BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaints by Ocean Properties, Ltd., J.C. Penney Corp., Target Stores, Inc., and Dillard's Department Stores, Inc. against Florida Power & Light Company concerning thermal demand meter error.	DOCKET NO. 030623-EI ORDER NO. PSC-05-0226-FOF-EI ISSUED: February 25, 2005

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
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APPEARANCES:

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On behalf of Florida Power & Light Company

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On behalf of the Florida Public Service Commission

FINAL ORDER RESOLVING COMPLAINTS

BY THE COMMISSION:

On November 19, 2003, this Commission issued Order No. PSC-03-1320-PAA-EI in this docket as proposed agency action to resolve complaints made by Southeastern Utility Services, Inc. ("SUSI") against Florida Power & Light Company ("FPL") on behalf of six commercial retail electric customers concerning inaccuracies in the customers' thermal demand meters. SUSI, four of the customers it represents (Ocean Properties, Ltd., J.C. Penney Corp., Dillards Department Stores, Inc., and Target Stores, Inc., collectively referred to as "Customers"), and FPL protested the Commission's proposed agency action and requested a formal administrative

hearing on these matters.[1] Consequently, this matter was set for a formal administrative hearing which was held on November 4, 2004.

At hearing, we heard testimony from witnesses presented by FPL and Customers and from one Staff witness. FPL and Customers filed post-hearing briefs on December 16, 2004. Based on our review of the evidence adduced at hearing and the arguments presented in the parties' post-hearing briefs, we disposed of the issues in this docket[2] by vote at our February 1, 2005, Agenda Conference. This order memorializes our decision.

I. Meters Eligible for Refund

Fourteen type 1V thermal demand meters used by FPL to serve Customers are at issue in this proceeding. Each of these meters is used to measure two separate components upon which Customers' bills are based: an energy (kilowatt-hours, kWh, or watthour) component and a demand (kilowatt or kW) component. From late 2002 through early 2003, FPL removed these meters from service, tested each meter, and replaced each meter with an electronic demand meter.[3] Customers contend that refunds are due for thirteen of these meters, one due to inaccurate measurement of energy and the remaining twelve due to inaccurate measurement of demand.

We are first presented with the question of determining, pursuant to our rules, the appropriate method of testing the accuracy of the thermal demand meters subject to this docket and, in turn, which of the 14 meters subject to this docket are eligible for a refund. With respect to determining the appropriate method of testing the accuracy of the watthour component of these meters, our rules are clear. Based on testing performed pursuant to our rules, the parties agree that the one meter for which Customers seek a refund based on erroneous watthour registration fails the accuracy requirements of our rules and is eligible for a refund. With respect to determining the appropriate method of testing the accuracy of the demand portion of these meters, we find that our rules are ambiguous and direct our staff to pursue rulemaking to clarify these rules. Based on the facts before us, however, we need not interpret our rules to determine how the accuracy of the demand component of these meters should be tested. For eleven meters, the record indicates that the parties agree that those meters are eligible for a refund for erroneous demand registration. We find that the parties' agreement is within the range of reasonable interpretations of our rules, and we accept this agreement with respect to those eleven meters. We find that the remaining two meters are not eligible for refunds for the reasons set forth below. Our findings for each meter are set forth below.

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[1] Subsequently, by Order No. PSC-04-0591-PCO-EI, issued June 11, 2004, SUSI was dismissed as a party to this proceeding. By Order No. PSC-04-0881-PCO-EI, issued September 8, 2004, we affirmed this dismissal by denying SUSI's motion for reconsideration.

[2] The issues in this docket were established in Order No. PSC-04-0933-PHO-EI, issued September 22, 2004.

[3] In this time period, FPL removed, tested, and replaced all of the approximately 3,900 type 1V thermal demand meters used on its system.

Meter #1V7166D

This is the only meter for which Customers seek a refund based on erroneous watthour registration, rather than demand registration. Both parties agree with the test results for the watthour portion of Meter #1V7166D. This meter had a registration error of 2.08%, which is in excess of the 2% error allowed by Rule 25-6.052(1), Florida Administrative Code. Thus, this meter is eligible for a refund for watthour overregistration.

Meter #1V5871D

This meter has a bent maximum demand pointer. This causes the instantaneous demand pointer to strike the maximum demand pointer prematurely, causing an erroneous deflection of approximately + 2.5 divisions on the scale of the demand portion of the meter. Two and a half divisions of the scale corresponds to 30 kilowatts of demand, or 3.57% of full-scale value. The record shows that in five tests of this meter at approximately 61% of full scale, the results varied from an error of 3.14% to 3.57% of full-scale value. The direct testimony of Customers witness George Brown in this case shows an error of 6.7% of full-scale value for this meter. However, witness Brown conceded on cross-examination that the 6.7% figure was not a test result, but a number that was agreed to by the parties as part of failed settlement discussions.

