined in Valencia's favor.

Disputed Issues of Fact or Law

15. The disputed issues of fact or law include the following:

- a. Whether the proposed rule amendment enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by Section 120.54(3)(a)1., F.S.
- b. Whether the proposed rule amendment is arbitrary or capricious.
- c. Whether the proposed rule amendment is supported by competent substantial evidence.

d. Whether the Commission has exceeded its grant of rulemaking authority, citation to which is required by Section 120.54(3)(a)1., F.S.

e. Whether the proposed rule amendment imposes regulatory costs on regulated persons, including Valencia, that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

Demand for Relief

WHEREFORE, Petitioner, Valencia, respectfully requests that:

a. A hearing be conducted on this Petition in accordance with Section 120.56, F.S., and Sections 120.569, and 120.57, F.S.;

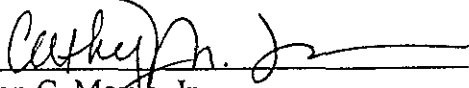
b. The Administrative Law Judge determine that the proposed rule amendment constitutes an invalid exercise of delegated legislative authority;

c. The Administrative Law Judge enter a Final Order invalidating the proposed rule amendment at issue in this Petition;

d. The Administrative Law Judge award attorney fees and reasonable costs to Valencia; and

e. Valencia be granted such other relief as may be deemed appropriate.

Respectfully submitted this 26th day of April, 2000.



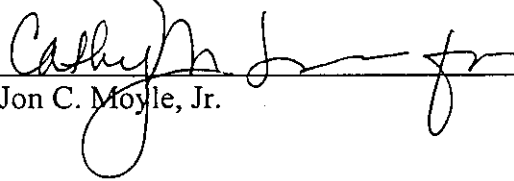
Jon C. Moyle, Jr.
Florida Bar No. 727016
Cathy M. Sellers
Florida Bar No. 784958
MOYLE, FLANIGAN, KATZ, KOLINS
RAYMOND & SHEEHAN, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

(850) 681-3828 - Telephone
(850- 681-8788 - Facsimile
Attorneys for Petitioner,
Valencia Area Condominium Association Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing have been furnished by hand delivery to Clerk, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida, 32399, and one copy was furnished by hand delivery to the Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0862, this 26th day of April, 2000.

Respectfully submitted,



Jon C. Moyle, Jr.

System as vocational preparatory. Satisfactory completion of such instruction shall be recognized by the award of units of measure called vocational preparatory credit.

(11)(7) Lifelong learning instruction. Each community college shall provide instructional activities to address community social and economic issues related to health and human relations, government, parenting, consumer economics, and senior citizens. Such instructional activities shall be classified in the Community College Management Information System as lifelong learning, a noncredit classification.

(12)(8) Recreational and leisure time instruction. Each community college shall provide instructional activities to develop recreational or leisure time skills. Such instructional activities shall be classified in the Community College Management Information System as recreational and leisure time, a noncredit classification.

(13)(9) These provisions shall not prevent community colleges from conferring honorary degrees, certificates, or diplomas.

Specific Authority ~~229.053(1)~~; 240.325 FS. Law Implemented 228.041(1)(2)(c)(3), 229.551(1)(c), 239.105(s), 239.205, ~~239.243, 239.304, 240.115(1)(a)(6), 240.117(2), 240.301(3)(a)(b), 240.325 FS. History—Formerly 6A-8.50, Repromulgated 12-19-74, Amended 8-27-84, 8-29-85, Formerly 6A-14.30, Amended 5-14-91, 11-10-92, 5-2-95, 2-13-96.~~

NAME OF PERSON ORIGINATING PROPOSED RULE: Sydney H. McKenzie, III, General Counsel, State Board of Community Colleges

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: J. David Armstrong, Jr., Executive Director, Community College System

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 4, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 31, 1998

DEPARTMENT OF TRANSPORTATION

RULE CHAPTER TITLE: Minority Business Enterprise Contracting

RULE CHAPTER NO.: 14-101

RULE TITLES: Definitions

RULE NOS.: 14-101.001

Purpose and Scope

14-101.002

Goal

14-101.003

Procedures

14-101.004

PURPOSE AND EFFECT: Rule Chapter 14-101 is obsolete. Department of Labor and Employment Security Rule Chapter 38A-20, Florida Administrative Code, applies to all state agencies. Therefore, the Department of Transportation does not have the statutory authority to adopt separate rules in this area.

SUMMARY: Rule Chapter 14-101 is obsolete.

SPECIFIC AUTHORITY: 287.0947(2), 20.05(5), 344.044(2) FS.

LAW IMPLEMENTED: 287.0947, 288.703 FS.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No Statement of Estimated Regulatory Cost has been prepared.

