

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** August 3, 2018  
**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk  
**FROM:** Samantha Cibula, Office of the General Counsel *SML*  
**RE:** Docket No. 20050152-EU

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Please file the attached materials in the docket file listed above.

Thank you.

Attachment

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20050152-EU

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December 15, 2005

**VIA FACSIMILE & E-MAIL  
& REGULAR MAIL**

Marc Mazo, Senior Partner  
Powercheck Consultants  
14252 Puffin Court  
Clearwater, FL 33762

**Re: Florida Public Service Commission ("PSC") Proposed Rule Change  
to Rule 25-6.049 Re Master Metering**

Dear Marc:

This letter will confirm our numerous conversations concerning the above-referenced rule change. As you know I represent Turnberry Associates, Fontainebleau Resorts, Fortune International, The Related Company of Florida, Starwood Hotels and other developers, all of whom are in the process of developing condominium hotel projects.

Condominium hotel projects are a unique product within the spectrum of real estate interests. They are very highly regulated on the local, state and indirectly on the federal level. Specifically, the Securities and Exchange Commission ("SEC") has examined Condominium Hotel products and projects and issued a letter ruling concerning the sale of condominium hotel units as to whether they constitute the sale of a real estate interest or a security. There are many factors set out in the SEC letter ruling that effect hotel condominiums but the most salient aspect of the letter ruling with regard to the proposed PSC rule change is that the SEC has specifically determined that a developer may NOT CREATE A MANDATORY RENTAL POOL OR OTHER MECHANISIM WHICH WOULD EFFECTIVLY FORCE PURCHASERS OF THESE UNITS TO PLACE THEIR UNITS UP

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BILZIN SUMBERG BAENA PRICE & AXELROD LLP

Marc Mazo, Senior Partner  
December 15, 2005  
Page 2

**FOR RENTAL AS PART OF THE OPERATION OF THE OVERALL PROPERTY.** Developers are even prohibited from establishing occupancy rules and regulations which would have the effect of forcing the purchasers of hotel condominium units into a rental pool. Under the SEC letter ruling, the imposition of temporal limitations requiring that a unit be utilized only for overnight occupancy and/or requiring participation in any type of rental pool or rental operation would convert these condominium hotel interest into a security subject to all of the regulations governing the trading and sale of securities. The conversion of a condominium hotel unit to a security would be effectively a "death sentence" for this type of real estate product. Real estate brokers could no longer sell the units, only registered security brokers and agents could sell them and there is a whole panoply of other regulations that would come to bear that are simply not workable.

It is my understanding from my discussions with you that the proposed rule change would require condominium hotel associations that wish to master meter to include in their declaration of condominium requirement that at least 95% of the units be used for "overnight occupancy." The inclusion of such a provision in a declaration of condominium for a condominium hotel would certainly violate the letter and word of the SEC ruling and would almost certainly covert that project into a security in accordance with the SEC letter ruling. In short such a rule would effectively prohibit any condominium hotel product from seeking a master meter. This would be a potential nightmare both logistically and operationally for this type of product.

In fairness, condominium hotel projects are permitted to enforce binding regulations such as zoning laws and other local government rules and regulations that are automatically applicable to the property. Hence, if a local zoning ordinance provides that a condominium hotel unit can not be occupied for more than 60 days at one time, that type of limitation may be imposed within the condominium documents, if and only if it is a preexisting regulation of general application to similarly situated properties. The SEC has gone so far as to say that a condominium hotel developer may not ever request that a local government adopt more stringent regulations without also running afoul of the securities regulations.

