

Table of Contents
Commission Conference Agenda
January 10, 2024

1**	Docket No. 20230115-EU – Proposed amendment of Rule 25-6.0131, F.A.C., Regulatory Assessment Fees; Investor-owned Electric Companies, Municipal Electric Utilities, Rural Electric Cooperatives.....	1
2	Docket No. 20230128-EU – Petition for declaratory statement regarding Rule 25- 6.049, F.A.C., by 1150 WHG, LLC.....	2
3**PAA	Docket No. 20230122-EI – Petition for variance from Rule 25-6.043(1)(a), F.A.C., by Tampa Electric Company.....	3

Item 1

REVISED 12/28/2023

FILED 12/28/2023

DOCUMENT NO. 06762-2023

FPSC - COMMISSION CLERK

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-

DATE: December 28, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Rubottom, Dike) *SMC*
Deputy Executive Director, Administrative (Lynn) *ACL*
Division of Economics (McNulty, Hampson, Kunkler) *EJD*

RE: Docket No. 20230115-EU – Proposed amendment of Rule 25-6.0131, F.A.C., Regulatory Assessment Fees; Investor-owned Electric Companies, Municipal Electric Utilities, Rural Electric Cooperatives.

AGENDA: 01/10/24 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-6.0131, Florida Administrative Code (F.A.C.), Regulatory Assessment Fees; Investor-owned Electric Companies, Municipal Electric Utilities, Rural Electric Cooperatives, implements the Commission's statutory mandate to collect a fee, known as a regulatory assessment fee (RAF), from each regulated electric company under the jurisdiction of the Commission as provided in Sections 350.113 and 366.14, Florida Statutes (F.S.). Specifically, the rule establishes filing requirements and a rate at which the RAF should be calculated for investor-owned electric utility companies (IOUs), municipal electric utilities, and rural electric cooperatives.

Statutory History

In Section 350.113, F.S., the Legislature established RAFs as the exclusive funding mechanism for the Commission. Each utility or company regulated by the Commission is required to pay a RAF, and collected RAFs are credited to the Florida Public Service Regulatory Trust Fund (PSC Trust Fund).¹ Monies from the PSC Trust Fund are to be used in the operation of the Commission and are withdrawn according to the Commission's budget that is set annually by the Legislature.²

Each utility or company under the Commission's jurisdiction is required to pay a RAF every six months, and the RAF must be based upon the company's gross operating revenues for the preceding six-month period.³ The Legislature did not prescribe the rate at which the RAF must be calculated from a company's revenues, but it did provide statutory guidance the Commission must follow in establishing and managing RAF rates through rulemaking:

1. The RAF for each industry must, to the extent practicable, be related to the cost of regulating that industry; the Commission must therefore endeavor to establish a RAF rate for each regulated industry that is sufficient to cover the cost of regulating the utilities or companies in that industry.⁴
2. The RAF rate may not exceed a maximum rate established by the Legislature for each industry.⁵
3. RAFs collected from one industry may not be used to subsidize the regulatory costs of another industry.⁶

History of Commission RAFs for Electric Utilities

Prior to 1980, the Legislature controlled RAFs directly by statute and set a separate RAF rate for each industry regulated by the Commission.⁷ However, in 1980 the Legislature enacted a statute that provided a maximum RAF rate for each industry and left it to the Commission to establish specific RAF rates through agency rulemaking.⁸ To implement this change enacted by the Legislature in the statutory scheme related to RAFs, the Commission adopted its original RAF

¹ See Sections 350.113, 364.336, 366.14, 367.145, 368.109, F.S.

² Section 350.113, F.S.

³ *Id.*

⁴ Section 350.113(3), F.S.

⁵ See Sections 364.336, 366.14, 367.145, 368.109, F.S.

⁶ See Section 367.145(3), F.S.

⁷ See Order No. 9438, issued on July 3, 1980, in Docket No. 800521-PU, *In Re: Proposed Rulemaking to Impose Upon Utilities and Railroads Regulatory Fees Based Upon Gross Operating Revenues for: Telephone Companies, Electric IOUs, Municipal and Rural Electric Cooperatives, Gas Companies, Water and Sewer Companies, Radio Common Carriers, Railroads.*

⁸ *Id.*; see also Ch. 80-289, 1980 Fla. Laws 1249 (creating Section 351.51, F.S., which was later renumbered as Section 350.113, F.S., and was amended when separate RAF statutes were adopted for each industry).

rules, including for electric utilities, in 1980 through emergency rulemaking⁹ and adopted them as permanent rules later that year.¹⁰

Rule 25-6.0131, F.A.C., was adopted by the Commission in 1983 to replace the original RAF rules for electric utilities.¹¹ The RAF rate for municipal electric utilities and rural electric cooperatives has not been updated since it was originally established by the Commission in 1980.¹² The RAF rate for IOUs has been amended five times since it was adopted in 1980, but has not been updated since 1999.¹³

Temporary Exemption from SERC and Legislative Ratification Requirements

In 2010, the Legislature amended Section 120.541, F.S., to require agencies to prepare a statement of estimated regulatory costs (SERC) for any rule that will have an adverse impact on small business or that is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation. Since the statute was amended in 2010, Section 120.541, F.S., has also required legislative ratification of all proposed agency rules that exceed \$1 million in regulatory cost impact within a 5-year period after implementation.¹⁴ During the 2023 legislative session, however, the Legislature granted the Commission a one-year exemption from the SERC and ratification requirements for rules amended to increase RAF rates.¹⁵

Because of the size of the industries regulated by the Commission, any meaningful increase in RAFs will trigger ratification. The lengthy time and uncertainty introduced by the legislative ratification requirement, coupled with the time required for rulemaking and the additional time required to realize the collection of RAFs, have prevented the Commission from managing RAF revenues through rulemaking in any industry since 2010.

Other Procedural Issues

A Notice of Rule Development for Rule 25-6.0131, F.A.C., appeared in the September 12, 2023, edition of the Florida Administrative Register, Vol. 49, No. 177. Staff held a rule development

⁹ See Order No. 9438, *supra* note 7.

¹⁰ See Order No. 9491, issued on August 13, 1980, in Docket No. 800521-PU, *In Re: Proposed Rulemaking to Impose Upon Utilities and Railroads Regulatory Fees Based Upon Gross Operating Revenues for: Telephone Companies, Electric IOU's, Municipal and Rural Electric Cooperatives, Gas Companies, Water and Sewer Companies, Radio Common Carriers, Railroads.* (adopting Rules 25-1.45 – 25.1.49, F.A.C., Regulatory Assessment Fees).

¹¹ See Order No. 11887, issued on April 27, 1983, in Docket No. 810160-ADM(RA), *In Re: Adoption of Rules 25-4.161, 25-6.131, 25-7.131, 25-10.24, and 25-23.12, Regulatory Assessment Fees; Repeal of Rules 25-1.45 through 25-1.49, Pertaining to Regulatory Assessment Fees; and Repeal of Rules 25-6.13 and 25-7.13, Gross Intrastate Operating Revenue Report.* Rule 25-6.131, F.A.C., was later renumbered as Rule 25-6.0131, F.A.C.

¹² See Order No. 9438, *supra* note 7 (establishing a RAF rate of “1/64 of one percent,” or 0.00015625, for municipal electrics and rural electric cooperatives).

¹³ See Order No. PSC-98-1660-FOF-EI, issued on December 9, 1998, in Docket No. 980276-EI, *In re: Proposed Amendment of Rule 25-6.0131, F.A.C., Investor-Owned Electric Company Regulatory Assessment Fees.* (decreasing the RAF rate for investor-owned utilities from 0.000833 to 0.00072).

¹⁴ See Section 120.541(3), F.S.

¹⁵ See Section 120.80(13)(g)2., F.S. (“For the 2023-2024 fiscal year, rules adopted by the Florida Public Service Commission to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109 are not subject to s. 120.541. This subparagraph expires July 1, 2024.”). See also Ch. 2023-240, § 51.

Docket No. 20230115-EU

Date: December 28, 2023

workshop on September 27, 2023. Participating in the workshop were the Office of Public Counsel and Tampa Electric Company. No post-workshop comments were filed.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-6.0131, F.A.C., Regulatory Assessment Fees; Investor-owned Electric Companies, Municipal Electric Utilities, Rural Electric Cooperatives. The Commission has jurisdiction pursuant to Sections 120.54, 350.113, 366.05, and 366.14, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-6.0131, F.A.C., Regulatory Assessment Fees; Investor-owned Electric Companies, Municipal Electric Utilities, Rural Electric Cooperatives?

Recommendation: Yes, the Commission should propose the amendment of Rule 25-6.0131, F.A.C., as set forth in Attachment A. The Commission should also certify that Rule 25-6.0131, F.A.C., is a rule the violation of which would be a minor rule violation pursuant to Section 120.695, F.S. (Rubottom, Lynn, McNulty).

Staff Analysis: Rule 25-6.0131, F.A.C., implements the Commission's statutory mandate to establish and collect RAFs from electric utilities. The purpose of this rulemaking is to update the rate at which RAFs are calculated for electric utilities to accurately reflect the cost of regulation.

Current Situation and Future Projections

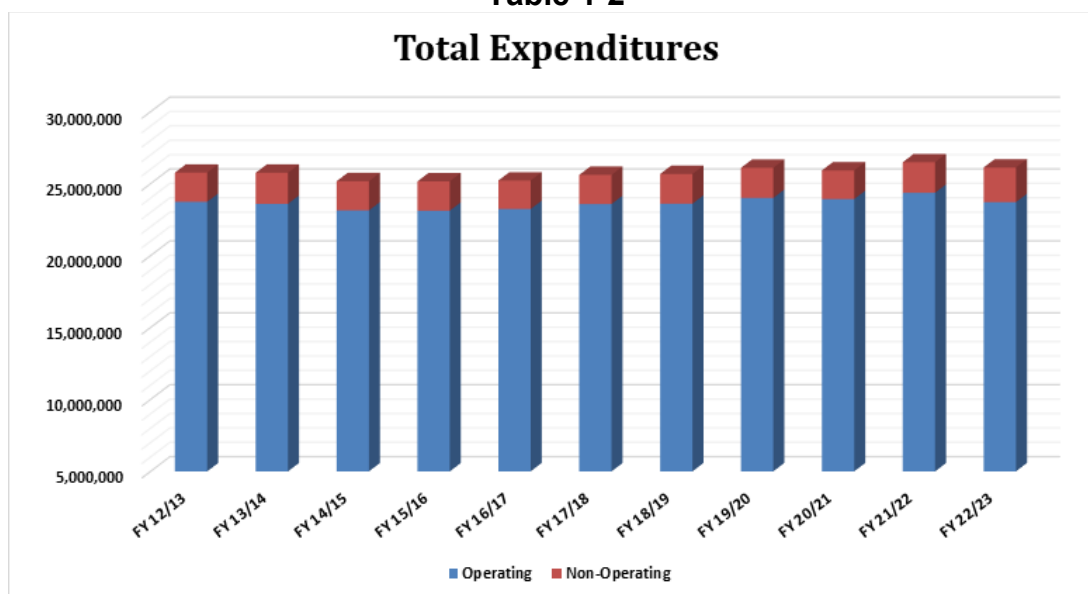
The Commission's overall cost of regulation has exceeded its collected RAF revenues in seven of the last eleven years. In recent years, Commission management has used internal cost controls to mitigate the difference in revenues and expenditures. Internal cost controls have involved holding positions vacant, limiting travel to only mission-critical functions, reducing/deferring professional development and training, postponing IT equipment purchases, reducing leased space, closing field offices and eliminating positions. As an example, and to quantify some of these actions, since 2010 the staffing footprint has been reduced by 15%, lease costs have been reduced \$80,000, and vehicle fleet has been reduced by 23%. All internal management of the Commission's budget has allowed total expenditures to stay relatively flat, despite recent legislative mandates (Table 1-1) that may have otherwise increased expenditures and adversely influenced the trust fund.