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.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND HELD.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: James C. Myers, Administrative and Management Support Level IV, Florida Department of Transportation, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0458

THE FULL TEXT OF THE PROPOSED RULES IS:

14-101.001 Definitions.

Specific Authority 287.0947(2), 20.05(5), 344.044(2) FS. Law Implemented 287.0947, 288.703 FS. History—New 12-20-89, Repealed.

14-101.002 Purpose and Scope.

Specific Authority 287.0947(2), 344.044(2) FS. Law Implemented 287.0947, 287.0945(1) FS. History—New 12-20-89, Repealed.

14-101.003 Goal.

Specific Authority 287.0947(2), 344.044(2) FS. Law Implemented 287.0947, 287.042(4)(f) FS. History—New 12-20-89, Repealed.

14-101.004 Procedures.

Specific Authority 287.0947(2), 344.044(2) FS. Law Implemented 287.0947 FS. History—New 12-20-89, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULES: Art Wright, Purchasing Officer

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE IS: Thomas F. Barry, Jr., P. E., Secretary

DATE PROPOSED RULES APPROVED BY AGENCY HEAD: October 8, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Not applicable. There is no requirement to publish a Notice of Proposed Rule Development for a rule repeal.

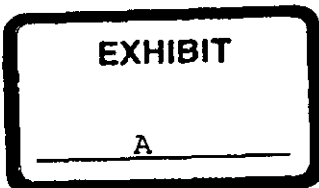
PUBLIC SERVICE COMMISSION

DOCKET NO. 981104-EU

RULE 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 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) 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.

THE FULL TEXT OF THE PROPOSED RULE IS:

64B7-26.003 Massage Establishment Operations.

(1) No change.

(2) Personnel. A licensed massage therapist must be on the premises of the establishment if a client is in a treatment room for the purpose of receiving massage therapy.

(3) through (4) No change.

Specific Authority 480.035(7), 480.043(2) FS. Law Implemented 480.043(2) FS. History—New 11-27-79, Amended 10-13-81, 9-10-84, 9-25-85, Formerly 21L-26.03, Amended 4-30-87, 6-12-89, 8-15-89, 5-31-92, 11-2-92, Formerly 21L-26.003, 61G11-26.003, Amended 2-16-99, 11-4-99.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Board of Massage Therapy

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Board of Massage Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: October 28, 1999

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 17, 2000

Section III
Notices of Changes, Corrections and
Withdrawals

PUBLIC SERVICE COMMISSION

DOCKET NO. 981104-EU

RULE NO.: 25-6.049
RULE TITLE: Measuring Customer Service
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 25, No. 42, October 22, 1999, issue of the Florida Administrative Weekly:

The following sentence shall be added to the end of paragraph (5)(a) in Rule 25-6.049:

This paragraph shall not be interpreted to authorize conversion of any such facilities from individual metering to master metering.

AGENCY FOR HEALTH CARE ADMINISTRATION

Health Facility and Agency Licensing
RULE CHAPTER NO.: 59A-25
RULE CHAPTER TITLE: Minimum Standards for Home
Medical Equipment Providers

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made in the above cited rule as published in Vol. No. 26, Florida Administrative Weekly, January 21, 2000, Purchase Order Number H00973. In response to comments received from the Joint Administrative Procedures Committee the following changes have been made.

In 59A-25.002(3)(a) the following sentences are deleted "However, in the first year of implementation, half of the providers will be given an application for one-year licenses. Those given one-year applications will pay one half of the fees, \$150 for licensing and \$200 for inspection."

In 59A-25.002(4) the following sentence is deleted "An application for initial licensure shall be made on forms prescribed by AHCA, which is referred to as the Home Medical Equipment Provider Licensure Application that is AHCA form number 3110-1005, Nov. 99."

In 59A-25.002(4) the following sentences are added "An application for initial licensure shall be made on forms prescribed by AHCA. The application package contains the following forms that are incorporated by reference as part of this rule:

(a) Home Medical Equipment Provider Application for Licensure, form number AHCA 3110-1005; March, 2000;

(b) Affidavit of Good Moral Character, form number AHCA 3110-0001, (Attachment A);

(c) Affirmation of Compliance with Screening Requirements, form number 3110-1006, March, 1999, (Attachment B);

(d) Request for Level 1 Criminal History Check, form number, AHCA 3110-0002, Revised June, 1998;

(e) Florida Abuse Hotline Information System Background Check, form number, AHCA 3110-0003, Revised July 1998; and,

Federal Bureau of Investigation, United States Department of Justice finger print card, form number, FD-258, Revised 12-29-82." In 59A-25.003(2) the phrase "includes but is not limited to" is deleted.