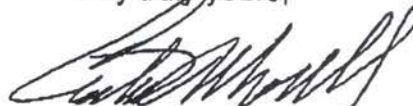
In this case the decision to seek a master meter for a condominium hotel project is clearly a voluntary act in that it requires a specific application and specific approval. Unlike a zoning regulation that is automatically applicable to a property, the decision to seek a master meter is a voluntary act by the developer of the project. There is no question in my mind, under the provisions of the SEC letter ruling, that if a developer were to seek a master meter and in so doing became subject to a requirement that 95% of the units be solely used for overnight occupancy that the developer would be in violation of the provisions of the SEC letter ruling and that the entire project would almost certainly

BILZIN SUMBERG BAENA PRICE & AXELROD LLP

Marc Mazo, Senior Partner  
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become a security subject to all of the applicable SEC rules and regulations. In short, the proposed rule would effectively prohibit any condominium hotel project from ever seeking a master meter. Hence, it is my belief that the proposed rule would create an undo hardship and economic burden on all future condominium hotel properties statewide.

Very truly yours,



Carter N. McDowell

CNM/mc

cc: Lori Hartglass, Esq.

**Marlene Stern**

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**From:** POWCK@aol.com  
**Sent:** Monday, February 06, 2006 11:35 AM  
**To:** Marlene Stern  
**Cc:** daleylaw@nettally.com  
**Subject:** From Marc Mazo Re: Rule 25-6.049

February 6, 2006

Marlene Stern, Esquire  
Florida Public Service Commission  
2540 Shumart Oak Blvd  
Tallahassee, Florida 32301

Re: Proposed Change to Rule 25-6.049

Further to our recent conversation please find the following suggestions regarding the proposed change to Rule 25-6.049:

25-6.049(5)(d) For lodging establishments such as hotels, motels, and similar facilities which are rented, leased, or otherwise provided to guests on a transient basis. (I would eliminate the reference to (8)(b) as the criteria for condominiums is established in (5)(g) and the reference to (8)(b) could be misconstrued regarding permanent residency).

25-6.049(5)(g) For condominiums that meet at the following criteria:

1. The condominium or group of units within a condominium is registered with the Department of Business and Professional Regulation (DBPR), to operate transient rentals, and no more than 25% of the total units in any one condominium building are used for permanent occupancy. (My reasons for use of 25% are outlined below).
2. A registration desk used for check-ins of transient guests is located on the grounds within the condominium or within the condominium complex.
3. A PBX or central switchboard is maintained.
4. Records of all rentals are maintained, including appropriate taxes paid on transient rentals, name of the renter and date of occupancy.
6. The service of a management company or manager is maintained to supervise the operation of the transient rentals, including oversight of energy conservation efforts which can include but is not limited to any of the following: installation of HVAC temperature controls, regular review of temperature settings of HVAC systems after check-out by housekeeping or maintenance personnel, closure of blinds in unoccupied units by housekeeping or maintenance staff when appropriate to reduce heat gain or energy loss from the units used for transient occupancy.

7. The units or group of units within the condominium are regularly advertised to the general public for the purpose of promoting transient rentals. The advertising may be in the form of marketing brochures, web pages, etc.

In view of the purpose of the rule, it is my belief the manner of operation of the condominium should be the deciding factor in allowing master metering. Where a condominium clearly operates like a hotel, expends funds on such operation, competes regularly with other hotels and motels for room night business, and pays tourist tax and sales tax, it is my opinion it should be allowed to master meter.

By setting the criteria for master metering at no more than 25% permanent occupancy and adding additional criteria, it will insure that a condominium seeking to master meter will be operating in a manner similar to a hotel or motel.. This will also reduce or eliminate the need for waivers which I do not believe a smaller number will necessarily accomplish. In my experience over the last ten years since filing the first waiver for Holiday Villas II, I have not come across any condominiums which meet all of the criteria listed in 2 thru 7 above that have had more permanent occupants then 25%. If the percentage of permanent residents is more than 25%, in general they do not meet all of the criteria listed. Either they don't have on site management, or they don't have a central PBX, or they don't regularly advertise. On the other hand, I believe there are many condominiums that clearly operate like hotels that have from 16% to 24% permanent residents, and would need a waiver if the criteria was 10% - 15%.

In addition, the 25% criteria would unlikely affect the rate base for any public utility in Florida. The experience of the PSC over the last ten years supports that argument in that there have only been approximately ten petitions for waivers filed during that period with no set % criteria established. Also, in looking at the utilities cost to serve the condominiums ( one of the factors used in setting rates), for those that operate like hotels at 25% or less permanent occupancy, and switch to master metering, the utilities' cost to serve would be more similar to the cost to serve hotels and motels.