Pursuant to Rule 25-6.052(2)(a), Florida Administrative Code, the performance of the demand portion of the meters at issue in this docket is acceptable if the error of registration does not exceed 4% in terms of full scale value. The test results for the demand portion of this meter show that it did not exhibit error in excess of 4% of full scale value. Thus, this meter is not eligible for a refund.

Meter #1V5774D

Customers state that this meter was mistakenly included in their petition for a formal hearing in this docket. Witness Brown did not discuss this meter in his testimony nor did he include this meter in the table he prepared summarizing the refunds he is proposing for Customers. The test results for this meter show that it was slightly underregistering both kilowatt-hours and demand (-0.48% and -0.03%, respectively). Therefore, this meter is not eligible for a refund.

Meters #1V52093, #1V7179D, #1V52475, #1V5216D, #1V7001D, #1V5192D, #1V5025D, #1V7019D, #1V7032D, #1V5887D, #1V5159D

The demand portion of all of these eleven meters failed the 4% accuracy requirement of Rule 25-6.052(2)(a) when tested at 80% of full-scale value. One of the meters also failed the 4% accuracy requirement when tested at 40% of full-scale value. Although FPL does not agree that it was required to test these meters at 80% of full-scale value, it nevertheless agreed to do so and is recommending refunds to customers for these meters based on the results of the 80% test. Both parties agree, based on the tests that have been conducted by FPL, that these meters are eligible for a refund. We accept this agreement and find that these meters are eligible for refunds for demand overregistration.

II. Determination of Meter Error for Refund Calculation Purposes

Calculation of Refunds for Demand Overregistration

FPL witness David Bromley argues that customer refunds for demand overregistration should be based on the error of the meter expressed as a percentage of full-scale value. Recognizing that Rule 25-6.103(1), Florida Administrative Code, only addresses the watthour portion of the meter, witness Bromley relies on Rule 25-6.103(3) for justification. He testified that this rule makes it clear that when a meter is found to be in excess of described limits, the refund or the charge is to be based on the error as determined by the meter test. He concludes that the meter test referenced in Rule 25-6.103(3) must refer to the performance requirements of Rule 25-6.052. We disagree with this interpretation of our rules.

Rule 25-6.103(3) states:

> It shall be understood that when a meter is found to be in error in excess of the prescribed limits, the figure to be used for calculating the amount of refund or charge in subsection (1) or paragraph (2)(b) above shall be that percentage of error as determined by the test.

Both subsection (1) and paragraph (2)(b) of the rule refer to refunds or backbills as determined by Rule 25-6.058, Florida Administrative Code. Staff witness Sidney Matlock discussed in detail that Rule 25-6.058, while providing a clear method for calculating the amount billed in error for the *watthour portion* of these meters, does not clearly provide an appropriate method for determining the amount billed in error for the *demand portion* of these meters. Thus, it appears that our rules are, at the very least, ambiguous regarding the proper method to determine refunds for demand meters. We are not aware of any other instance in which we have been asked to apply our rules to determine refunds for demand meters and, thus, find no guidance in past Commission decisions.

Customers agree that our rules do not specifically address how the demand portion of the meters subject to this docket should be tested for purposes of calculating a refund. Moreover, both Staff witness Matlock and Customers witness Brown provide persuasive examples which show that under witness Bromley's interpretation of the rule, i.e., using errors as a percent of full-scale value to calculate amounts billed in error due to demand overregistration, customers would not be made whole.

Customers witness Brown proposes that refunds be based on the actual change in demand registration that has occurred following the replacement of the inaccurate thermal demand meters with electronic demand meters. We must reject witness Brown's proposal, because we find no basis in our rules for supporting this proposed method of calculating refunds. As noted above, we recognize that there is ambiguity in our rules and that a clear method for determining the amount billed in error for the demand portion of these meters is not specified in the rules. However, Rule 25-6.103(3), cited above, states that any refund should be based on "that percentage of error determined by *the test*." (Emphasis added.) Thus, our rules clearly envision that any refund be based on the results of a meter test.

Further, we agree with FPL witness Rosemary Morley that there are two technical flaws in witness Brown's proposed method. Witness Brown calculates an average demand for each customer before and after meter replacement. However, the average demand before meter replacement is based on 12 months and the average demand after meter replacement is based on 16 to 22 months, depending on the meter. The two averages are not consistent because the average after replacement, in effect, weights certain months more than others. For example, meter #1V5192D shows an average meter error of 10.62% for the 18 months following meter replacement. If 12 months had been used to conduct a month-to-month comparison with the previous 12 months, the average meter error following replacement would have been 7.63%.