Table 1-1 - Recent Legislative Mandates

Florida Retirement System Modifications	\$182,000
Health Insurance Adjustment	\$420,000
Salary Increases	\$2,155,000
SB 1944 (Utility Pole Bill)	\$926,000
Storm Hardening	\$276,000
	<hr/>
	\$3,959,000

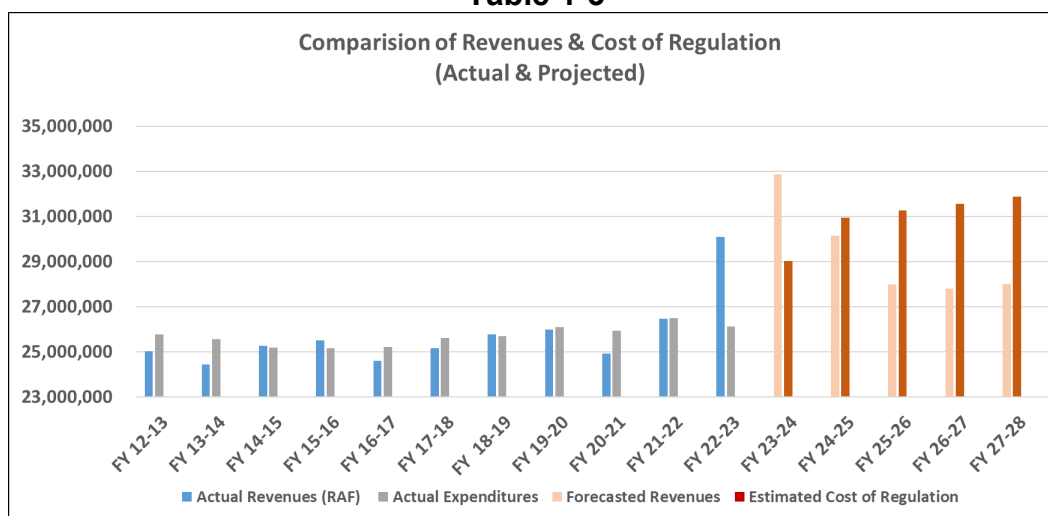
Commission expenditures include both operating and non-operating costs. (Table 1-2). Non-operating cost are roughly \$2 million per year and are determined as a percentage of revenues collected. The Commission would consider the non-operating cost and roughly 96% of operating cost as non-discretionary. In other words, only 3% - 4% of operating cost, or approximately \$1 million (using FY 2020 – FY 2023 as an example) of Commission expenditures are subject to internal controls. Therefore, the internal measures described above have only a temporary and limited impact on the cost of regulation.

Table 1-2
Total Expenditures



The recent legislative changes and mandates have increased the Commission's costs, and staff projects that without any offsetting increase in revenues, the annual deficit will increase significantly over the next three to five years. (Table 1-3).

Table 1-3



Source: Commission Staff¹⁶

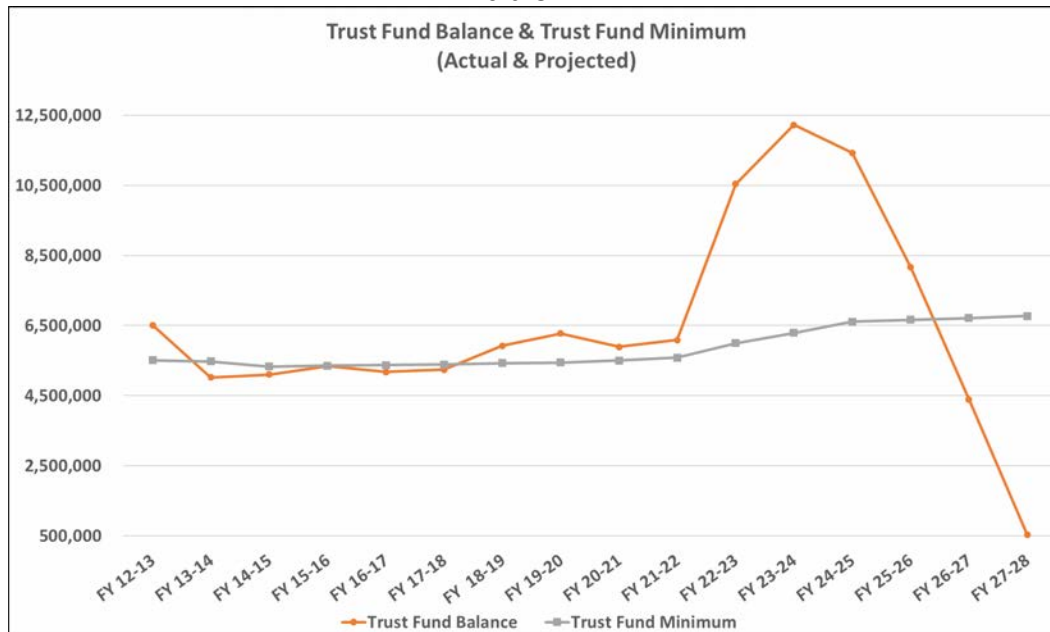
Projected deficits in the electric industry are particularly concerning. Regulation of electric IOUs accounts for the largest share of the Commission's total regulatory workload and therefore of the Commission's total expenditures. Looking at FY 26/27, staff calculates that the projected cost of regulating IOUs will be \$18,233,324 and that the projected RAF revenues from IOUs, based on

¹⁶ Staff's projection of the Commission's future cost of regulation in Table 1-3 includes, for more immediate years, the known operational costs and legislative mandates and, for the out years, assumes a growth rate of 2.6%.

the current RAF rate of 0.00072, will be \$15,473,309, resulting in a projected shortfall of \$2,760,015.

When the Commission's revenues consistently do not match expenditures, the PSC Trust Fund is depleted over time as deposits fail to replace the agency's annual operating budget appropriated by the Legislature. Under current RAF rates and the projected annual budget deficit described above, staff projects that the PSC Trust Fund balance will decline substantially over the next few years. (Table 1-4).

Table 1-4



Source: Commission Staff

The current status and near-term projections of the PSC Trust Fund balance and of the Commission's annual revenues and expenditures in the electric industry demonstrate a need to raise agency revenues by increasing RAF rates for IOUs.

Calculation of Recommended RAF Rates for Electric Companies

In order to calculate a new RAF rate that would address the projected shortfall in the Commission's budget for the electric industry, staff first determined how much additional revenue is needed to cover the cost of regulation. For IOUs, and separately for municipal and cooperative utilities, staff looked at projections for FY 26/27 and performed the following calculation to determine the projected revenue deficit:

$$\text{Cost of Regulation} - (\text{Utility Gross Revenues} \times \text{Current RAF Rate}) = \text{Revenue Deficit}$$

For electric IOUs in FY 26/27, staff projected a cost of regulation of \$18,233,324 and utilities' aggregate gross revenues of \$21,490,706,756. Applying the current RAF rate of 0.00072, staff projected a deficit of \$2,760,015.¹⁷ Staff calculated that increasing the RAF rate for electric

¹⁷ \$18,233,324 - (\$21,490,706,756 x 0.00072) = \$2,760,015.

IOUs from 0.00072 to 0.000848 would result in an increase of nearly \$2.8 million in Commission revenues for FY 26/27, covering the projected shortfall.¹⁸

For municipal and cooperative electric utilities in FY 26/27, staff projected a cost of regulation of \$849,208 and utilities' aggregate gross revenues of \$8,573,862,477. Applying the current RAF rate of 0.00015625, staff projected a surplus of \$490,458.¹⁹ Staff calculated that decreasing the RAF rate for municipal electric utilities and rural electric cooperatives from 0.00015625 to 0.00009905 would result in a decrease of nearly \$500,000 in Commission revenues for FY 26/27, avoiding the projected surplus.²⁰

Therefore, staff recommends that the RAF rate for electric IOUs be increased from 0.00072 to 0.000848. The new rate would be well below the statutory RAF cap of 0.00125,²¹ and the impact of the new RAF rate on individual IOU customers, based on a residential monthly bill for 1,000 kilowatt-hours (kWh), would come to an increase of approximately \$0.02. (Table 1-5 below).

Staff also recommends that the RAF rate for municipal electric utilities and rural electric cooperatives be decreased from 0.00015625 to 0.00009905. The new rate will be below the statutory RAF cap of 0.00015625,²² and the impact of the new RAF rate on individual municipal and cooperative customers, based on a residential monthly bill for 1,000 kWh, would come to a decrease of approximately \$0.01. (Table 1-5 below).

Table 1-5

	IOUs	Munis/Coops
Statutory RAF Cap	0.00125	0.00015625
Current RAF Rate	0.00072	0.00015625
Recommended RAF Rate	0.000848	0.00009905
Impact on Customers (Based on Residential Bill at 1,000 kWh)	\$0.02	-\$0.01

Source: Commission Staff

Recommended Amendments to Rule 25-6.0131, F.A.C.

Staff recommends that the Commission amend Rule 25-6.0131, F.A.C., including the forms incorporated by reference, as set forth in Attachment A. Updated RAF rates, as detailed above, are the only substantive amendments staff is recommending to Rule 25-6.0131, F.A.C. Other recommended amendments to the rule are non-substantive, designed to provide consistency and clarity to the rule language.

¹⁸ $\$18,233,324 - (\$21,490,706,756 \times 0.000848) = \0 .

¹⁹ $\$849,208 - (\$8,573,862,477 \times 0.00015625) = (\$490,458)$.

²⁰ $\$849,208 - (\$8,573,862,477 \times 0.00009905) = \0 .

²¹ See Section 366.14(1), F.S.

²² See Section 366.14(4), F.S.