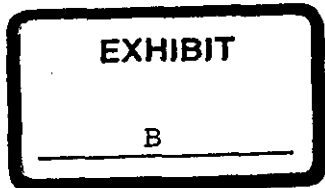
AGENCY FOR HEALTH CARE ADMINISTRATION

Medicaid
RULE NO.: 59G-4.130
RULE TITLE: Home Health Services
NOTICE OF CHANGE

Notice is hereby given that the following changes have been made in the above cited rule as published in Vol. 26, No. 8, Florida Administrative Weekly, February 25, 2000. These changes are in response to written comments received prior to the public hearing date.

The following change was made to the Home Health Services Coverage and Limitations Handbook, March 2000, which is being incorporated by the reference in the rule.

On page 1-10, we deleted the following: "Recipient's Acknowledgment of Services: The recipient or the recipient's family must acknowledge in writing and verify that specific home health service(s) were received on each date of service(s) and the specified time."



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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|---|---|
| In re: Generic investigation into the requirement for individual electric metering by investor-owned electric utilities pursuant to Rule 25-6.049(5)(a), F.A.C. | DOCKET NO. 990188-EI ORDER NO. PSC-99-1474-PCO-EI ISSUED: July 29, 1999 |
|---|---|

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR INTERVENTION

By Petition filed June 22, 1999, Valencia Area Condominium Association, Inc. (Valencia) and Point Management, Inc. (Point) petitioned for leave to intervene in this proceeding. There has been no response filed in opposition to this request.

I. RELIEF REQUESTED

A. POINT

Point asserts that it is a management company for the Kings Point communities. Point contends that it is responsible for managing community property, including buildings for which construction was commenced prior to January 1, 1981. Point maintains that it manages condominium association property and is in the business of managing condominium buildings. Point asserts that it manages properties which receive electrical service metered and billed by Florida Power & Light Company (FPL) and other investor-owned utilities. Point asserts that any Commission decision affecting the manner in which electric service is metered and billed under Rule 25-6.049(5)(a), Florida Statutes, will affect its substantial interests because the properties Point manages receive electric service from investor-owned utilities.

B. VALENCIA

Valencia asserts that it is an association formed to represent the owners of units in the condominium buildings known as Valencia A through I. Valencia maintains that it represents the interests of the owners of these buildings who have electric service metered and billed by FPL. Valencia contends that it and its members' substantial interests will be affected by any Commission decision in this docket. Valencia asserts that it and its members will be directly affected by any Commission decision affecting the manner in which the units owned by Valencia's members will be metered and billed for electric usage.

II. STANDING AS APPLIED TO POINT MANAGEMENT, INC.

Following Florida standing law as it was expressed in AgriCo Chem. Co. v. Dept. of Env't'l. Regulation, 406 So. 2d 478 (Fla. 2d

DCA 1981), rev. denied 415 So. 2d 1359 (Fla. 1982), petitioners to intervene in a docket must have standing. In order to have standing, petitioners must have a substantial interest in the outcome of the proceeding. To have a substantial interest in the outcome of the proceeding, the petitioner must show that it is entitled to participate as a matter of constitutional or statutory right or pursuant to Commission rule, or that its substantial interests are subject to determination or will be affected through the proceeding. Point has not alleged that it is entitled to intervene as a matter of right or pursuant to Commission rule. It is appropriate, therefore, to apply the two-pronged test for "substantial interest" set forth in Agrico. According to the Agrico test, a party must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482.

With respect to the first prong of the test, Point's petition only contains allegations that it "manages condominium association property and is in the business of managing condominium buildings." (Petition at 2) Point further alleges that it "manages properties that receive electric service that is metered and billed by, among others, Florida Power & Light." (Petition at 2). Point alleges no nexus between its management activities and the receipt of bills for electricity usage by owners of the properties it manages.

After consideration, I find that Point has not shown that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Point has merely alleged that it manages property that receives electricity from various companies.

With respect to the second prong of the Agrico test, I find that the Point's arguments contained in the petition allege no injury designed to be protected by proceedings to investigate the requirement for individual electric metering by investor-owned electric utilities pursuant to Rule 25-6.049(5)(a), Florida Administrative Code.

Based on the foregoing, Point Management, Inc.'s, portion of the Petition to Intervene in these proceedings is denied.

II. STANDARD FOR ASSOCIATION STANDING AS APPLIED TO VALENCIA AREA CONDOMINIUM ASSOCIATION, INC.

Florida Homebuilders Ass'n. v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), held that an association's standing to bring a rule challenge under Section 120.56(1), Florida Statutes, requires the showing that the association and its members

were "substantially affected" by the challenged rule. This test for association standing was extended in Farmworker Rights Org. v. Dept. of Health, 417 So. 2d 753 (Fla. 1st DCA 1982). The Farmworker case established that there is no difference between participating in a rule challenge and participating in a Section 120.57, Florida Statutes, hearing for the purposes of determining standing.