The second technical flaw is that witness Brown's proposed method does not take into account that some customer loads were already trending downward before meter replacement. These trends can be observed most clearly in Customers witness Bill Gilmore's rebuttal testimony. Five of the fourteen charts he presents show that a downward trend in the plotted ratios of kilowatt-demand to energy consumption already existed before meter replacement. An additional five charts show that the plotted ratios of kilowatt-demand to energy consumption following meter replacement are not outside of the control limits in witness Gilmore's statistical analysis, as discussed in greater detail below.

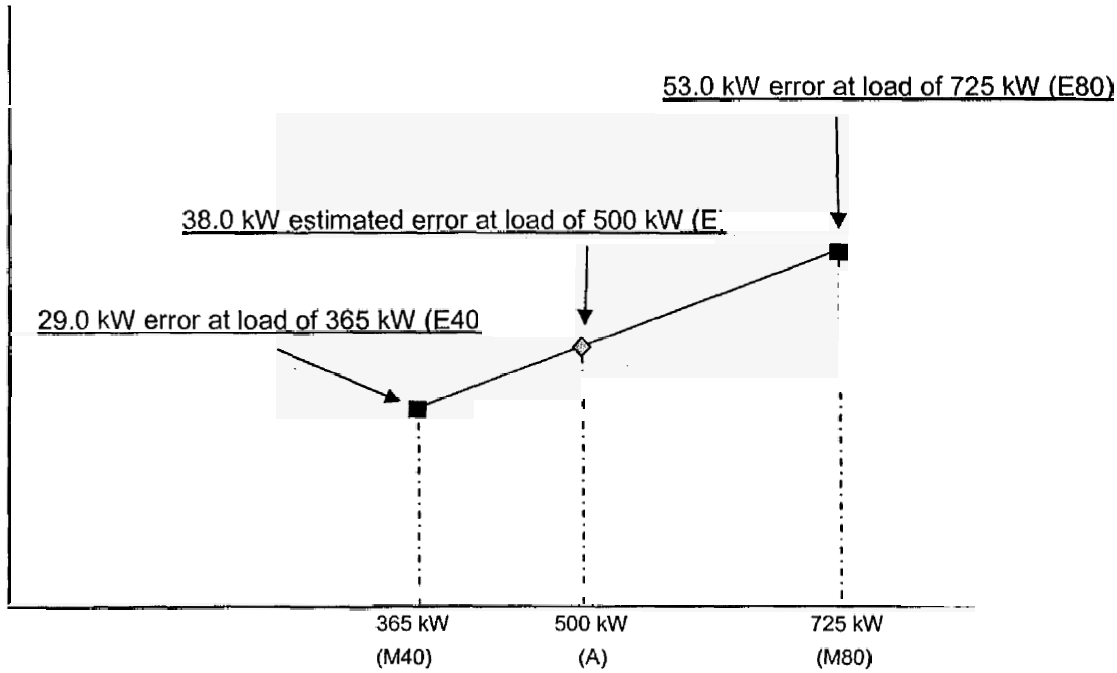
Staff witness Matlock proposes that the eligible meters be re-tested at the customers' average billing demand for the refund period to determine the percentage error for purposes of calculating a refund. Witness Matlock proposes that the test point error be used rather than the full-scale error, because he believes, as discussed above, that use of the full-scale error does not make the customer whole. Based on our review of the record, we agree that using the percentage error based on the test point rather than the full-scale value better serves the purpose of making the customer whole.

Recognizing that our rules do not specify a clear method for determining the amount billed in error for the demand portion of these meters but clearly envision using meter test results to calculate refunds, we find in the record of this proceeding a mechanism consistent with our rules and suitable for determining meter error for refund calculation purposes in this case. Staff witness Matlock testified that straight-line interpolation could be used to interpolate the results of FPL's previous tests of each meter at 40% and 80% of full scale to determine the error at each customer's maximum monthly demand. We believe that this method can practically and easily be used to determine the percentage error for the eleven meters eligible for a refund for inaccurate demand readings while avoiding the need for extensive retesting of these meters.[4] However, instead of using each customer's maximum demand over the refund period, as witness Matlock proposes, we believe that each customer's average demand over the refund period should be used to better reflect the customer's actual usage. We note that FPL witness Bromley testified that FPL is using average demand in the modified procedure that FPL is currently using to calculate refunds for customers with demand meters eligible for refunds, although his modified procedure uses a two-year average rather than the average over the refund period.

[4] We do not address whether this same procedure should be employed in other factual situations where different meter test points, or a single point, may have been used. We do direct our staff to pursue rulemaking to address this and other issues arising under our meter testing and refund rules.