Date: December 28, 2023

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., for each rule filed for adoption, the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-6.0131, F.A.C., is on the Commission's minor violation rule list because violation of the rule would not result in economic or physical harm to a person or adverse effects on the public health, safety, or welfare and would not create a significant threat of such harm. The proposed amendments to the rule would not alter the likelihood or risk of such harms in the event of a violation. Thus, if the Commission proposes the amendment, staff recommends that the Commission certify that Rule 25-6.0131, F.A.C., is a rule the violation of which would be a minor violation pursuant to Section 120.695, F.S.

Statement of Estimated Regulatory Costs

As discussed above, rules adopted by the Commission during the 2023-2024 fiscal year to implement Sections 350.113 and 366.14, F.S., are not subject to the SERC requirement of Section 120.541, F.S.²³ Therefore, no SERC has been prepared.

Conclusion

Based on the foregoing, staff recommends that the Commission propose the amendment of Rule 25-6.0131, F.A.C., as set forth in Attachment A. In addition, staff recommends that the Commission certify that Rule 25-6.0131, F.A.C., is a rule the violation of which would be a minor rule violation pursuant to Section 120.695, F.S.

If the Commission proposes the amendment, staff notes that the new RAF rate will be applied to the company's gross operating revenues based on the date the amended rule becomes effective. For example, if the new rule becomes effective on April 1, 2024, the current RAF rate will be applied to the company's gross operating revenues for the period of January 1, 2024, through March 31, 2024, and the new RAF rate will be applied to the company's gross operating revenues for the period of April 1, 2024, through June 30, 2024.

²³ See *supra* p. 3 and note 15.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no requests for hearing or JAPC comments are filed, the rule should be filed for adoption with the Department of State, and the docket should be closed. (Rubottom).

Staff Analysis: If no requests for hearing or JAPC comments are filed, the rule should be filed with the Department of State for adoption, and the docket should be closed. Staff notes that if there are no requests for hearing or JAPC comments filed, the rule will be filed for adoption on approximately March 12, 2024, and will become effective on approximately April 1, 2024.

**25-6.0131 Regulatory Assessment Fees; Investor-owned Electric Companies,
Municipal Electric Utilities, Rural Electric Cooperatives.**

(1) As applicable and as provided in Section 350.113, F.S., and Section 366.14, F.S., each company, utility, or cooperative shall remit to the Commission a fee based upon its gross operating revenue. This fee shall be referred to as a regulatory assessment fee. Regardless of the gross operating revenue of a company, utility, or cooperative, a minimum annual regulatory assessment fee of \$25 shall be imposed.

(a) Each investor-owned electric company shall pay a regulatory assessment fee in the amount of 0.000848 ~~0.00072~~ of its gross operating revenues derived from intrastate business, excluding sales for resale between investor-owned electric companies ~~public utilities~~, municipal electric utilities, and rural electric cooperatives or any combination thereof.

(b) Each municipal electric utility and rural electric cooperative shall pay a regulatory assessment fee in the amount of 0.00009905 ~~0.00015625~~ of its gross operating revenues derived from intrastate business, excluding sales for resale between investor-owned electric companies ~~public utilities~~, municipal electric utilities, and rural electric cooperatives or any combination thereof.

(2) Regulatory assessment fees are due each January 30 for the preceding period or any part of the period from July 1 until December 31, and on July 30 for the preceding period or any part of the period from January 1 until June 30.

(3) If the due date falls on a Saturday, Sunday, or a holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the United States Postal Service's postmark date. The postmarked certified mail receipt is evidence that the fees were delivered. Regulatory assessment fees are considered paid on the date they are postmarked by

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

1 the United States Postal Service or received and logged in by the Commission's Division of
2 Administrative and Information Technology Services in Tallahassee. Fees are considered
3 timely paid if properly addressed, with sufficient postage and postmarked no later than the due
4 date.

5 (4) Commission Form PSC/ECO PSC/AFD 68 (12/23) ~~(01/99)~~, entitled "Investor-Owned
6 Electric Utility Regulatory Assessment Fee Return," is available at [new hyperlink]
7 ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-02610~~; Commission Form PSC/ECO
8 PSC/AFD 69 (12/23) ~~(07/96)~~, entitled "Municipal Electric Utility Regulatory Assessment Fee
9 Return," is available at [new hyperlink]
10 ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-02611~~; and Commission Form
11 PSC/ECO PSC/AFD 70 (12/23) ~~(07/96)~~, entitled "Rural Electric Cooperative Regulatory
12 Assessment Fee Return," is available at [new hyperlink]
13 ~~http://www.flrules.org/Gateway/reference.asp?No=Ref-02612~~. These forms are incorporated
14 into this rule by reference and may be also be obtained from the Commission's Division of
15 Administrative and Information Technology Services. The failure of a company, utility, or
16 cooperative to receive a return form shall not excuse the company, utility, or cooperative from
17 its obligation to timely remit the regulatory assessment fees.

18 (5) Each company, utility, or cooperative shall have up to and including the due date in
19 which to:

20 (a) Remit the total amount of its fee; or

21 (b) Remit an amount which the company, utility, or cooperative estimates is its full fee.

22 (6) Where the company, utility, or cooperative remits less than its full fee, the remainder
23 of the full fee shall be due on or before the 30th day from the due date and shall, where the
24 amount remitted was less than 90 percent of the total regulatory assessment fee, include
25 interest as provided by paragraph (8)(b) of this rule.

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

1 (7) A company, utility, or cooperative may request either a 15-day or a 30-day extension
2 of its due date for payment of regulatory assessment fees or for filing its return form by
3 submitting to the Division of Administrative and Information Technology Services
4 Commission Form PSC/AIT 124 (12/11)₂ entitled “Regulatory Assessment Fee Extension
5 Request,” which is incorporated into this rule by reference and is available at:
6 <http://www.flrules.org/Gateway/reference.asp?No=Ref-02620>. This form may also be
7 obtained from the Commission’s Division of Administrative and Information Technology
8 Services.

9 (a) The request for extension must be received by the Division of Administrative and
10 Information Technology Services at least two weeks before the due date.

11 (b) The request for extension will not be granted if the company, utility, or cooperative has
12 any unpaid regulatory assessment fees, penalties, or interest due from a prior period.

13 (c) Where a company, utility, or cooperative receives an extension of its due date pursuant
14 to this rule, the entity shall remit a charge as set out in Section 350.113(5), F.S., in addition to
15 the regulatory assessment fee.

16 (8) The delinquency of any amount due to the Commission from the company, utility, or
17 cooperative pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the
18 first calendar day after any date established as the due date either by operation of this rule or
19 by an extension pursuant to this rule.

20 (a) A penalty, as set out in Section 350.113~~(4)~~, F.S., shall apply to any such delinquent
21 amounts.

22 (b) Interest at the rate of 12 percent per annum shall apply to any such delinquent amounts.
23 *Rulemaking Authority 350.127(2), 366.05 FS. Law Implemented 350.113, 366.14 FS. History—*
24 *New 5-18-83, Amended 2-9-84, Formerly 25-6.131, Amended 6-18-86, 10-16-86, 3-7-89, 2-*
25 *19-92, 7-7-96, 1-1-99, 5-7-13,_____.*

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

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE «Field1»

Investor-Owned Electric Utility Regulatory Assessment Fee Return

STATUS:

☐ Actual Return
☐ Estimated Return
☐ Amended Return

PERIOD COVERED:

«Field3»

Florida Public Service Commission

(See Filing Instructions on Back of Form)

«Field2»

FOR PSC USE ONLY

Check #

\$ 06-02-002
003001

\$ E

\$ P 06-02-002

\$ I 004011

Postmark Date

Initials of Preparer

Please Complete Below If Official Mailing Address Has Changed

LINE NO.	(Name of Utility)	(Address)	(City/State)	(Zip)
	ACCOUNT CLASSIFICATION	INTRASTATE AMOUNTS	SALES FOR RESALE & INTERSTATE AMOUNTS	TOTAL REVENUES
1.	Sales of Electricity:			
2.	Residential Sales (440)	\$	\$	\$
3.	Commercial Sales (442)			
	Industrial Sales (442)			
4.	Public Street and Highway Lighting (444)			
5.	Other Sales to Public Authorities (445)			
6.	Sales to Railroads and Railways (446)			
7.	Interdepartmental Sales (448)			
8.	Total Sales to Ultimate Consumers	\$	\$	\$
9.	Sales for Resale (447)			
10.	Total Sales of Electricity	\$	\$	\$
11.	Provision for Rate Refunds (449.1)			
12.	Total Revenue Net of Refunds	\$	\$	\$
13.	OTHER OPERATING REVENUES:			
14.	Forfeited Discounts (450)			
15.	Miscellaneous Service Revenues (451)			
16.	Sales of Water and Water Power (453)			
17.	Rent from Electric Property (454)			
18.	Interdepartmental Rents (455)			
19.	Other Electric Revenues (456)			
20.	Deferred Fuel Revenues			
21.	Deferred Conservation Revenues			
22.	Unbilled Revenues			
23.	Other			
24.	Total Other Operating Revenues	\$	\$	\$
25.	Total Electric Operating Revenues	\$	\$	\$
26.	Adjustments: (Specify)			
27.				
28.				
29.				
30.				
31.				
32.	Total Adjustments	\$		
33.	Revenues Subject to Regulatory Assessment Fee			
34.	REGULATORY ASSESSMENT FEE RATE	0.000848 .00072		
35.	REGULATORY ASSESSMENT FEE DUE (Line 33 x Line 34)			
36.	Less: Payment for Jan. 1 – Jun. 30 Period	()		
37.	NET REGULATORY ASSESSMENT FEE DUE (see #2 on back)			
38.	Penalty For Late Payment (see #3 on back)			
39.	Interest For Late Payment (see #3 on back)			
40.	Extension Payment Fee (see #4 on back)			
41.	TOTAL AMOUNT DUE ⁽¹⁾	\$		

⁽¹⁾As provided in Section 350.113, Florida Statutes, the Minimum Annual Fee is \$25 (see #5 on back)

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of Utility Official)

(Title)

(Date)

(Please Print Name)

Telephone Number ()

Fax Number ()

F.E.I. No.

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Investor-Owned Electric Utility)

1. **WHEN TO FILE:** To avoid payment of penalties and interest, the Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, **and**

On or before January 30 for the six-month period July 1 through December 31.

However, if July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty.

2. **FEES:** Each utility shall pay the currently authorized percentage, as indicated on Line 34 on the reverse side, of its gross operating revenues derived from intrastate business. Gross Operating Revenues are defined as the total revenues before expenses. The currently authorized percentage was implemented by Rule Section 25-6.0131(1)(a), Florida Administrative Code. Annual revenue amounts are to be reported on the return for the period ended December 31.
3. **FAILURE TO FILE BY DUE DATE:** A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due. Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 38). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 39).
4. **EXTENSION:** A utility, for good cause shown in a written request, may be granted up to a 30-day extension. A request must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/AIT 124), two weeks prior to the filing date. If an extension is granted, a charge shall be added to the amount due:
- 0.75% of the fee to be remitted for an extension of 15 days or less, *or*
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a utility may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the utility shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period.