Finally, costs for the utilities are also reduced by having to read one meter and mail out one bill rather than hundreds. This substantially reduces the effects of any loss in energy charges for the utility. (There typically is no affect in fuel charges as the fuel cost to the customer on the residential rate is the same in most cases as the GSD rates).

The other changes I would suggest are as follows:

(6) (a) Initial Qualifications.....must attest **by letter**.....Upon request and reasonable notice by the utility, **the utility shall be allowed to conduct an on site inspection to view the operation of the condominium to determine if the criteria listed in 2 thru 7 above is being met. With regard to verification of the criteria that no more than 25% of the units are being used for permanent occupancy, an affidavit signed under oath by the Manager of the Condominium or a member of the Association Board of Directors shall be sufficient**.....

(6)(b) On Going Compliance – **Unless the utility has been notified by the condominium to the contrary, it shall be presumed that the condominium continues to meet the criteria for master metering.** The customer shall notify the utility within **30 days** if at any time, the condominium.....

(6)(c) Upon request and notice.....see (6)(a) above...use same language.

This clarifies what the utility can do if it chooses to visit the property for the purpose of checking whether the criteria is being met. It also eliminates the need for a utility account manager or other utility representative to make an interpretation as to what they are suppose to do when checking for evidence.

(d) Failure to Comply

eliminate - if the customer fails to make the annual attestation.....See (6)(b)

I would add some language similar to this to allow a condominium to challenge the determination by a utility that it does not meet the established criteria.

**After receiving notice from the utility that it fails to comply with the criteria established for master metering the condominium; 1) if it believes it does comply the condominium may file for an informal complaint with the PSC. Until the complaint has been heard and is final, the utility may not convert the condominium back to individual metering, 2) if the condominium chooses to file for a waiver with the PSC it may do so and the utility shall not convert the condominium back to individual metering until the PSC has made its determination on the waiver and the docket is closed.**

(7)....., less salvage value of any removed equipment. **For purpose of this rule, salvage value shall be the book value placed on any equipment removed by the utility that is subsequently placed back into its inventory for reuse.**

(9) Each utility shall develop a standard policy governing the provisions of sub-metering as provided herein. Such policy shall be filed by each utility as part of its tariffs. **The policy shall only apply to those condominiums requesting sub-metering from the utility** and shall have uniform application and be nondiscriminatory.

Thanks for the opportunity to provide input for staff;s consideration. If you have any questions, please do ont hesitate to call.

Sincerely,

Marc Mazo

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Power Check Consultants  
14252 Puffin Court  
Clearwater, Fl 33762  
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PROGRESS ENERGY FLORIDA

Suggested Revisions to Rule 25-6.049(5)

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Progress Energy offers these suggested revisions to Commission Rule 25-6.049(5), F.A.C., the so-called master metering rule. The suggested revisions are followed by explanatory comments. Progress Energy would also note that we have recently reviewed a draft of FPL's suggested rule revisions, which we find to have considerable merit. As this rule development proceeds, the opportunity for consolidation may present itself.

**25-6.049 Measuring Customer Service.**

\* \* \*

(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, but shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since, January 1, 1981. In addition, individual electric meters shall not be required:

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- 1. In those portions of a commercial establishment where the floor space dimensions or physical configuration of the units are subject to alteration, as evidenced by non-structural element partition walls, unless the utility determines that adequate provisions can be made to modify the metering to accurately reflect such alterations;
- 2. For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems;
- 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;
- 4. For electricity used in lodging establishments such as motels, hotels, and similar facilities used solely for overnight occupancy as defined in subparagraph (5)(c)2 of this rule;

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5. For separate, specially-designated areas for overnight occupancy as defined in subparagraph (5)(c)2 of this rule at trailer, mobile home and recreational vehicle parks and marinas where permanent residency is not established.

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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 timeshare 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.