This straight-line interpolation method is similar to and consistent with the method proposed by a manufacturer of thermal demand meters, Landis & Gyr, in an April 5, 1982, letter that was introduced into evidence. In that letter, two separate linear interpolations are used: one to determine the effect of any zero adjustment error at the customer's load point, and one to determine any full-scale adjustment error at the customer's load point. Because the error at no load is unknown in this case, we adopt the use of a single linear interpolation using the test results that are available from the two test points (40% and 80% of full-scale). This linear interpolation method is illustrated in the following diagram:

Illustration of Linear Interpolation to find Error at Customer Average Billing Demand



Equation of estimating line: $E = [(E80 - E40)/(M80 - M40) * (A - M40)] + E40$

The following table shows the full-scale error test results for the eleven meters eligible for refunds because of demand registration errors, as presented by FPL witness Bromley:

Meter Number – Location	40% F.S. Error	80% F.S. Error
1V52093 (Ocean Properties – Bradenton)	5.78%	6.00%
1V7179D (J.C. Penney – Bradenton)	n/a	4.31%
1V52475 (J.C. Penney – Naples)	3.01%	4.12%
1V5216D (Dillards – Coral Springs)	2.44%	4.84%
1V7001D (Target – Boynton Beach)	n/a	4.60%
1V5192D (Target – Bradenton)	2.68%	4.36%
1V5025D (Target – Delray Beach)	1.73%	4.12%
1V7019D (Target – Ft. Myers)	n/a	4.21%
1V7032D (Target – Hollywood)	2.01%	4.84%

1V5887D (Target – Port Charlotte)	3.25%	4.36%
1V5159D (Target – Venice)	3.10%	4.36%

To use the straight-line interpolation method, only three of the meters eligible for refund - Meters #1V7179D, #1V7001D, and #1V7019D – require testing at 40% of full scale. After this testing, the linear interpolation procedure described above shall be applied to determine the correction factor to be used in determining corrected customer billing demands.

For purposes of clarity, the nine-step procedure outlined below specifies how the linear interpolation method shall be used to determine the amount billed in error for the demand portion of the eligible meters subject to this docket:

1. Calculate the average billing demand over the refund period. Denote this average by A.

2. Test the meter in question at both 80% of full-scale value and 40% of full-scale value (or, as nearly so as practicable), denoting these two test points by T80 and T40, respectively. Denote the kilowatt readings on the meter being tested by M80 and M40, respectively. (In this docket, the existing test results shown in the table above shall be used and supplemented by additional test results at 40% of full-scale value for the three meters identified above.)

3. Calculate the kilowatt error at each of these test points and denote them by E80 and E40, respectively:

$$E80 = M80 - T80 \quad \text{and} \quad E40 = M40 - T40$$

4. Calculate the estimated kilowatt error, E, at the customer's average billing demand by the following formula:

$$E = [(E80 - E40) / (M80 - M40) * (A - M40)] + E40$$

5. Calculate the percentage error, P, associated with the kilowatt error at customer's average load:

$$P = [E/(A - E)]*100$$

6. Calculate a "correction factor" defined by $1/(1+P/100)$

7. Multiply each monthly billing demand in the refund period by the correction factor calculated in Step 6 to determine an adjusted billing demand for each month.

8. Apply the appropriate rates and charges to each of the adjusted billing demands calculated in Step 7 to calculate an adjusted monthly bill for each month in the

refund period. Then subtract the adjusted monthly bill from the original monthly bill for each month of the refund period.

9. Apply the appropriate interest rate to the overbilled amounts calculated in Step 8 to determine the total refund amount for each meter eligible for refund.

Calculation of Refund for Watthour Overregistration

Neither the Customers' position on this issue nor the testimony provided by witness Brown on behalf of Customers explicitly discusses the appropriate method for calculating customer refunds for the watthour portion of a thermal demand meter. However, the refund that witness Brown is proposing in this docket for Meter #1V7166D is based on the average change in kWh consumption before and after the thermal meter was replaced by an electronic meter. As discussed previously, we find that it is not appropriate to calculate refunds on the basis of readings before and after meter changeout.

For this meter, the percent change that was used by witness Brown in his calculations (1.63%) is actually less than the error as measured by FPL (2.08%). We find that FPL used the correct method to calculate the percent registration error for this meter as specified in Rule 25-6.058(3)(a). Using the 2.08 percent error as determined by Rule 25-6.058(3)(a), an adjusted bill would be calculated in a manner similar to that outlined in Steps 6 through 9 of the procedure set forth above for calculating refunds for overregistration by the demand portion of the meter.