Subsequently, the First District Court of Appeal recognized that, in the context of standing, there can be a difference between the concepts of "substantially affected" persons and persons whose "substantial interests" are affected by an agency's action. The court suggested that Farmworker is not applicable to every case in which an association seeks to participate in a Section 120.57 proceeding. Florida Soc. of Ophthalmology supra. Florida Soc. of Ophthalmology appears aimed at the first prong of the Florida Homebuilders Ass'n. test which provides that an association must demonstrate that a substantial number of its members are substantially affected by the agency's action. The Court does not address the applicability of the second and third prongs of Florida Homebuilders, relating to the requirement that the subject matter of the proceeding be within the association's general scope of interest and activity; and, that the relief requested is of the type appropriate for an association to receive on behalf of its members.

Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology, when read together, suggest that the appropriate test for association standing in this case is whether Valencia's petition, has demonstrated: (1) that a substantial number of its members have substantial interests which are affected by the present action; (2) that the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) that the relief requested is of the type appropriate for an association to receive on behalf of its members.

A. THE FIRST PRONG OF THE ASSOCIATIONAL STANDING TEST

When Valencia's petition is read under Agrico, the Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology cases, it appears to meet the tests outlined in Agrico, Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology. Under the first prong of the Florida Homebuilders Ass'n. test, associations must meet the Agrico test outlined above. Valencia has demonstrated in its petition that it and its members will suffer injury in fact which is of sufficient immediacy to entitle them to a section 120.57 hearing. Valencia's members receive electric service from FPL. Valencia asserts that "the vast majority" of its members are

elderly and live on fixed incomes. Any change in the manner of metering and billing Valencia's members for electricity would be disruptive, and very likely could cause them confusion and added expense. Valencia has also shown that its members have no other forum to exercise their rights than the present one. The substantial injury accruing to Valencia's members is of a type or nature which this proceeding is designed to protect. We believe Valencia has demonstrated that its members, who are customers of FPL and whose situation would subject them to any change in the manner in which their electricity is metered and billed, will be affected by our decision in this docket to a degree and in a nature which passes the rigors of the Agrico test.

B. THE SECOND PRONG OF THE ASSOCIATIONAL STANDING TEST

We believe that Valencia has shown: (1) "a zone of interest personal to [its members] that would be invaded" by this proceeding under Section 366.05, Florida Statutes, and Rule 25-6.049(5)(a), Florida Administrative Code. We believe that this would rise to the substantial interest test. Valencia Area Condominium Association, Inc.'s members stand to have changed the manner in which their electricity is metered and billed to them.

This generic investigation into the requirement for individual electric metering under Section 366.05, Florida Statutes, and Rule 25-6.049(5)(a), Florida Administrative Code, is within the association's general scope of interest and activity. The Association asserts that it exists only to represent the interests of the owners of the condominium units. The owners of these units take electric service from an investor-owned electric utility and are thereby the very population any change in the requirement for individual metering would target. Valencia, as these owners' voice, has as its general duty to see that the interests of its members are adequately represented wherever they are to be determined.

C. THE THIRD PRONG OF THE ASSOCIATIONAL STANDING TEST

The third prong of the Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology test for association standing, determining that the relief requested is of the type appropriate for an association to receive on behalf of its members, has also been met here. Valencia merely requests to participate as an intervenor in this docket to express the concerns of its members over an issue that impacts them directly as the group targeted by any change in the manner in which electricity is metered and billed for their units in their condominium buildings. We believe that this type of relief is appropriate for Valencia to receive on behalf of its members.

ORDER NO. PSC-99-1474-PCO-EI
DOCKET NO. 990188-EI
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Based on the foregoing, Valencia's portion of the Petition for Leave to Intervene is granted.

It is therefore

ORDERED by the Florida Public Service Commission that the portion of the Petition for Leave to Intervene filed by Valencia Area Condominium Association, Inc., is granted and the portion of the Petition for Leave to Intervene filed by Point Management, Inc., is denied. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

Valencia Area Condominium Association, Inc.
7000 West Atlantic Avenue
Delray Beach, Florida 33446

and

Mr. Jon C. Moyle, Esquire
Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan, P.A.
210 South Monroe Street
Tallahassee, Florida 32301

By ORDER of the Florida Public Service Commission this 29th day of July, 1999.

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

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

(S E A L)

GAJ

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

ORDER NO. PSC-99-1474-PCO-EI
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should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.