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7. For condominiums that meet the following criteria:

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- a. The declaration of condominium requires that at least 95% of the units are used solely for overnight occupancy as defined in sub-paragraph (5)(c)2 of this rule;
- b. A registration desk, lobby and central telephone switchboard are maintained; and,
- c. A guest register is maintained, signed by guests who occupy the units, showing, in chronological order, the dates on which the units were occupied by such guests.

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When a condominium meeting the above criteria is converted from individual metering to master metering, the utility shall be reimbursed by the customer for the costs it incurred for the conversion. These costs shall include, but not be limited to, the undepreciated cost of any existing distribution equipment that 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) It is the utility's responsibility to ensure, before installing the master meter, that the criteria for at least one of the six subparagraphs in 6.049(5)(a)1.-7. are satisfied or will be satisfied upon completion of construction. By tariff, the utility may establish uniform, non-discriminatory requirements with which a customer receiving master-metered service must

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comply to ensure that the criteria remain satisfied for as long as the master meter remains in place. If a structure later fails to meet at least one of the six sets of criteria for master metering, the utility shall promptly notify the customer that the structure is no longer eligible to receive master-metered service and must be converted at the customer's expense to individual metering by a date certain not later than six months after notification, at which time master-metered service will be discontinued.

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(b c) For purposes of this rule:

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

2. "Overnight Occupancy" means occupancy of a limited expected duration for which rates charged to occupants are based on a period of no longer than one week.

Deleted: 2. The construction of a new commercial establishment, residential building, marina, or trailer, mobile home or recreational vehicle park shall be deemed to commence on the date when the building structure permit is issued.<sup>3</sup>

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

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(6)(a) – (7) No change.

Comments on suggested revisions:

Paragraph (5)(a) – The suggested revision codifies the Commission's prior decision that this paragraph was intended to grandfather master metered occupancy units constructed before January 1, 1980, and was not intended to allow the conversion of individually metered occupancy units to master metering simply because they were constructed before that date. The revision also incorporated the construction permit date from the definition of construction commencement in renumbered subparagraph (5)(c)2.

Subparagraphs (5)(a)3 and 4 – The suggested revision relocates "motels, hotels, and similar facilities" from the listing of specialized-use housing accommodations in subparagraph 3 to a new subparagraph 4 and clarifies that "similar facilities" means similar short-term occupancy facilities, as opposed to other similarities a facility may have with motels and hotels. Existing subparagraphs 4 and 5, and proposed new subparagraph 6 are renumbered as subparagraphs 5, 6 and 7.

Staff proposed new paragraph (5)(b) – The first of two suggested revisions to the proposed new paragraph addresses the first sentence regarding the utility's initial and ongoing responsibility to ensure compliance with the criteria for eligibility to receive master-metered service. The suggested revision divides the responsibility for initial eligibility and ongoing eligibility into two sentences. The utility's responsibility for initial eligibility would remain as proposed. With respect to ongoing eligibility, the utility would have the ability through its tariff to establish customer requirements for demonstrating that they remains eligible for master-metered service. Since master metering is an exception to the Commission's policy favoring individual metering, these tariff requirements would more appropriately place the burden on the customer to affirmatively demonstrate eligibility for master-metered service, rather than requiring a utility to demonstrate the customer's ineligibility.

The second suggested revision to proposed new paragraph (5)(b) would establish and make clear to existing and potential master metered customers the consequences of failure to maintain compliance with the eligibility criteria for such service. Because these consequences can be severe due to the costs of retrofitting for individual metering, it is important to clearly forewarn potential customers before they commit to master-metering and existing customers before they take any action that would result in a loss of eligibility.

Proposed renumbered subparagraph (5)(c)2 – This suggested housekeeping revision would delete the definition of construction commencement, since its construction permit issuance date is incorporated into the suggested revision to paragraph (5)(a), which is the only provision in the rule to which the definition applies.