Treatment of Similarly Situated Customers

Customers point out that Section 366.03, Florida Statutes, states that "[n]o public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject same to any undue or unreasonable prejudice or disadvantage in any respect." Citing Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So. 2d 716 (Fla. 1983), Customers argue that utility policies must be applied without discrimination. Customers argue that FPL, in calculating refunds for customers whose type 1V thermal demand meters were tested and found to be eligible for refunds, established a policy of using the higher of the meter test point error or an error calculated by comparing billing records before and after replacement of the meter (the "higher of" method). Customers contend that this policy must now be applied uniformly to all customers whose type 1V meters are eligible for refunds, including Customers.

FPL notes that Rule 25-6.103(3) provides that the determination of amounts billed in error shall be based on the results of a test. FPL contends that the record is clear that FPL offered all customers, including Customers in this docket, the "higher of" method sought by Customers, along with a 12-month refund. FPL asserts that Customers' complaint of unfair treatment rang hollow when Customers witness Brown conceded on cross-examination that FPL had made the same offer to him, as representative of Customers, and witness Brown rejected it in favor of pursuing multi-year refunds.

The record is clear that FPL treated Customers in this docket the same as other similarly situated customers with respect to the calculation of refunds for meter error in type 1V thermal

demand meters. FPL calculated refunds for all such customers based on a 12-month refund period and the "higher of" method described above. The record indicates that FPL used the "higher of" method, which goes beyond the requirements of the relevant Commission rules, as previously discussed, to remove any perception from affected customers that they were not being treated fairly. Thus, FPL went beyond the requirements of our rules in this regard in an attempt to avoid litigation concerning calculation of refunds.

On behalf of Customers, witness Brown rejected this method of calculating refunds and sought refunds for greater than 12 months. Through this litigation, Customers now seek the benefit of the "higher of" method along with a refund period much greater than twelve months. Thus, Customers themselves have chosen to be treated differently than similarly situated customers.

Customers assert that there is no evidence that FPL ever offered these terms to other customers as settlement or that those customers accepted these terms as settlement. Instead, Customers assert, FPL developed a policy to calculate refunds pursuant to these terms and credited customers' accounts accordingly. Customers contend that FPL never informed other customers that the credit being applied to their accounts was an offer to resolve issues related to a faulty thermal demand meter and that acceptance of the credit constituted acceptance of FPL's offer. Customers argue that merely paying a bill which includes a utility generated credit is not acceptance of an offer.

The record reflects that FPL did not negotiate the calculation of refunds with customers outside of this docket. Yet the record does indicate that every customer using a type 1V thermal demand meter was informed by FPL that each such meter would be removed, tested, and replaced with a new meter and that FPL would provide a refund if the meter test demonstrated that the meter was eligible for a refund, but would not backbill any customer whose meter underregistered outside of the limits specified by Commission rules. Each of these customers whose meter was eligible for a refund was free to challenge FPL's calculation of the refund provided, including the refund period, just as Customers have done in this docket. Upon such a challenge, FPL would also have been free to take the position that it is not required to calculate refunds based on the "higher of" method, just as it has done in this docket.

We find that FPL treated Customers in this docket the same as any other similarly situated customer with respect to the calculation of refunds for meter error in type 1V thermal demand meters. By seeking to hold FPL to one part of the formula it used to calculate refunds - a part not required by our rules - but seeking larger refunds by litigating another part of the formula, Customers have chosen to be treated differently than similarly situated customers.

III. Refund Period

Rule 25-6.103(1), Florida Administrative Code, reads in pertinent part:

> Whenever a meter is found to have an error in excess of the plus tolerance allowed in Rule 25-6.052, the utility shall refund to the customer the amount billed in error as determined by Rule 25-6.058 for one half the period since the last test, said one

> half period shall not exceed twelve (12) months; except that if it can be shown that the error was due to some cause, the date of which can be fixed, the overcharges shall be computed back to but not beyond such date based upon available records.

As discussed below, we find, pursuant to this rule, that a refund period of one year is appropriate for the meters addressed in this docket.

Meter #1V7166D (Dillards – Port Charlotte)

As noted previously, this meter failed the watthour accuracy requirements of our rules by a very small margin. The only evidence in the record related at all to the time period in which this meter overregistered is a chart provided by witness Brown that attempts to show a change in usage after meter replacement. However, this chart shows only a one-year historical analysis. Therefore, the chart does not demonstrate that the watthour portion of this meter had been in error in excess of the plus tolerance allowed by our rules for more than 12 months. Because there is no evidence to demonstrate that this meter has had an unacceptable error since some fixed point in time beyond 12 months, we find that the appropriate refund period for this meter is one year.