5. **REGULATORY ASSESSMENT FEE DUE:** Amounts are due and payable to the Commission by either January 30 or July 30 depending on the reporting period. If there are no revenues *OR* if revenues are insufficient to generate a minimum annual fee, remit the minimum fee. **A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.**
6. **FEE ADJUSTMENTS:** Computational errors and/or differences in gross operating revenues reported for regulatory assessment fee purposes and those reported in the annual report may cause adjustments to amounts paid to the Commission. The utility will be notified as to the amount and reason for any adjustment. Penalty and interest charges may be applicable to additional amounts owed to the Commission by reason of the adjustment. A utility may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.
7. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your files, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. If you are unable to use the enclosed envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

8. **ADDITIONAL ASSISTANCE:** If any additional assistance is required in preparing the Regulatory Assessment Fee Return, please contact the Division of Economics Accounting and Finance at (850) 413-6410 ~~413-6900~~ or at the above-referenced address, directing correspondence to the attention of the division.

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE «Field1»

Municipal Electric Utility Regulatory Assessment Fee Return

STATUS:

☐ Actual Return
☐ Estimated Return
☐ Amended Return

PERIOD COVERED:

«Field3»

Florida Public Service Commission

(See Filing Instructions on Back of Form)

«Field2»

FOR PSC USE ONLY

Check # _____
\$ _____ 06-02-001
003001
\$ _____ E
\$ _____ P 06-02-001
\$ _____ I 004011

Postmark Date _____
Initials of Preparer _____

Please Complete Below If Official Mailing Address Has Changed

(Name of Utility)	(Address)	(City/State)	(Zip)	
LINE NO.	ACCOUNT CLASSIFICATION	INTRASTATE AMOUNTS	SALES FOR RESALE & INTERSTATE AMOUNTS	TOTAL REVENUES
1.	Sales of Electricity:			
2.	Residential Sales (440)	\$ _____	\$ _____	\$ _____
3.	Commercial Sales (442)	_____	_____	_____
	Industrial Sales (442)	_____	_____	_____
4.	Public Street and Highway Lighting (444)	_____	_____	_____
5.	Other Sales to Public Authorities (445)	_____	_____	_____
6.	Sales to Railroads and Railways (446)	_____	_____	_____
7.	Interdepartmental Sales (448)	_____	_____	_____
8.	Total Sales to Ultimate Consumers	\$ _____	\$ _____	\$ _____
9.	Sales for Resale (447)	_____	_____	_____
10.	Total Sales of Electricity	\$ _____	\$ _____	\$ _____
11.	Provision for Rate Refunds (449.1)	_____	_____	_____
12.	Total Revenue Net of Refunds	\$ _____	\$ _____	\$ _____
13.	Other Operating Revenues:	_____	_____	_____
14.	Forfeited Discounts (450)	_____	_____	_____
15.	Miscellaneous Service Revenues (451)	_____	_____	_____
16.	Sales of Water and Water Power (453)	_____	_____	_____
17.	Rent from Electric Property (454)	_____	_____	_____
18.	Interdepartmental Rents (455)	_____	_____	_____
19.	Other Electric Revenues (456)	_____	_____	_____
20.	Total Other Operating Revenues	\$ _____	\$ _____	\$ _____
21.	Total Electric Operating Revenues	\$ _____	\$ _____	\$ _____
22.	Adjustments: (Specify)	_____	_____	_____
23.	_____	_____	_____	_____
24.	_____	_____	_____	_____
25.	_____	_____	_____	_____
26.	_____	_____	_____	_____
27.	_____	_____	_____	_____
28.	Total Adjustments	\$ _____	_____	_____
29.	Revenues Subject to Regulatory Assessment Fee	_____	_____	_____
30.	REGULATORY ASSESSMENT FEE RATE	0.00002905 -00015625	_____	_____
31.	REGULATORY ASSESSMENT FEE DUE (Line 29 x Line 30)	_____	_____	_____
32.	Less: Payment for Jan. 1 – Jun. 30 Period	(_____)	_____	_____
33.	NET REGULATORY ASSESSMENT FEE DUE (see #2 on back)	_____	_____	_____
34.	Penalty For Late Payment (see #3 on back)	_____	_____	_____
35.	Interest For Late Payment (see #3 on back)	_____	_____	_____
36.	Extension Payment Fee (see #4 on back)	_____	_____	_____
37.	TOTAL AMOUNT DUE	\$ _____	_____	_____

⁽¹⁾ As provided in Section 350.113, Florida Statutes, the Minimum Annual Fee is \$25 (see #5 on back)

THIS FORM MUST BE COMPLETED AND RETURNED REGARDLESS OF THE AMOUNT OF REVENUES REPORTED

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of Utility Official)

(Title)

(Date)

(Please Print Name)

Telephone Number () Fax Number ()

F.E.I. No. _____

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Municipal Electric Utility)

1. **WHEN TO FILE:** To avoid payment of penalties and interest, the Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, **and**

On or before January 30 for the six-month period July 1 through December 31.

However, if July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty.

2. **FEES:** Each utility shall pay the currently authorized percentage, as indicated on Line 30 on the reverse side, of its gross operating revenues derived from intrastate business. Gross Operating Revenues are defined as the total revenues before expenses. The currently authorized percentage was implemented by Rule Section 25-6.0131(1)(b), Florida Administrative Code. Annual revenue amounts are to be reported on the return for the period ended December 31.
3. **FAILURE TO FILE BY DUE DATE:** A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due. Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 34). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 35).
4. **EXTENSION:** A utility, for good cause shown in a written request, may be granted up to a 30-day extension. A request must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/AIT 124), two weeks prior to the filing date. If an extension is granted, a charge shall be added to the amount due:
- 0.75% of the fee to be remitted for an extension of 15 days or less, *or*
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a utility may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the utility shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period.

5. **REGULATORY ASSESSMENT FEE DUE:** Amounts are due and payable to the Commission by either January 30 or July 30 depending on the reporting period. If there are no revenues *OR* if revenues are insufficient to generate a minimum annual fee, remit the minimum fee. **A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.**
6. **FEE ADJUSTMENTS:** The utility will be notified as to the amount and reason for any adjustment. Penalty and interest charges may be applicable to additional amounts owed to the Commission by reason of the adjustment. A utility may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.
7. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your file, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. If you are unable to use the enclosed envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

8. **ADDITIONAL ASSISTANCE:** If any additional assistance is required in preparing the Regulatory Assessment Fee Return, please contact the Division of Economics Accounting and Finance at (850) 413-6410 ~~413-6900~~ or at the above-referenced address, directing correspondence to the attention of the division.

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE «Field1»

Rural Electric Cooperative Regulatory Assessment Fee Return

STATUS:

☐ Actual Return
☐ Estimated Return
☐ Amended Return

PERIOD COVERED:

«Field3»

Florida Public Service Commission

(See Filing Instructions on Back of Form)

«Field2»

FOR PSC USE ONLY

Check #

\$ 06-02-001
003001

\$ E

\$ P 06-02-001

\$ I 004011

Postmark Date

Initials of Preparer

Please Complete Below If Official Mailing Address Has Changed

LINE NO.	(Name of Utility)	(Address)	(City/State)	(Zip)
	ACCOUNT CLASSIFICATION	INTRASTATE AMOUNTS	SALES FOR RESALE & INTERSTATE AMOUNTS	TOTAL REVENUES
1.	Sales of Electricity:			
2.	Residential Sales (440)	\$	\$	\$
3.	Commercial Sales (442)			
	Industrial Sales (442)			
4.	Public Street and Highway Lighting (444)			
5.	Other Sales to Public Authorities (445)			
6.	Sales to Railroads and Railways (446)			
7.	Interdepartmental Sales (448)			
8.	Total Sales to Ultimate Consumers	\$	\$	\$
9.	Sales for Resale (447)			
10.	Total Sales of Electricity	\$	\$	\$
11.	Provision for Rate Refunds (449.1)			
12.	Total Revenue Net of Refunds	\$	\$	\$
13.	Other Operating Revenues:			
14.	Forfeited Discounts (450)			
15.	Miscellaneous Service Revenues (451)			
16.	Sales of Water and Water Power (453)			
17.	Rent from Electric Property (454)			
18.	Interdepartmental Rents (455)			
19.	Other Electric Revenues (456)			
20.	Total Other Operating Revenues	\$	\$	\$
21.	Total Electric Operating Revenues	\$	\$	\$
22.	Adjustments: (Specify)			
23.		\$		
24.				
25.				
26.				
27.				
28.	Total Adjustments	\$		
29.	Revenues Subject to Regulatory Assessment Fee			
30.	REGULATORY ASSESSMENT FEE RATE	0.00009905, 00015625		
31.	REGULATORY ASSESSMENT FEE DUE (Line 29 x Line 30)			
32.	Less: Payment for Jan. 1 – Jun. 30 Period	()		
33.	NET REGULATORY ASSESSMENT FEE DUE (see #2 on back)			
34.	Penalty For Late Payment (see #3 on back)			
35.	Interest For Late Payment (see #3 on back)			
36.	Extension Payment Fee (see #4 on back)			
37.	TOTAL AMOUNT DUE	\$		

⁽¹⁾As provided in Section 350.113, Florida Statutes, the Minimum Annual Fee is \$25 (see #5 on back)

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor or of the second degree.

(Signature of Utility Official)

(Title)

(Date)

(Please Print Name)

Telephone Number ()

Fax Number ()

F.E.I. No.

PSC/ECO PSC/AFD 70 (12/23) (07/96)
Rule 25-6.0131, F.A.C.

FLORIDA PUBLIC SERVICE COMMISSION
Instructions For Filing Regulatory Assessment Fee Return
(Rural Electric Cooperative)

1. **WHEN TO FILE:** To avoid payment of penalties and interest, the Regulatory Assessment Fee Return and payment must be filed or postmarked:

On or before July 30 for the six-month period January 1 through June 30, **and**
On or before January 30 for the six-month period July 1 through December 31.

However, if July 30 or January 30 falls on a Saturday, Sunday, or holiday, the Regulatory Assessment Fee Return may be filed or postmarked on the next business day, without penalty.