Proposed renumbered subparagraph (5)(c)3 – This suggested revision would clarify the awkwardly worded definition of "overnight occupancy", which is used in suggested new subparagraph (5)(a)4, existing renumbered subparagraph (5)(a)5, and Staff's proposed new subparagraph (5)(a)6 (renumbered by these suggested revisions as (5)(a)7). The purpose of this definition is to identify the longest period of expected occupancy which still justifies an exception to the requirement for individual metering. Expected occupancy periods are typically based on the rate charged for occupancy, which are expressed on a daily, weekly, monthly or yearly basis. Since billing, and presumably responsibility, for electric consumption is on a monthly basis, the longest period that would prevent imposing this responsibility on a consumer/occupant, and thus justify an exception to individual metering, would be occupancy on a weekly basis. Therefore, the suggested revision provides that rates for overnight occupancy must be based on a period not longer than one week.

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

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May 5, 2004

**HAND DELIVERY**

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RECEIVED  
04 MAY -5 AM 10:51  
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OFFICE OF THE  
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Re: Undocketed; Post-Workshop Comments of Florida Power & Light Company, Tampa Electric Company, and Gulf Power Company, concerning Proposed Amendments to Rule 25-6.049, Florida Administrative Code

Dear Ms. Stern:

Once again, Florida Power & Light Company ("FPL"), Tampa Electric Company ("TECO") and Gulf Power Company ("Gulf Power") would like to thank the Commission Staff for their efforts in this rulemaking process. We believe that a continued dialogue on this issue will be productive and will hopefully serve to eliminate or at least substantially reduce requests for rule waivers of individual metering requirements for facilities, including condominiums or resort condominiums, that are truly transient or overnight facilities.

With that goal in mind, FPL, TECO and Gulf Power have developed a proposal for amending Rule 25-6.049, Florida Administrative Code, which is enclosed with this letter. The remainder of this letter will summarize the component parts of the proposal to amend Rule 25-6.049.

**Amended Subsection (5)(a)3. and New Subsection (5)(a)4.**

These proposed changes take "motels" and "hotels" out of the category of "specialized-use housing accommodations" and place them with similar facilities that provide overnight occupancy.

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May 5, 2004

**Amended Subsection (5)(a)6.**

Deletes the last two sentences regarding the costs of conversion from individual metering to master metering and customer reimbursement of same for time-share plans. These issues will now be addressed in new subsection (7), which would address conversion costs and customer reimbursement for all eligible facilities - - not just time-share plans.

**Amended Subsection (5)(a)7.**

This language builds on language proposed by Staff by authorizing master metering for condominiums, including resort condominiums that are not time-share plans, when certain conditions are met. A condition is included that would require the owner or developer to provide written notice up front to each purchaser or owner of each condominium unit that there may be costs in the future for converting to individual metering if the criteria is no longer met. The purpose here would be to provide as much advance notice as possible in the event the criteria were not met in the future.

**New Subsection (6)**

Creates a process for master meter eligible condominiums whereby certification is provided on an annual basis to the utility that the condominium meets the criteria in subsection (5)(a)7. If the criteria ceases to be met, the utility is authorized to convert the units to individual metering and may backbill the customers of the individual units for electric service based on the residential service tariffs that would have applied dating back to the date established by the utility that the criteria for master metering were no longer met. The utility would also be authorized to recover a reconnection fee and administrative charges for the backbilling per the utility's tariffs.

**New Subsection (5)(a)7**

This provision would address costs to be reimbursed by the customer for all conversions from individual metering to master metering or from master metering to individual metering.

**New Subsection (8)**

This subsection consists of the existing language in (5)(b). The definition of the term "costs" is appropriately moved to the section on submetering.

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**New Subsection (9)/Former Subsection (6)**

The existing language of what is currently subsection (6) remains intact with the addition of the definition of the term "costs" currently found in subsection (5)(b)4.

On behalf of FPL, TECO and Gulf Power, thank you for the opportunity to submit these comments and proposed rule amendments.