Meters #1V5216D (Dillards – Coral Springs), #1V5159D (Target – Venice), #1V5887D (Target – Port Charlotte), #1V7019D (Target – Ft. Myers), #1V7032D (Target – Hollywood), #1V7179D (J.C. Penney – Bradenton), #1V5025D (Target – Delray Beach), #1V52475 (J.C. Penney – Naples), #1V52093 (Ocean Properties – Bradenton), #1V5192D (Target – Bradenton), and #1V7001D (Target – Boynton Beach)

Customers' theory of this case is that the demand component of these meters was miscalibrated by FPL and, therefore, any refund must go back to the time that they were last calibrated by FPL. The record shows that FPL tested six of these meters[5] when it received them as new meters from the manufacturer in the early 1990s. These meters tested as accurate at that time, so FPL did not make any calibration adjustments. Thus, Customers theory cannot be sustained with respect to these six meters.

In addition, the control charts prepared by witness Gilmore do not support a refund period of more than one year. Witness Gilmore contends that there is a consistent relationship between kilowatt-demand and energy consumption. According to witness Gilmore, because the meters in this docket have exhibited correct readings for energy consumption, any significant change in the ratio of demand to energy must be caused by a change in demand.

Witness Gilmore plots these ratios of demand to energy on a chart along with statistically determined upper and lower control limits. The last ratio plotted on each chart represents the ratio of demand to energy for the new electronic demand meter that replaced the old thermal demand meter. If the last data point falls below the lower control limit while all other data points

[5] Meters #1V5216D (Dillards – Coral Springs), #1V5159D (Target – Venice), #1V5887D (Target – Port Charlotte), #1V7019D (Target – Ft. Myers), #1V7032D (Target – Hollywood), and #1V7179D (J.C. Penney – Bradenton).

fall within the control limits, witness Gilmore contends that this is an indication that the demand dropped significantly when the new meter was installed.

We do not find witness Gilmore's analysis to be a reliable indicator of meter error "due to some cause, the date of which can be fixed" as required by our rules to justify a refund period greater than 12 months. The analysis does not include a review of what other factors may have influenced a particular customer's demand either before or after meter replacement. Further, witness Gilmore admitted on cross-examination that the analysis does not provide a basis to establish any specific cause for a variation that is outside the range of the control limits.

In addition, we are persuaded that if there is already a downward trend in the plotted ratios prior to meter replacement, a point falling below the control limit does not necessarily indicate an "out of control" condition as witness Gilmore contends. It is just as likely to indicate the continuation of a trend that had already been established. For six of the meters, the analysis shows such a downward trend prior to meter replacement. Further, the analysis shows that the data points for five of the meters are within the control limits established in the analysis. Based on witness Gilmore's analysis, we note the following:

- The chart for Meter #1V5216D (Dillards – Coral Springs) shows that all plotted ratios (annual average ratios of demand to energy consumption) fall within the established control limits.

- The chart for Meter #1V5159D (Target – Venice) shows that there is a downward trend in plotted ratios prior to meter replacement. In addition, all ratios are within the established control limits.

- Witness Gilmore stated under cross examination that he did not have the correct data corresponding to the chart for Meter #1V5887D (Target - Port Charlotte). Thus, no conclusions can be drawn from the chart for this meter.

- The chart for Meter #1V7019D (Target – Ft. Myers) shows a downward trend in ratios for the five-year period prior to meter replacement.

- The chart for Meter #1V7032D (Target – Hollywood) shows a downward trend for two years prior to meter replacement. In addition, all annual averages are within the established control limits, although the last data point is very near the limit.

- The chart for Meter #1V7179D (J.C. Penney – Bradenton) shows a downward trend for the three years prior to meter replacement.

- The control chart for Meter #1V5025D (Target – Delray Beach) shows a downward trend over all years represented by the control chart. In addition, there are significant drops in the ratios for both years prior to meter replacement.

- The control chart Meter #1V52475 (J.C. Penney – Naples) shows that all annual averages are within the established limits of the control chart. In addition, there is a significant drop in the ratio for the year prior to replacement of the meter.

- The control chart for Meter #1V52093 (Ocean Properties – Bradenton) shows a downward trend in the ratios for two years prior to meter replacement. In addition, all annual averages fall within the established control limits.

From this record, we cannot conclude, pursuant to Rule 25-6.103(1), that a refund period beyond one year is appropriate for these meters. Thus, we find that the appropriate refund period for these meters is the one-year period prior to meter replacement.

IV. Appropriate Rate Schedule to Apply in Calculating Refunds

We are next asked to determine the appropriate rate schedule to be used to calculate refunds for eligible meters. Based on the analysis set forth below, we find that the proper rate schedule to be used to calculate refunds is the rate schedule under which the customer would have been billed if the meter had registered accurately.