2. **FEES:** Each utility shall pay the currently authorized percentage, as indicated on Line 30 on the reverse side, of its gross operating revenues derived from intrastate business. Gross Operating Revenues are defined as the total revenues before expenses. The currently authorized percentage was implemented by Rule Section 25-6.0131(1)(b), Florida Administrative Code. Annual revenue amounts are to be reported on the return for the period ended December 31.
3. **FAILURE TO FILE BY DUE DATE:** A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due. Failure to file a return by the established due date will result in a penalty being added to the amount of fee due, 5% for each 30 days or fraction thereof, not to exceed a total penalty of 25% (Line 34). In addition, interest shall be added in the amount of 1% for each 30 days or fraction thereof, not to exceed a total of 12% per year (Line 35).
4. **EXTENSION:** A utility, for good cause shown in a written request, may be granted up to a 30-day extension. A request must be made by filing the enclosed *Regulatory Assessment Fee Extension Request* form (PSC/AIT 124), two weeks prior to the filing date. If an extension is granted, a charge shall be added to the amount due:

0.75% of the fee to be remitted for an extension of 15 days or less, *or*
1.5% of the fee for an extension of 16 to 30 days.

In lieu of paying the charges outlined above, a utility may file a return and remit payment based upon estimated gross operating revenues by checking the "Estimated Return" space in the top left-hand corner on the reverse side. If such return is filed by the normal due date, the utility shall be granted a 30-day extension period in which to file and remit the actual fee due without paying the above charges, provided the estimated fee payment remitted is at least 90% of the actual fee due for the period.

5. **REGULATORY ASSESSMENT FEE DUE:** Amounts are due and payable to the Commission by either January 30 or July 30 depending on the reporting period. If there are no revenues *OR* if revenues are insufficient to generate a minimum annual fee, remit the minimum fee. **A Regulatory Assessment Fee Return must be completed, signed, and filed even if there are no revenues to report or if the minimum amount is due.**
6. **FEE ADJUSTMENTS:** The utility will be notified as to the amount and reason for any adjustment. Penalty and interest charges may be applicable to additional amounts owed to the Commission by reason of the adjustment. A utility may file a written request for a refund of any overpayments. The request should be directed to Fiscal Services at the below-referenced address.
7. **MAILING INSTRUCTIONS:** Please complete this form, make a copy for your file, and return the original in the enclosed preaddressed envelope. Use of this envelope should assure a more accurate and expeditious recording of your payment. If you are unable to use the enclosed envelope, please address your remittance as follows:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATTENTION: Fiscal Services

8. **ADDITIONAL ASSISTANCE:** If any additional assistance is required in preparing the Regulatory Assessment Fee Return, please contact the Division of Economics Accounting and Finance at (850) 413-6410 ~~413-6990~~ or at the above-referenced address, directing correspondence to the attention of the division.

FLORIDA PUBLIC SERVICE COMMISSION

Select
(Type of Industry)

REGULATORY ASSESSMENT FEE EXTENSION REQUEST

(Utility/Company) (Utility/Co Code) (FEID No.)
Mailing Address: _____

This is to request an extension for filing the Regulatory Assessment Fee Return for the above utility/company for the period indicated below:

PERIOD - ,

- ☐ 15 days to ,
☐ 30 days to ,

Statement of Good Cause (Reason For Request): _____

(Signature) (Title)

(Date) (Telephone Number) (FAX Number)

NOTE TO UTILITY/COMPANY

- Your Regulatory Assessment Fee Extension Request form must be filed and received by the Florida Public Service Commission at the address referenced below **BY CLOSE OF BUSINESS ON** before the payment due date of , . Once your request is received, you will be notified by fax (or by mail when a fax number is not provided) indicating that your request was approved or denied. **THIS IS NOT AN AUTOMATIC EXTENSION, THEREFORE YOU MUST RECEIVE APPROVAL FROM THE COMMISSION IN ORDER TO RECEIVE AN EXTENSION. See approval criteria on the back of this form.**
- If an extension of **15 days or less is approved**, 0.75% of the fee is to be included when making payment.
- If an extension of **16 to 30 days is approved**, 1.5% of the fee is to be included when making payment.

FOR PUBLIC SERVICE COMMISSION USE ONLY

Request Approved ☐
Request Denied ☐
☐ The 20__ Regulatory Assessment Fee has not been received.
☐ The 20__ Regulatory Assessment Fee was delinquent. Prior penalty and/or interest has not been received for your 20__ Regulatory Assessment Fee.
☐ The request was received too late for processing.
APPROVED BY: _____ (Fiscal Services Section Supervisor) _____ (Date)

If you have questions, please contact a staff member of the Fiscal Services Section or write to Division of Administrative & Information Technology Services, Fiscal Services Section, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399.

Criteria for Extension Request

- Form PSC/AIT 124, *Regulatory Assessment Fee Extension Request*, must contain a statement of good cause/reason for extension request. Examples of good cause include reasons such as financial hardship, severe illness, or acts of God; but do not include reasons such as management oversight or vacation time.
- The request for extension must be received by the Division of Administrative & IT Services at least two weeks before the Regulatory Assessment Fee due date.
- The request for extension will not be granted if the utility has any unpaid regulatory assessment fees, penalties, and/or interest due from a prior period(s).
- Please be aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree.

Item 2

FILED 12/28/2023
DOCUMENT NO. 06763-2023
FPSC - COMMISSION CLERK

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-

DATE: December 28, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Dike, Sapoznikoff) *SMC*
Division of Economics (Hampson, Kelley) *EJD*

RE: Docket No. 20230128-EU – Petition for declaratory statement regarding Rule 25-6.049, F.A.C., by 1150 WHG, LLC.

AGENDA: 01/10/24 – Regular Agenda – Decision on Declaratory Statement – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: 2/6/24 (Final Order on Petition for Declaratory Statement Must be Issued by this Date Pursuant to Section 120.565(3), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

On November 8, 2023, 1150 WHG, LLC (WHG) filed a petition for declaratory statement (Petition), asking the Commission to declare that, based on the facts presented, “the property qualifies for the grandfather exception set forth in [R]ule 25-6.049, [Florida Administrative Code (F.A.C.)], since the Property was constructed pursuant to a permit issued prior to January 1, 1981 and has received continuous master-metering since January 1, 1981.” Tampa Electric Company (TECO) provides electric service to the property.

Rule 25-6.049, F.A.C., sets forth electric metering requirements to measure energy use. For ease of reference, a copy of Rule 25-6.049, F.A.C., is appended to this recommendation as Attachment A.

The rule requires individual electric metering for each occupancy unit in new commercial, residential, and other buildings. This rule provides limited exemptions from the individual metering requirement for hotels, motels, hospitals, nursing homes, and other facilities for which billing for individual metering is impractical due to the nature of the facility's operation.¹ The rule also avoids retroactive application of the individual metering requirement for residential units in buildings constructed before 1981, allowing older properties to remain master-metered.²

Staff notes that individual electric metering is typically defined as measuring electric service for each occupancy unit of an establishment on an individual basis, using utility-owned meters for billing. In contrast, master-metering is typically used to describe situations in which electric service for multiple occupancy buildings is measured using a single, utility-owned meter for billing. TECO defines sub-meters, in tariff sheet No. 4.110, as a meter used to check electric usage on a particular electrical load for a non-billing purpose. Sub-meters are installed behind the utility-owned master-meter by the property owner or third party.

The Commission has stated that the purpose of Rule 25-6.049, F.A.C., is to implement the Florida Energy Efficiency and Conservation Act (FEECA) and encourage customers to conserve electricity.³ As this Commission has noted, "when unit owners are responsible for paying for their actual consumption, they are more likely to conserve to minimize their bills."⁴

Law Governing Petitions for Declaratory Statement

Section 120.565, Florida Statutes (F.S.), sets forth the necessary elements of a petition for declaratory statement. This section provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., states the purpose of a declaratory statement:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders

¹ Rule 25-6.049, F.A.C.; *see also* Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

² Rule 25-6.049(5), F.A.C.

³ Order No. PSC-15-0363-PAA-EU, issued September 8, 2015, in Docket No. 150142-EU, *In re: Petition by Wiscan, LLC for waiver of Rule 25-6.049(5), F.A.C.*

⁴ *Id.*

may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

If a petitioner meets the filing requirements provided by Rule 28-105.002, F.A.C., an agency must issue a declaratory statement. Rule 28-105.003, F.A.C., provides the requirements for how agencies must dispose of declaratory statements and states that an agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. A declaratory statement enables members of the public to resolve ambiguities of law and obtain definitive, binding advice as to the applicability of agency law to a particular set of facts.

Procedural Matters

Pursuant to Section 120.565, F.S., and Rule 28-105.0024, F.A.C., a Notice of Declaratory Statement was published in the November 13, 2023, edition of the Florida Administrative Register to inform substantially affected persons of the Petition. TECO was granted intervention into this docket by Order No. PSC-2023-0360-PCO-EU, issued November 28, 2023. Pursuant to Order No. PSC-2023-0360-PCO-EU, TECO filed its response to the Petition on December 6, 2023, and WHG filed its reply to TECO's response on December 13, 2023.

This recommendation addresses whether the Commission should grant WHG's Petition. Pursuant to Section 120.565(3), F.S., a final order on a request for a declaratory statement must be issued within 90 days of the filing of the Petition. As such, the statutory deadline to issue a final order on the Petition is February 6, 2024. The Commission has jurisdiction to consider this matter pursuant to Section 120.565 and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant WHG’s Petition for Declaratory Statement?

Recommendation: No. The Commission should deny WHG’s Petition for Declaratory Statement and instead declare that WHG does not qualify for the grandfather exception under Rule 25-6.049, F.A.C., and that WHG must use individual metering on its property. (Dike, Hampson, Kelley)

Staff Analysis:

Facts and Legal Analysis from the Parties

Under Rule 28-105.003, F.A.C., in considering the facts set forth in the pleadings, “[t]he agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts.” Therefore this recommendation relies on the facts as presented by WHG and TECO, without taking a position with regard to the validity of the facts.

WHG’s Statement of Facts

In its Petition and accompanying affidavit, WHG states it purchased the property at issue in November 2022. The property was originally constructed in 1973 and has continuously operated with a master-meter electrical system since then. In December 2022, the City of Winter Haven issued permits for WHG to renovate the property, converting it into individual, residential units.

WHG asserts that it informed TECO in January 2023 that it planned to install a sub-metering system for electrical use on the property. Sometime after that, WHG alleges it began the process of installing sub-metering in the residential units on the property. Under its plan, WHG states that tenants will pay for their electricity at the same rate at which WHG is billed by TECO, based on their individual energy usage recorded by the sub-meter in each unit. WHG sets forth that an independent third party will then invoice and collect these amounts from the tenants as reimbursement for WHG. WHG states that it will ultimately be billed by TECO for the energy usage recorded by the master-meter for the entire property. WHG further contends that in July 2023, TECO objected to the plan.