Sincerely,

*Marti P. McQuinn* *fox*

Kenneth A. Hoffman

KAH/rl

FPL\workshop.ltr

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

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October 18, 2004

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Re: Florida Power & Light Company's Proposed Revisions to Staff's Draft Text of Rule 25-6.049, Florida Administrative Code

Dear Ms. Stern:

Florida Power & Light Company ("FPL") would like to thank the Staff for the extensions of time to allow FPL to file these comments and proposed rule revisions. Accompanying this letter is a copy of Staff's draft text of Rule 25-6.049 with FPL's proposed changes in legislative format. The following is a brief explanation of FPL's proposed revisions:

**Amended Subsection (5)(d) and (e)**

This proposed change concerning the definition of "Overnight Occupancy" substitutes subparagraph (8)(b) for subparagraph (8)(c) to provide consistency with other changes proposed by FPL.

**New Subsection (5)(g)**

Paragraph 1 contains the same change described above regarding subsection (8)(b). Paragraph 3 proposes to delete the requirement that the guest register be signed by guests who occupy the units in view of the fact that such a requirement would be difficult to enforce and some resort condominiums may not even maintain a guest registration book (although presumably the resort condominium would have guest registration records sufficient to satisfy the requirements of paragraph 3). Paragraph 4 would require the owner or the developer of the condominium to provide notice to each unit owner or purchaser that conversion costs and backbilling of rates and charges may

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GENERAL COUNSEL

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be incurred in the future if the facility no longer qualifies for master metering. FPL believes this to be important language as it could help avoid potential disputes with customers over conversion costs where the customer claims that he or she was not provided notice that such costs could be incurred.

**New Section (6)**

FPL proposes to delete Staff's proposed language for subsection 6 which would require FPL to "police" master metering eligibility. FPL does not believe that it should bear that burden. From a practical standpoint, the utilities would be unable to effectively "police" these customers and it would be inappropriate and misleading to create the false impression that these entities were being monitored. The burden on the entity affirmative seeking the establishment of master metering should rest with the entity seeking that result. FPL would have an active role in reviewing the supporting documentation provided by the applying entity.

To implement this type of mechanism, FPL has proposed new language in a new section (6) applicable only to master metered condominiums. FPL's proposed section (6) would create a process for master meter eligible condominiums whereby the customer or the customer's authorized representative would provide initial certification to the utility that the condominium meets the criteria in subsection (5)(g). The customer or the customer's authorized representative would thereafter provide similar certification to the utility on an annual basis.

If the criteria ceases to be met or the customer/customer representative fails to comply with the above certificate requirement, the utility would be authorized to convert the units to individual metering and may backbill the customers of the individual units for electric service based on the residential service tariffs that would have applied dating back to the date established by the utility that the criteria for master metering were no longer met. FPL proposes a six month time limit for the conversion. The utility would also be authorized to recover administrative charges for the backbilling per the utility's tariffs.

As a final note, for purposes of consistency, FPL has proposed changes to rule language using the words "section" and "subsection". So, for example, reference would be made to "section (5)" and "subsection (5)(a)". FPL has used the term "subparagraph" only when there is a listing of topics or criteria within a subsection.



Page 3  
October 18, 2004

On behalf of FPL, thank you for the opportunity to submit these comments and proposed rule revisions.

Sincerely,



Kenneth A. Hoffman

KAH/knb  
FPL\workshop2.ltr

# RUTLEDGE, ECENIA, PURNELL & HOFFMAN

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May 2, 2005

Marlene K. Stern, Esq.  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Staff's Draft Text of Proposed Amendments to Rule 25-6.049, Florida  
Administrative Code

Dear Marlene:

As you know, our firm represents Florida Power & Light Company ("FPL") in connection with the above-referenced rulemaking. First and foremost, FPL wishes to express its appreciation to the Commission Staff for its efforts in this rulemaking. FPL believes that the process has worked well and that the current draft represents a significant improvement over earlier versions.

As you may recall, there were certain provisions proposed by FPL that have apparently been rejected by Staff in developing the current text of the proposed rule. While FPL believes that those provisions were worth pursuing, FPL believes that the current text of the rule, subject to the additional comments below, reflects an appropriate and acceptable version of the rule that, FPL can support. I have contacted representatives for Progress Energy, Gulf Power Company and Tampa Electric Company regarding the suggested revisions below and although I have not yet heard back from Progress Energy, I have been authorized to represent that Gulf Power Company and Tampa Electric Company adopt and support the additional suggested revisions to the Rule that are set forth below.

