



Public Service Commission

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

DATE: January 21, 2000
TO: DIVISION OF RECORDS AND REPORTING
FROM: RICHARD C. BELLAK, DIVISION OF APPEALS *RCB*
RE: DOCKET NO. 981104-EU - PROPOSED AMENDMENT OF RULE 25-6.049, F.A.C., MEASURING CUSTOMER SERVICE.

Attached are Post-Hearing Comments of Staff in Docket No. 981104-EU.

RCB/MRD

AFA	_____
APP	_____
CAF	_____
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CTR	_____
EAG	_____
LEG	_____
MAS	<u>5</u> _____
OFC	_____
RRR	_____
SEC	<u>1</u> _____
WAV	_____
OTH	_____

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 981104-EU
FILED: January 21, 2000

POSTHEARING COMMENTS OF STAFF

The staff of the Florida Public Service Commission submits the following posthearing comments on the proposed amendment of Rule 25-6.049, Florida Administrative Code:

Background

The purpose of the hearing was to address a rule amendment originally proposed by staff at the February 2, 1999 Agenda Conference. The amendment was proposed as a clarification to Rule 25-6.049, Florida Administrative Code, concerning the applicability of the individual metering requirement to buildings whose construction commenced prior to January 1, 1981. The original Notice of Rulemaking was published in the Florida Administrative Weekly on February 19, 1999. Following publication of the original Notice, a hearing was requested by Valencia Condominium Association and Point Management, Inc. The hearing convened initially on March 15, 1999 and was continued on May 5, 1999.

When staff established the rulemaking hearing schedule for the proposed amendment, it was unaware that the Joint Administrative Procedures Committee (JAPC) interprets Section 120.54(3)(e)2., Florida Statutes to require the publication of notice of the agenda conference at which the Commission votes to adopt a rule if the proposed rule will not be adopted within 90 days of the first notice proposing the rule or 45 days from the date of the last noticed hearing. No such notice was published within the allowed time frame. Consequently, the rule amendment was withdrawn pursuant to the Commission's vote at its August 31, 1999 agenda conference. At that agenda conference, the Commission also directed the staff to again initiate rulemaking to amend Rule 25-6.049, Florida Administrative Code.

The Notice of Withdrawal and Notice of Proposed Rulemaking were both published in the October 22, 1999 edition of the Florida Administrative Weekly. Following publication of the Notice of Proposed Rulemaking, Valencia Condominium Association and Point Management, Inc. again requested a hearing on the proposed amendment. The hearing

was held on December 2, 1999. At the hearing, the transcript and post hearing comments record from the previous hearing were incorporated into the record.

Proposed Rule Change

Staff proposed the rule amendment in response to Commission Order No. PSC-098-0449-FOF-EI issued on March 30, 1998 in Docket Number 971542-EI. In that docket, Florida Power Corporation (FPC) requested a declaratory statement on the applicability of the individual electric metering requirement to buildings whose construction commenced prior to 1981. In Order No. PSC-098-0449-FOF-EI, staff was instructed to initiate rulemaking to determine whether paragraph (5)(a) of Rule 25-6.049 should be amended to clarify the application of the 1981 cut-off date.

At issue was whether the rule allowed those multiple-occupancy buildings that were built before 1981, but are currently individually metered by the utility, to convert to a single master meter. FPC's request cited a specific instance where they had allowed a pre-1981 residential condominium (Redington Towers Two) which was individually metered, to be converted to a master meter. FPC subsequently came to believe that this conversion request was granted in error, and should have been denied based on the requirements of the rule. FPC then denied requests by two similarly situated condominiums (Redington Towers One and Three) to convert to master metering. They subsequently filed a request for a declaratory statement that would clarify the meaning of the provision regarding pre-1981 buildings.

The Redington Towers case involved two distinct interpretations of the rule for facilities constructed before January 1, 1981. The interpretation used by FPC to allow the Redington Towers Two conversion would essentially allow all pre-1981 buildings, regardless of whether they were originally master metered or individually metered, to opt for master metering at any time. This interpretation creates a special class of customers who, solely by virtue of their age, can choose between master and individual metering at any time.

The second interpretation views the pre-1981 language as a grandfather provision intended to mitigate any hardships that would have been created for existing master metered buildings at the time of the effective date of the individual metering requirement. The January 1, 1981 date was chosen to follow closely the November 26, 1980 effective date of the individual metering requirement in Rule 25-6.049, Florida Administrative Code. Under this interpretation, facilities that were master metered at the time the requirement for individual metering was imposed would not be forced to undergo potentially costly conversion to individual metering. However, the rule would not allow pre-1981 buildings

to convert from existing individual metering to master metering. In these situations, the application of the new individual metering requirement imposes no conversion costs, because the facilities are already individually metered.

It is this latter interpretation that the Commission adopted in its order on FPC's request for a declaratory statement. In that order, the Commission declared that the individual occupancy units in Redington Towers Condominiums One and Three are not eligible for conversion to master metering. In addition, the Commission directed the staff to initiate rulemaking to decide whether paragraph 5(a) of Rule 25-6.049, Florida Administrative Code should be amended.