WHG claims that it has changed all of the wiring in the building and installed half of the sub-meters in the individual units already. WHG estimates that it would cost \$1.5 million to install individual meters. Moreover, WHG opines that the installation of solar panels—which it states would also further the purposes of FEECA—is not justifiable if the property cannot use master-metering. WHG states that its ultimate goals are to avoid retrofitting costs, upgrade the property for tenants, and achieve the conservation and sustainability goals of FEECA.

TECO’s Statement of Facts

In its response to the Petition, TECO states that the property at issue included multiple motel structures and an office building. TECO sets forth that the company provided electric service to the motel from its construction in 1973 until November 2022, when Petitioner became the customer of record. TECO asserts that in January 2023, an energy auditor from TECO visited the property to perform a Commercial Energy Audit.

TECO also alleges that on June 16, 2023, WHG advised TECO that it intended to master-meter the property with sub-metering in the individual apartments. TECO contends that on June 18, 2023, TECO informed WHG that master-metering is not consistent with Rule 25-6.049, F.A.C. TECO further claims that when WHG sent construction design plans to TECO in June 2023, the plans did not include sub-metering of the residential units. TECO states that the company sent letters to WHG in July and August of 2023, informing Petitioner that the property did not qualify for master-metering.

In August 2023, WHG made an informal complaint to the Commission. TECO states that WHG subsequently informed TECO that it would begin renting out apartments in September 2023. On September 27, 2023, Commission staff issued a complaint resolution, finding that TECO had not violated any Commission rules and, therefore, could interrupt electric service after giving WHG proper notice.

The Parties' Legal Arguments

WHG maintains its property is exempt from the individual metering requirement of Rule 25-6.049, F.A.C., because its buildings were permitted and constructed prior to 1981 and the property has had continuous master-metering since its construction. WHG also argues the requirement for new residential buildings to use individual meters does not apply in this matter because the buildings on the property are not new, despite the renovations.

In response, TECO argues that WHG's property does not qualify for the grandfather exception in Rule 25-6.049, F.A.C. TECO opines that the grandfather exception has limited applicability to occupancy units built prior to 1981, not motels and other overnight occupancy buildings. TECO claims its interpretation follows the plain language of Rule 25-6.049, F.A.C., and Commission precedent.

In its reply to TECO's response, WHG now asserts that the grandfather exception in Rule 25-6.049, F.A.C., applies because the property has occupancy units in a new residential building. WHG states the property is a new residential building because of the renovations. WHG posits that it is irrelevant whether its exemption from individual metering came from the motel exception or the grandfather exception. WHG contends that it follows the plain language of the rule and TECO misrepresents Commission precedent.

WHG further asserts that its use of the grandfather exception is a continuation of a prior, non-conforming use, rather than the creation of a new, non-conforming use. It contends that substantial upgrading of the property does not create a new use and that the rule does not require that the property's use remains continuous to rely on the grandfather exception. WHG also argues that it has already incurred substantial costs by sub-metering some of the units, and that it would be burdensome to switch to individual metering.

Next, WHG claims that its use of sub-meters will achieve the purpose of FEECA—the statute that Rule 25-6.049, F.A.C., implements—as residents would be responsible for their individual electric consumption, thus incentivizing conservation. In response, TECO alleges the Commission should declare that individual metering is required because WHG's master-

Date: December 28, 2023

metering approach undermines the purposes of FEECA. TECO cites to the intent of Rule 25-6.049, F.A.C., arguing that the rule implements FEECA by having individual residents pay for their electric, so that they are more likely to conserve energy and lower their bills. Here, TECO states that the tenants will be paying a portion of WHG's commercial rate under WHG's master-metering plan. TECO argues that since the cost of electricity differs for residential and commercial customers, the tenants would be paying a potentially lower commercial rate than they would under individual metering. TECO claims this would be inapposite to the policy goal of conservation under FEECA, as customers would not see their conservation efforts reflected in their bills, unless the units are individually metered.

TECO further states that WHG's proposed plan raises other issues outside the requested declaratory statement. TECO points out that WHG has not requested a declaratory statement regarding whether the proposed plan would be consistent with Rule 25-6.065, F.A.C., Net Metering (which allows a customer to offset its electricity costs via customer-owned renewable generation). TECO asserts that if the Commission grants the requested declaratory statement, WHG will be offsetting the costs of electricity usage of all the residents on the property, not just WHG's usage, with the planned solar array.

Additionally, TECO argues that if the Commission grants the requested declaratory statement, then WHG may be considered an "electric utility" and a "public utility" under Chapter 366, F.S. In its reply, WHG posits that TECO's argument is not based in fact. WHG argues that it would agree to any limitations the Commission may impose, so that WHG would not operate as a public or electric utility.

Staff's Analysis of WHG's Petition for Declaratory Statement

WHG's Requested Declaratory Statement

WHG asks the Commission to issue the following affirmative declaratory statement:

The Property qualifies for the "grandfather exception" set forth in [R]ule 25-6.049[, F.A.C.,] since the Property was constructed pursuant to a permit issued prior to January 1, 1981 and has received continuous master-metering since January 1, 1981.

Threshold Requirements of Petition

As stated in the case background, the purpose of a declaratory statement is to address the applicability of statutory provisions, orders, or rules of an agency to the petitioner's particular circumstances.⁵ Under Section 120.565(1)-(2), F.S., a petition must "state with particularity the petitioner's set of circumstances" and specify the statute, order, or rule that the petitioner believes is applicable, as well as show the petitioner is substantially affected. WHG's Petition contains specific details about the property at issue and electric service concerns and identifies Rule 25-6.049, F.A.C., as the rule that applies to its set of circumstances. WHG alleges that it and TECO have different interpretations of the rule and seeks a declaration to establish the proper interpretation of the rule as it applies to WHG's property. WHG is substantially affected

⁵ Rule 28-105.001, F.A.C.

because of the costs associated with metering its property and the disagreement with its electric service provider. In sum, WHG has satisfied the threshold requirements for issuance of a declaratory statement.

Application of Rule 25-6.049, F.A.C.

Staff believes that WHG's property does not fall under the grandfather exception of Rule 25-6.049, F.A.C., and it never has. In statutory interpretation, courts "follow the supremacy-of-text principle—namely, the principle that [t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."⁶ Thus, the plain language of the rule must be examined to determine how the rule should be applied to WHG's particular circumstances.

Under Rule 25-6.049(5), F.A.C., properties with occupancy units—e.g., rented or leased portions of residential and commercial buildings—can avoid retroactive application of individual metering requirements if (1) the construction permit for the property was issued before 1981 and (2) the property has been using master-metering continuously since that time.⁷ Here, the property was originally constructed to be a motel, which meets the definition of "overnight occupancy" in Rule 25-6.049(8)(b), F.A.C. As the property was used as a motel, rather than residential units, there has never been a requirement for individual metering from which the property needed exception. Staff believes that since there was no grandfather exception in the first place, the Commission cannot extend an exception to WHG now via a declaratory statement.⁸

Assuming for the sake of argument, even if the property originally qualified for the grandfather exception under Rule 25-6.049, F.A.C., its use has changed fundamentally from overnight occupancy to occupancy units, which would negate the exception. Subsection (5) of the rule states that "[i]ndividual electric metering by the utility shall be required for each separate occupancy unit of [a] new . . . residential building." Although the building structures are not new, WHG obtained a new construction permit in 2022 to renovate the buildings, turning motel rooms into apartment units. In its Petition, WHG first argued that the building was not new. Then, it subsequently argued that the building was considered a new residential building in its reply to TECO's response. Regardless, staff believes this renovation generates a new residential building.

⁶ *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (citing Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 56 (2012)).

⁷ The Commission has identified the purpose of the grandfather clause to be "advancing conservation, while at the same time, avoiding the retroactive imposition of individual metering retrofit costs on buildings constructed as master-metered buildings prior to the adoption of the rule." Order No. PSC-00-1802-FOF-EU, issued October 2, 2000, in Docket No. 981104-EU, In re: *Proposed Amendment of Rule 25-6.049, F.A.C., Measuring Customer Service*.

⁸ Even in rule waivers, which this Petition is not, "[t]he types of facilities that are exempted from the individual metering requirement are those in which, due to their nature or mode of operation, it is not practical to attribute usage to individual occupants. For example, hotels and motels are commercial enterprises in which the occupants of the units are not billed for their use of electricity, but rather pay a bundled rate for the use of a room for a limited time." Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, In re: *Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

Date: December 28, 2023

Even if the outer structures remain the same, the renovation changes the nature of the property from commercial to residential. The 2022 permit and subsequent conversion creates a new, nonconforming use when WHG installs sub-metering rather than individual metering, which is opposite to Commission precedent. As this Commission has stated, “[t]he concept of grandfathering simply tolerates pre-existing non-conforming uses, it does not condone the creation of new ones.”⁹ Not only does the creation of a new grandfather exception go against Commission precedent, but the creation of sub-metering does too. This Commission has previously stated that, “[w]e are concerned that if non-utility entities become responsible for metering and billing of electricity, we will no longer have the statutory authority to [e]nsure that the protections currently afforded by the Commission statutes and rules are provided to sub-metered customers.”¹⁰

Additionally, the cost associated with changing the property from master-metering to individual metering is not sufficient reason to depart from the plain language of Rule 25-6.049, F.A.C., and Commission precedent.¹¹ There is no mention of cost considerations in Rule 25-6.049, F.A.C. Here, WHG asserts it has incurred substantial costs in wiring and installation of half of the sub-meters on the property, and the subsequent installation of individual meters would be burdensome. While WHG sets forth this cost argument, Rule 25-6.049, F.A.C., does not allow the Commission to grant exceptions from individual metering solely based on cost.

The potential consequences of approval of the requested declaratory statement also indicate that WHG’s interpretation of Rule 25-6.048, F.A.C., runs counter to the intent of the rule. TECO states that it bills WHG’s property at a commercial rate, so WHG’s plan may circumvent rate design. Rates purposefully differ for commercial and residential customers, because “[a] large proportion of the production costs of electricity are allocated to the rate classes based on their contribution to the system's peak demand.”¹² If WHG does bill individual tenants for their contribution to the overall energy usage of the property, then the tenants will be paying a portion of a commercial rate, instead of the residential rates, under WHG’s plan. If the Commission grants the requested declaratory statement, then it may implicitly allow WHG to bypass rate design and use a commercial rate. This potential consequence of WHG’s interpretation supports staff’s interpretation of Rule 25-6.049, F.A.C.

⁹ Order No. PSC-98-0449-FOF-EI, issued on March 30, 1998, in Docket No. 971542-EI, *In re: Petition for Declaratory Statement Regarding Eligibility of Pre-1981 Buildings for Conversion to Master Metering by Florida Power Corporation*.

¹⁰ Order No. PSC-97-0074-FOF-EU, issued on January 24, 1997, in Docket No. 951485-EU, *In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by MicroMETER Corporation*.