With that backdrop, FPL offers the following additional comments to the current draft text of the amendments to Rule 25-6.049:

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GENERAL COUNSEL

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(1) **Subsection (8)(b)** - - FPL believes that this provision is no longer necessary. Under the new language in subsection (5), the term "construction" is now followed by the word "permit" so there would no longer appear to be a need to define the construction of a new commercial establishment, etc. as the date when a construction permit is issued. If the Staff agrees, then subsection (8)(c) would become subsection (8)(b) and the current references to subsection (8)(c) in other parts of the Rule should be corrected

(2) **Subsection (6)** - - FPL believes that the Rule can be strengthened by expressly providing that a condominium shall be master metered if the owner/developer, condominium association or customer fails to comply with the Initial Qualifications Provisions under subsection (6)(a) or the On-Going Compliance Provision in subsection (6)(b). To accomplish that, FPL proposes a new subsection (6)(c) which would state as follows:

(c) If the owner or developer of the condominium, the condominium association, or the customer fails to comply with the requirements of subsections (6) (a) or (b), the utility shall individually meter the condominium for a failure to comply with subsection (6)(a) or shall convert the condominium to individual meters pursuant to subsection (6)(e) for a failure to comply with subsection (6)(b).

If the above new subsection (6)(c) is included in the proposed Rule, then existing subsections (6)(c) and (d) would need to be renumbered as (6)(d) and (e), respectively.

(3) **Subsection (9)(a)** - - As currently proposed, the last sentence of that subsection reads as follows:

The term does not include payment charges, returned check charges, the cost of the distribution system behind the master meter, the cost of billing, and other such costs.

There are two items in the above language which appear to require further consideration. In referring to "the cost of the distribution system behind the master meter," it appears that Staff is referring to facilities on the customer's side of the meter. There are many instances where the customer rents facilities from FPL that are on the customer's side of the meter. FPL believes that such rental charges would properly be allocated to the unit owners as part of the "cost" of the electricity billed by the utility under this subsection. Therefore, to provide clarification, FPL would recommend that this portion of the last sentence of subsection (9)(a) be amended to read:

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the cost of the customer-owned distribution system on the customer's side of the master meter

The next passage in this rule refers to "the cost of billing." FPL's cost of billing is included in its customer charge and, therefore, would not be applicable to the exclusionary language in this section. To provide clarification, FPL would suggest that this language be amended to read:

the customer of record's cost of billing the individual units

Taking the two suggested changes to Staff's language together, FPL suggests that the last sentence of subsection (9)(a) be revised to read as follows:

The term does not include late payment charges, returned check charges, the cost of the customer-owned distribution system on the customer's side of the master meter, the customer of record's cost of billing the individual units, and other such costs.

We hope that the above suggestions are helpful. If you have any questions, please give me a call.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Mr. Bill Feaster  
Mr. Gary Livingston  
Mr. Howard Bryant  
Mr. Paul Lewis  
Mr. Bob Valdez

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**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

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March 25, 2004

**HAND DELIVERY**

Marlene K. Stern, Esq.  
Appeals, Rules & Mediation Section  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Undocketed  
In re: Amendment to Rule 25-6.049, Florida Administrative Code, Measuring  
Customer Service

Dear Ms. Stern:

Pursuant to the Notice of Proposed Rule Development issued March 10, 2004, Florida Power & Light Company hereby requests that a rule development workshop be held concerning Staff's proposed amendments to the above-referenced rule. Due to scheduling considerations, FPL respectfully requests that the workshop be rescheduled for a date two to three weeks after the April 13, 2004 date identified in the Notice of Proposed Rule Development.

Thank you for your attention to and consideration of this request.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Mr. Bob Valdez  
Mr. Bill Feaster

FPL\stern.ltr

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