The staff's proposed amendment clarifies the pre-1981 provision in the rule to comport with the Commission's decision in the cases of Redington Towers One and Three by making clear that pre-1981 buildings that are currently individually metered by the utility are not eligible for conversion to master metering. Staff believes that this proposed rule amendment reflects the only logical interpretation of the pre-1981 provision. The pre-1981 provision was adopted to avoid imposing hardship on those facilities that were already master metered at the time the prohibition was enacted. It was not intended to allow the creation of additional master metered facilities.

At the hearing on December 2, 1999, the Legal Environmental Assistance Foundation (LEAF) expressed concern that the proposed rule amendment does not clearly indicate that pre-1981 facilities that are individually metered are not eligible for conversion to a single master meter. Staff has reviewed the proposed amendment, and agrees that additional language to clarify the intent of the pre-1981 grandfather provision is appropriate to eliminate any ambiguity regarding the treatment of these facilities. Staff has attached as Exhibit 1 the proposed rule amendment incorporating the additional clarifying language in paragraph (5)(a), which reads as follows:

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

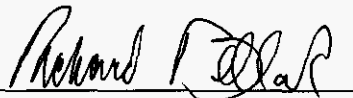
During the initial rule hearing on March 15, 1999 and continued on May 5, 1999 there was some questioning of the staff regarding the origins and purposes of the prohibition against master metering found in Rule 25-6.049(5)(a), Florida Administrative Code. Staff believes that a discussion of the merits of the individual metering requirement are not relevant to the proposed rule amendment that was the subject of this hearing, since the amendment merely clarifies the provisions of the existing rule with regard to buildings constructed before 1981. Such questions are the subject of an ongoing generic investigation, Docket No. 990188-EI. Moreover, staff does not believe that the prohibition against retroactive rules in Section 120.54(1)(b) is implicated because there is no element

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of retroactivity at issue. The Commission's interpretation of the rule has never been otherwise than what has been set out above.

Staff also believes that section 366.05(1), Florida Statutes should be included in the "Law Implemented" notice. That statutory section gives the commission the authority to prescribe "standards of quality and measurements," such as the individual metering requirement at issue.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy has been furnished by U.S. Mail this 21st

January 2000 to the following:

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RICHARD C. BELLAK

1 **25-6.049 Measuring Customer Service.**

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

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

15 (3) Meters which are not direct reading shall have the
16 multiplier plainly marked on the meter. All charts taken from
17 recording meters shall be marked with the date of the record, the
18 meter number, customer, and chart multiplier. The register ratio
19 shall be marked on all meter registers. The watt-hour constant for
20 the meter itself shall be placed on all watt-hour meters.
21

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

24 (5) (a) Individual electric metering by the utility shall be
25 required for each separate occupancy unit of ~~new~~ commercial

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

1 establishments, residential buildings, condominiums, cooperatives,
2 marinas, and trailer, mobile home and recreational vehicle parks
3 ~~for which construction is commenced after January 1, 1981.~~

4 Individual electric meters shall not, however, be required:
5

6 1. For each separate occupancy unit of commercial establishments,
7 residential buildings, condominiums, cooperatives, marinas, and
8 trailer, mobile home and recreational vehicle parks for which
9 construction commenced prior to January 1, 1981 and which are not
10 currently individually metered. This paragraph shall not be
11 interpreted to authorize conversion of any such facilities from
12 individual metering to master metering.
13

14 21. In those portions of a commercial establishment where the
15 floor space dimensions or physical configuration of the units are
16 subject to alteration, as evidenced by non-structural element
17 partition walls, unless the utility determines that adequate
18 provisions can be made to modify the metering to accurately reflect
19 such alterations;
20

21 32. For electricity used in central heating, ventilating and air
22 conditioning systems, or electric back up service to storage
23 heating and cooling systems;
24

25 43. For electricity used in specialized-use housing accommodations
such as hospitals, nursing homes, living facilities located on the

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1 same premises as, and operated in conjunction with, a nursing home
2 or other health care facility providing at least the same level and
3 types of services as a nursing home, convalescent homes, facilities
4 certificated under Chapter 651, Florida Statutes, college
5 dormitories, convents, sorority houses, fraternity houses, motels,
6 hotels, and similar facilities;

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

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

23 (b) For purposes of this rule:

24 1. "Occupancy unit" means that portion of any commercial
25

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1 establishment, single and multi-unit residential building, or
2 trailer, mobile home or recreational vehicle park, or marina
3 which is set apart from the rest of such facility by clearly
4 determinable boundaries as described in the rental, lease, or
5 ownership agreement for such unit.

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

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

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

22 (6)(a) Where individual metering is not required under
23 Subsection (5)(a) and master metering is used in lieu thereof,
24
25

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1 reasonable apportionment methods, including sub-metering may be
2 used by the customer of record or the owner of such facility solely
3 for the purpose of allocating the cost of the electricity billed by
4 the utility.

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

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

15 **Specific Authority 366.05(1) FS.**

16 **Law Implemented 366.05(3), 366.05(1), FS.**

17 **History--Amended 7-29-69, 11-26-80, 12-23-82, 12-28-83, Formerly**
18 **25-6.49, Amended 7-14-87, 10-5-88, 3/23/97.**

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