As discussed in FPL witness Morley's testimony, the goal of refunds is to make the customer's electric bill equal to the electric bill which would have been rendered, had the meter error not existed. Witness Morley argues that the objective should be to hold the customer harmless from the effects of the meter error and return the customer to a correctly billed status quo. Witness Morley describes how FPL's rate schedules are differentiated by the maximum monthly demand of the customer. Customers whose maximum demand in a given 12 month period is between 21 kW and 499 kW qualify for the GSD rate. Customers whose maximum demand in a 12 month period is between 500 kW and 1,999 kW are billed under the GSLD-1 rate schedule. If, due to meter error a customer's measured maximum demand exceeded 500 kW but the actual demand was less than 500 kW, the customer would have been billed under the GSD tariff in the absence of the meter error. Therefore, Witness Morley contends, the appropriate adjustment is to calculate the customer's bill under the GSD schedule and then subtract that amount from the actual amount billed to determine the amount of the refund for the month. Witness Morley maintains that this methodology is consistent with our rules.

Customers witness Brown disputes the rate schedule used to calculate a refund for one specific customer whose meter is eligible for a refund. This customer was originally billed on the GSLD rate schedule because the customer's maximum registered demand in a 12 month period was in excess of 500 kW. When the correction factor advocated by witness Morley was applied, this customer no longer qualified for the GSLD rate and was rebilled using the GSD rate factors. The GSLD rate schedule allows a customer for whom it is advantageous to "opt up" to the GSLD rate even if the customer would not otherwise qualify for that schedule. The customer then pays for the minimum 500 kW demand, no matter what the actual kW usage is. The advantage to "opting up" is the ability to take service at the lower kWh charge on the GSLD rate. For high load factor customers, this may be a significant monetary advantage, even with the minimum kW charges. Witness Brown argued that because the customer was very close to 500

kW maximum demand, and may well have chosen to "opt up," using the GSD rate to calculate the refund could understate the refund due to this customer. Witness Brown contends that because the customer had no reason to believe it didn't qualify for the GSLD rate, it never considered the "opt up" provision and was therefore being unduly penalized by being billed at the GSD rate.

FPL witness Morley notes that this specific customer is the only customer with a meter being addressed in this docket that falls into this potential "opt up" situation. Further, FPL established that this customer had been on the GSD rate since September 2003, was aware of the opt up provision, and had not yet availed itself of that option. The inference was that the customer, even given the knowledge and opportunity to opt up, has not done so. We believe that it is reasonable to assume the customer would not have opted up, had the meter been registering correctly. Therefore, we find that witness Morley's calculations for this customer were appropriate.

In conclusion, we find that the proper rate schedule to be used to calculate refunds is the schedule under which the customer would have been billed, had the meter registered accurately.

V. Effects of Sun/Radiant Heat on Accuracy of Meters

We are also asked to address the following issue raised by Customers in this docket: "Did the sun or radiant heat affect the accuracy of any of the meters subject to this docket? If so, how do such effects impact the determination of which meters are eligible for a refund of the amount of any refund due?" Having thoroughly reviewed the record of this proceeding, we find no evidence that the sun or radiant heat affected the accuracy of any meters subject to this docket. Thus, such matters do not affect our determination of which meters are eligible for a refund or the amount of any refund.

According to the Prehearing Order in this docket, Customers witnesses Brown, Smith and Gilmore were identified to address this issue. Witness Gilmore provided no testimony on this issue. Witness Brown testified that he had observed and video recorded numerous thermal demand meters that appeared to respond to the effects of solar radiation. When asked if the meters subject to this docket have been affected by the sun, he stated that he could not be certain what part of the meters' demand errors in the docket were affected by the sun. Witness Smith also testified that thermal demand meters are affected by the sun. However, he provided no specific testimony regarding the meters that are subject to this docket.

FPL witness Bromley discussed this issue in his direct testimony. According to witness Bromley, in early 2002 a customer alleged, among other things, that its 1V thermal demand meter was over-registering in part because of the effects of the sun. FPL metering personnel investigated and observed that the heating and cooling of the meter experienced during and after exposure to the sun appeared to be affecting the demand reading.

FPL then performed a laboratory test on the meter. Three 500-watt halogen lights were used to simulate the effect of the sun. By using this test, FPL was able to duplicate what FPL employees had observed in the field. The process of being heated and then cooled caused the

meter to over-register demand. To determine whether the phenomenon was a widespread problem, FPL tested two random samples of thermal meters, totaling 150 meters in all. Not one of the 150 meters sampled registered higher than it should when the meter was heated by the halogen lights and then cooled.

FPL witness Malemezian testified that the effect of the sun may cause a slight under-registration. He points out that the lab test performed by FPL on the 150 meters showed that the external heating caused either no demand misregistration or some demand underregistration.

In conclusion, there is no information in the record to indicate that the specific meters subject to this docket were affected by the sun. Therefore, we can make no determination as to how this phenomenon may have affected the meters subject to this docket.