¹¹ While substantial hardship is considered in rule variances, it is not a factor to consider in the rule at hand. See Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

¹² Order No. PSC-97-0074-FOF-EU, issued on January 24, 1997, in Docket No. 951485-EU, *In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by MicroMETER Corporation* (“In its petition, Micrometer cited as an advantage to its proposal the ability of apartments, condominiums, and other multi-occupancy residential buildings to take service under a commercial rate through a master meter, in lieu of the residential rate billed through individual meters. We do not believe that this would be appropriate. The rates charged to the various classes of customers are based on the unique usage characteristics of each class. We do not believe it would be appropriate to allow customers whose usage is residential in nature to take service under a commercial rate.”).

Date: December 28, 2023

The Purpose of FEECA

WHG's statement that it is purporting to meet the purpose of FEECA through other means does not override the plain language and purpose of the rule. Under Rule 25-6.049, F.A.C.,

The primary objective of [the] individual metering requirement is to promote energy conservation. When unit owners are directly responsible for paying for their electricity consumption, they are more likely to conserve in order to minimize their bills.¹³

Here, WHG seeks to use a solar panel array and master-metering with sub-meters to lower tenants' bills and offset their usage. While WHG asserts that sub-metering its units alongside the solar array will achieve the same conservation goals encapsulated in FEECA as individual metering, these two methods are not interchangeable under the plain language of the rule. Despite its assertion otherwise, WHG's plan to use solar panels under a cogeneration agreement does not obviate the requirement for individual metering. Thus, approval of the requested declaratory statement would actually run counter to the purpose of FEECA.

Other Regulatory Concerns

Furthermore, staff agrees with TECO that WHG's plan raises other potential legal issues beyond those identified in its Petition. Staff believes that WHG's interpretation of Rule 25-6.049, F.A.C., runs counter to the legislative intent of Chapter 366, F.S., and Commission rules. In statutory construction, the doctrine of *in pari materia* "requires that statutes relating to the same subject . . . be construed together to harmonize the statutes and to give effect to the Legislature's intent." *E.A.R. v. State*, 4 So. 3d 614 (Fla. 2009) (citing *Fla. Dep't of State v. Martin*, 916 So.2d 763, 768 (Fla.2005)).

If the Commission grants WHG's declaratory statement, then WHG may become a "public utility" or "electric utility" under Florida law, by maintaining and operating solar panels and supplying electric generation to its tenants. Section 366.02(8), F.S., defines a "public utility" as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity . . . to or for the public within this state." Under Section 366.02(4), an "electric utility" is defined as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state." Here, WHG plans to install solar panels and sub-meters and distribute that solar power to the sub-metered tenants. The Commission should harmonize the provisions of Chapter 366, F.S., and Rule 25-6.049, F.A.C., by following the plain language interpretation of Rule 25-6.049, F.A.C. In doing so, the Commission can avoid these extraneous consequences of the requested declaratory statement.

Rule 25-6.065, F.A.C., the Commission's net metering rule, should also be read in *in pari materia*. Under Rule 25-6.065, F.A.C., customers with their own renewable generation can "interconnect to the investor-owned utility's electrical grid . . . to net meter." Through this regulatory scheme, a customer can offset their energy usage with their own renewable generation. TECO argues that

¹³ Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, in Docket No. 001543-EU, *In re: Petition for Variance from or Waiver of Rule 25-6.049(5)(a), F.A.C., by Sundestin International Homeowners Association, Inc.*

Date: December 28, 2023

WHG's plan could cause WHG to offset electricity usage of the 200+ residents on the property, not just WHG's electricity, which it argues is opposite to the purpose of Rule 25-6.065, F.A.C. The Florida Legislature's intent is to promote renewable energy generation for individual customers, not to allow net metering for businesses on behalf of others.¹⁴ In order to give effect to the Legislature's intent regarding net metering, and interpret the rules in *pari materia*, the Commission should deny the requested declaratory statement.

To clarify, WHG has not asked for any declaration on whether WHG's plan to provide service to its property will make it an electric company or public utility under Chapter 366, F.S., or whether the manner of electric service is consistent with Rule 25-6.065, F.A.C., nor is staff recommending the Commission make such declarations. Staff is only pointing out that the declaration WHG is requesting is inconsistent with other parts of Chapter 366, F.S., and other Commission rules and, thus, indicates the requested declaration is an incorrect interpretation of Rule 25-6.049, F.A.C.

Conclusion

For the reasons stated above, staff recommends the Commission deny WHG's Petition for Declaratory Statement and should instead declare that (1) WHG's property does not fall under the grandfather exception of Rule 25-6.049, F.A.C., and (2) WHG must use individual metering for its property.

¹⁴ See § 366.91, F.S. (using a statutory scheme wherein customers can offset their own energy use via renewable energy, not others); *see also* Florida Senate Bill 1718 (2021) (showing a proposed bill that the Legislature **did not** pass which would have expressly authorized businesses to net meter and use renewable generation in the same manner that WHG plans).

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission votes to either grant or deny the Petition for Declaratory Statement, a final order will be issued and the docket should be closed. (Dike)

Staff Analysis: Whether the Commission grants or denies WHG's Petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.

Date: December 28, 2023

25-6.049 Measuring Customer Service.

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

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

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

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

(5) 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. However, individual metering 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:

(a) 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;

(b) For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems;

(c) 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, F.S., college dormitories, convents, sorority houses, fraternity houses, and similar facilities;

(d) For lodging establishments such as hotels, motels, and similar facilities which are rented, leased, or otherwise provided to guests by an operator providing overnight occupancy as defined in paragraph (8)(b);

(e) For separate, specially-designated areas for overnight occupancy, as defined in paragraph (8)(b), at trailer, mobile home and recreational vehicle parks and marinas where permanent residency is not established;

(f) For new and existing time-share plans, provided that all of the occupancy units which are served by the master meter or meters are committed to a time-share plan as defined in Chapter 721, F.S., and none of the occupancy units are used for permanent occupancy.

(g) For condominiums that meet the following criteria:

1. The declaration of condominium requires that at least 95 percent of the units are used solely for overnight occupancy as defined in paragraph (8)(b) of this rule;

2. A registration desk, lobby and central telephone switchboard are maintained; and

3. A record is kept for each unit showing each check-in and check-out date for the unit, and the name(s) of the individual(s) registered to occupy the unit between each check-in and check-out date.

(6) Master-metered condominiums.

(a) Initial Qualifications – In addition to the criteria in paragraph (5)(g), in order to initially qualify for

Date: December 28, 2023

master-metered service, the owner or developer of the condominium, the condominium association, or the customer must attest to the utility that the criteria in paragraph (5)(g) and in this subsection have been met, and that any cost of future conversion to individual metering will be the responsibility of the customer, consistent with subsection (7) of this rule. Upon request and reasonable notice by the utility, the utility shall be allowed to inspect the condominium to collect evidence needed to determine whether the condominium is in compliance with this rule. If the criteria in paragraph (5)(g) and in this subsection are not met, then the utility shall not provide master-metered service to the condominium.

(b) Ongoing Compliance – The customer shall attest annually, in writing, to the utility that the condominium meets the criteria for master metering in paragraph (5)(g). The utility shall establish the date that annual compliance materials are due based on its determination of the date that the criteria in paragraphs (5)(g) and (6)(a) were initially satisfied, and shall inform the customer of that date before the first annual notice is due. The customer shall notify the utility within 10 days if, at any time, the condominium ceases to meet the requirements in paragraph (5)(g).

(c) Upon request and reasonable notice by the utility, the utility shall be allowed to inspect the condominium to collect evidence needed to determine whether the condominium is in compliance with this rule.

(d) Failure to Comply – If a condominium is master metered under the exemption in this rule and subsequently fails to meet the criteria contained in paragraph (5)(g), or the customer fails to make the annual attestation required by paragraph (6)(b), then the utility shall promptly notify the customer that the condominium is no longer eligible for master-metered service. If the customer does not respond with clear evidence to the contrary within 30 days of receiving the notice, the customer shall individually meter the condominium units within six months following the date on the notice. During this six month period, the utility shall not discontinue service based on failure to comply with this rule. Thereafter, the provisions of Rule 25-6.105, F.A.C., apply.

(7) When a structure or building is converted from individual metering to master metering, or from master metering to individual metering, the customer shall be responsible for the costs incurred by the utility for the conversion. These costs shall include, but not be limited to, any remaining 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.

(8) For purposes of this rule:

(a) “Occupancy unit” means that portion of any commercial establishment, single and multi-unit residential building, 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.

(b) “Overnight Occupancy” means use of an occupancy unit for a short term such as per day or per week where permanent residency is not established.

(9)(a) Where individual metering is not required under subsection (5) and master metering is used in lieu thereof, reasonable apportionment methods, including sub-metering may be used by the customer of record or the owner of such facility solely for the purpose of allocating the cost of the electricity billed by the utility. 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, conservation, capacity and environmental 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 customer-owned distribution system behind the master meter, the customer of record’s cost of billing the individual units, and other such costs.

(b) Any fees or charges collected by a customer of record for electricity billed to the customer’s account

Date: December 28, 2023

by the utility, whether based on the use of sub-metering or any other allocation method, shall be determined in a manner which reimburses the customer of record for no more than the customer's actual cost of electricity.

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

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.05(1), 366.06(1), 366.81, 366.82 FS. History—New 7-29-69, Amended 11-26-80, 12-23-82, 12-28-83, Formerly 25-6.49, Amended 7-14-87, 10-5-88, 3-23-97, 10-10-06.

Item 3

FILED 12/28/2023
DOCUMENT NO. 06764-2023
FPSC - COMMISSION CLERK

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-

DATE: December 28, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Thompson, Crawford, Dose) *JSC*
Division of Accounting and Finance (Vogel) *ALM*
Division of Economics (Draper, Hampson) *EJD*
Division of Engineering (Ballinger) *TB*

RE: Docket No. 20230122-EI – Petition for variance from Rule 25-6.043(1)(a), F.A.C., by Tampa Electric Company.

AGENDA: 01/10/24 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: 01/24/24 (Date by which petition must be ruled on pursuant to Section 120.542(8), F.S.)

SPECIAL INSTRUCTIONS: None

Case Background

Tampa Electric Company (TECO or Company) is an investor-owned public electric utility servicing 810,000 customers in four counties¹ in Florida. On October 24, 2023, TECO filed a Petition for Variance from Rule 25-6.043(1)(a), Florida Administrative Code (F.A.C.). According to TECO, it requires a variance from this Rule in order to comply with the terms of Order No. PSC-2021-0423-S-EI (2021 Settlement Agreement),² by which the Commission

¹ All of Hillsborough County and parts of Pasco, Pinellas, and Polk counties.

² Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket Nos. 20210034-EI, *In re: Petition for rate increase by Tampa Electric Company*, and 20200264-EI, *In re: Petition for approval of 2020 depreciation and dismantlement study and capital recovery schedules, by Tampa Electric Company*.

approved the unanimous stipulation and settlement agreement in TECO's 2021 base rate proceeding.³

Rule 25-6.043(1), F.A.C., (MFR Rule) sets forth the general filing instructions for investor-owned electric utilities' minimum filing requirements (MFRs) when submitting applications for changes in rates. The MFR Rule, states, in pertinent part:

(a) The petition under Sections 366.06 and 366.071, F.S., for adjustment of rates must include or be accompanied by:

1. The information required by Commission Form PSC/AFD/011-E (2/04), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities" which is incorporated into this rule by reference. The form may be obtained from the Commission's Division of Accounting and Finance.

Schedule E of the Minimum Filing Requirements for Investor-Owned Utilities form⁴ (MFR Form) incorporated into the MFR Rule requires utilities to provide a cost of service study⁵ with any application for adjustment of rates. Specifically, the cost of service study required by the MFR Rule must allocate production and transmission plant using the average of the twelve monthly coincident peaks and 1/13th weighted average of demand. This method of allocation is abbreviated as the 12CP and 1/13th method.

TECO seeks a variance from the 12CP and 1/13th method to instead use a four coincident peaks and full Minimum Distribution System (4CP and MDS) method⁶ for the cost of service study submitted as part of an anticipated rate case in 2024. Per TECO's petition, the use of the 4CP and MDS method is driven by the 2021 Settlement Agreement:

The parties have agreed . . . that the company will, for purposes of meeting its initial burden of proof in complying with Rule 25-6.043, F.A.C., in Tampa Electric's next general rate base proceeding, file the cost of service MFRs using the 4CP and full MDS methods for cost allocation.⁷

TECO believes that this provision in the 2021 Settlement Agreement requires it to use the 4CP and MDS method in its next base rate case and, significantly, that it is also prohibited from using an alternative method, such as the 12CP and 1/13th method required by the MFR Rule. Consequently, TECO filed the petition giving rise to this docket.

³ The signatories to the 2021 Settlement Agreement are TECO; the Office of Public Counsel; the Florida Industrial Power Users Group; the West Central Florida Hospital Utility Alliance; the Federal Executive Agencies; the Florida Retail Federation; and Walmart, Inc.

⁴ This form may be accessed at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12642>.

⁵ A cost of service study determines the total costs incurred by a utility in providing service to its customers and the appropriate allocation of those costs among various customer classes.

⁶ The MDS is a method of allocating distribution plant costs.

⁷ Order No. PSC-2021-0423-S-EI, pp. 29-31.

Pursuant to Section 120.542(6), Florida Statutes (F.S.), a Notice of Variance or Waiver was published in the November 16, 2023 edition of the Florida Administrative Register. The time for filing comments, provided by Rule 28-104.003, F.A.C., expired on November 30, 2023.

In response to TECO's request, the Commission received 136 comments in opposition to TECO's petition and one joint notice of support from the signatories to the 2021 Settlement Agreement. These comments are discussed in Issue 1.

This recommendation addresses TECO's petition. Pursuant to Section 120.542(8), F.S., the Commission must grant or deny a request for variance within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. As such, the statutory deadline for this proceeding is January 24, 2024. The Commission has jurisdiction pursuant to Chapters 120 and 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant TECO’s petition for variance from Rule 25-6.043(1)(a), F.A.C.?

Recommendation: No, the Commission should deny TECO’s petition for variance from Rule 25-6.043(1)(a), F.A.C. (Thompson)

Staff Analysis:

Legal Standard for Rule Variances and Waivers

Florida law allows agencies to waive or provide other relief (variances) to persons subject to regulation where the strict application of uniformly applicable rule requirements leads to “unreasonable, unfair, and unintended results in particular instances.” Section 120.542(1), F.S. Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. Section 120.542(2), F.S.

TECO’s Petition

TECO requests a variance of the MFR Rule to use a 4CP and full MDS cost of service methodology when preparing the E Schedule MFRs in its next rate case, in lieu of the 12 CP and 1/13th methodology specified in the MFR Rule. TECO contends that the underlying purpose of the statute would not be affected by granting the waiver. Further, TECO contends that requiring TECO to use the 12CP and 1/13th methodology specified in the MFR Rule in the MFRs of TECO’s next base rate case would violate principles of fairness, because doing so would cause the Company “to violate the terms of its approved 2021 rate case settlement agreement.”

Purpose of the Underlying Statute

The MFR Rule primarily implements Section 366.06, F.S.,⁸ which sets forth the Commission’s statutory obligation to approve rates that are fair, just, and reasonable. Section 366.06, F.S., states, in pertinent part, that “the commission shall consider the cost of providing service to the class. . . ; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.”

The MFR Rule serves to provide the Commission a uniform method to consider the cost of providing services to the customer classes as well as to look at the consumption and load characteristics of those classes. TECO’s petition requests a variance from the MFR Rule to provide an alternative method for the Commission to consider the cost of providing service to the customer classes and to look at the consumption and load characteristics of those classes. Since the statute does not require a particular cost of service study, such as the 12CP and 1/13th method, the 4CP and MDS method would still allow the Commission to fulfill its statutory obligation. Therefore, staff believes that the first prong of the rule waiver test is met, which is that the purpose of the underlying statute is still met if the MFR Rule is waived.

⁸ The MFR Rule also implements Sections 366.04(2)(f) and 366.071, F.S.

Substantial Hardship and Principles of Fairness

The second prong of the rule waiver test is met if strict application of the rule either (1) creates a substantial hardship or (2) would violate the principles of fairness. The utility may meet the second prong through either path and is not required to show both. In its petition, TECO does not argue that application of the MFR Rule creates a substantial hardship, but rather that application of the MFR Rule would violate the principles of fairness.

“Principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), F.S. TECO argues that it is uniquely affected because the 2021 Settlement Agreement – approved by an order from the Commission - requires it to file a cost of service study that is inconsistent with the MFR Rule. Paragraph 6(d) of Attachment A to the 2021 Settlement Agreement lays out the cost of service study requirements for TECO in its next general base rate proceeding:

This revenue attribution was derived by application of the 4CP methodology for allocating production and transmission plant costs and the use of the full Minimum Distribution System (“MDS”) costing method for allocating distribution plant costs, as mitigated. The Parties have agreed to the transitional revenue percentage allocations shown in Exhibit K[,] with the further understanding that the company will, for purposes of meeting its initial burden of proof in complying with Rule 25-6.043, F.A.C., in Tampa Electric Company’s next general base rate proceeding, file the cost-of-service MFRs using the 4CP and full MDS methods for cost allocation. The company further commits to base its filed revenue attribution among customer classes in its next general base rate proceeding on full implementation of the 4CP and MDS methodologies, and in that initial filing to substantially and materially improve the position of all above-parity customer classes toward parity, such that costs are allocated and revenue is collected consistent with 4CP and full MDS methods. All Parties and affiliates of TECO (“Precluded Parties”) will either not oppose, or will support, the 4CP and full MDS implementation. If the 4CP or full MDS methodology is opposed in the next general base rate case by an entity other than a Precluded Party, the Parties will indicate that they continue to support or not oppose implementation of the 4CP and full MDS, but in response, may offer responsive information on alternative cost-of-service methodologies and revenue allocation methodologies solely on an alternative basis.

Staff does not agree that TECO is affected in a manner significantly different from the way the MFR Rule affects other similarly situated entities subject to the rule. The MFR Form specifically contemplates multiple cost of service studies being utilized:

Provide under separate cover a cost of service study that allocates production and transmission plant using the average of the twelve monthly coincident peaks and 1/13 weighted average demand (12CP and 1/13th) method. In addition, if the company is proposing a different cost allocation method, or if a different method

Date: December 28, 2023

was adopted in its last rate case, provide cost of service studies using these methods as well. All studies must be at both present and proposed rates. The cost of service analysis must be done separately for each rate class.

(Emphasis added). The MFR Form makes several more references to multiple cost of service studies. Therefore, the MFR Rule allows for and, in fact, requires a utility to provide a cost of service study with the 12CP and 1/13th method alongside any other methodologies adopted in a prior rate case.

TECO argues that the 2021 Settlement Agreement specifically prohibits TECO from providing a cost of service study using any alternative method besides 4CP and MDS. Staff disagrees. While the 2021 Settlement Agreement does bind TECO and others in some ways, staff's reading of this provision does not prohibit or preclude TECO from filing the 12CP and 1/13th method alongside the 4CP and MDS method. TECO can comply with both the MFR Rule and the 2021 Settlement Agreement. Therefore, TECO is not being affected by the 2021 Settlement Agreement in a manner significantly different from the way the MFR Rule affects other similarly situated entities subject to the rule.

Comments to TECO's Petition

As of the time of filing this recommendation, the Commission received 136 comments related to TECO's petition. Among them were 133 comments from customers, 2 comments from Hillsborough County Commissioners, and 1 joint comment from Florida Rising and the Florida League of United Latin American Citizens (LULAC). All 136 comments were in opposition to TECO's request for variance.

Florida Rising and LULAC claim that TECO's petition does not meet the standard for variance as it fails to demonstrate compliance with the purpose of the underlying statute and fails to show that application of the statute would present a substantial hardship to TECO or violate the principles of fairness. Florida Rising and LULAC further claim that the Commission should reject the petition as a matter of policy as it pertains to its impact on residential customer bills.

As previously discussed, staff agrees with Florida Rising and LULAC that TECO has not shown a violation of the principles of fairness. However, staff believes Florida Rising and LULAC's other arguments lack merit. Specifically, the policy considerations of impacts on residential customer bills are not an appropriate means to grant or deny a petition for a rule waiver or variance. Staff notes that Florida Rising and LULAC were not parties to TECO's 2021 base rate proceeding. However, parties of appropriate standing wishing to contest impacts on residential customers' bills will have an opportunity to intervene in TECO's next base rate proceeding.

The signatories to the 2021 Settlement Agreement provided the following joint statement:

Consistent with Paragraph 16 of the August 6, 2021 Stipulation and Settlement Agreement ("SSA") adopted and approved by the Commission in Order No. PSC-2021-04230S-E1 [*sic*], Docket Number 20220122-EI [*sic*], all parties to that docket reaffirm and support the SSA in its entirety, as provided for in Paragraph 16(a).

Conclusion

The MFR Rule specifically contemplates the use of multiple cost of service studies, including cost of service studies adopted in a utility's prior rate case. By its plain language, the 2021 Settlement Agreement does not preclude TECO from filing another cost of service study alongside the required 4CP and MDS study. Staff believes that the 2021 Settlement Agreement and MFR Rule can and should be read harmoniously, and that compliance with the former does not compel waiver of the latter. Because TECO has failed to demonstrate how the application of the rule would violate principles of fairness, staff recommends that TECO's petition for a rule variance should be denied.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Thompson)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.