VI. Interest Rate for Refunds

Customers argue that, pursuant to Section 687.01, Florida Statutes, the appropriate interest rate for calculating customer refunds is the rate provided for in Section 55.03, Florida Statutes. Section 687.01 states that "[i]n all cases where interest shall accrue without a special contract for the rate thereof, the rate is the rate provided for in s. 55.03." Customers state that Section 55.03 requires the Chief Financial Officer to annually set the interest rate by averaging the discount rate of the Federal Reserve Bank of New York for the preceding year, then adding 500 basis points to the averaged discount rate. Customers also argue that the Florida Supreme Court decided in Kissimmee Utility Authority v. Better Plastics, Inc., 526 So. 2d 46 (Fla. 1988) that Section 687.01 is applicable when calculating interest on utility overcharge refunds.

Customers further argue that Rule 25-6.109(4), Florida Administrative Code, which addresses the interest rate to be applied to Commission-ordered refunds, is invalid because no specific statutory authority exists which gives this Commission the ability to adopt such a rule. Customers note that they have initiated a rule challenge in a proceeding before the Division of Administrative Hearings. Finally, Customers argue that it is better public policy to calculate interest using an approach that reaches back further in time to the point Customers were actually damaged, rather than applying an interest rate based on the commercial paper rates for the past 30 days as called for in Rule 25-6.109(4).

FPL notes that Rule 25-6.109(1) provides that the interest rate provisions of subsection (4) of the rule apply to all refunds ordered by this Commission with the exception of deposit refunds and refunds associated with adjustment factors, unless otherwise ordered by the Commission. FPL notes that this case does not involve deposit refunds or refunds associated with adjustment factors.

FPL contends that Kissimmee Utility is distinguishable from this case because it did not address whether the rule at issue in this case applied to a refund ordered by this Commission for payment by an electric utility that is subject to rate regulation by the Commission. FPL notes that approximately seven months after issuance of the Court's opinion in Kissimmee Utility, this Commission directly addressed the applicability of its refund rules in Commission proceedings. FPL notes that in Order No. 20474, issued December 20, 1988, in Docket No. 880606-WS, In re:

Complaint by Kelly Tractor Company, Inc. against Meadow Brook Utility Systems, Inc. regarding refunds for overpayments in Palm Beach County, we analyzed and rejected the potential application of the Kissimmee Utility decision and held that the interest to be applied to the refund at issue should be calculated pursuant to its rules. FPL states that in that case, we noted that the generally applicable refund and interest rate rule for public utilities subject to our rate regulation was not at issue in Kissimmee Utility.

We agree with FPL that the Florida Supreme Court's decision in Kissimmee Utility is clearly and easily distinguishable from this case. Kissimmee Utility involved a municipal utility not subject to our broad ratemaking authority under Chapter 366, Florida Statutes. We do not have the authority to set rates for municipal utilities and, likewise, do not have the authority to require refunds for overcharges of the rates set by municipal utilities. Thus, our rules governing refunds and interest rates applicable to Commission-ordered refunds were not at issue in Kissimmee Utility. As noted by FPL, we recognized these distinctions in Order No. 20474 and determined that our rules, rather than Section 687.01, apply to the calculation of interest on Commission-ordered refunds. Thus, we find that the interest rate provisions of Rule 25-6.109, Florida Administrative Code, shall apply to calculate appropriate refunds in this case.

As noted above, Customers have asserted that Rule 25-6.109 is invalid for lack of any statutory authority for us to adopt an interest rate rule applicable to the refunds in this case. However, we must continue to assume the validity of the rule pending an adjudication to the contrary.

VII. Provision of Refunds

For the 12 meters identified as being eligible for refunds, refunds shall be calculated consistent with the findings set forth herein. FPL shall calculate corrected billing determinants for these meters over the 12-month refund periods specified above. The appropriate rate schedule as determined herein, and all other applicable rates and charges, shall be applied to the corrected billing determinants to determine the corrected bill for each month in the refund period. The difference between the original bill and the corrected bill is the amount of refund due to the customer, except for interest. The appropriate interest rate, as set forth above, shall be applied to the monthly refund amounts to determine a total refund for the entire refund 12-month period.

Refunds shall be completed within 30 days of the issuance date of this order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company shall calculate refunds, consistent with the provisions of this order, for those meters identified in the body of this order as eligible for refunds and shall complete such refunds within 30 days of the issuance date of this order. It is further

ORDERED that this docket shall be closed after the time for filing an appeal has expired.

By ORDER of the Florida Public Service Commission this 25th day of February, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

WCK

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 the Commission Clerk and Administrative Services, 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 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 the Commission Clerk and Administrative Services 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.