

STATE OF FLORIDA
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Declaratory Statement

By 1150 WHG, LLC,
a Florida limited liability company

Docket No. 20230128-EI

Petitioner _____/

**1150 WHG, LLC'S REPLY TO
TAMPA ELECTRIC COMPANY'S RESPONSE TO PETITION**

1150 WHG, LLC ("1150 WHG") files this Reply to Tampa Electric Company's ("Tampa Electric") Response to Petition in the above-captioned docket and states as follows:

I. 1150 WHG Disputes Certain Statements Made by Tampa Electric in the Factual Background.

In the Factual Background, Tampa Electric insinuates that 1150 WHG already incurred the costs associated with retrofitting the property from master metering to individual metering via the "submetering" installation made by 1150 WHG. Tampa Electric's recitation of the facts is misleading because it fails to recognize two key points. First, the costs associated with the submetering were significantly less than the costs for retrofitting the property from master metered to individual metered because the main gear was not replaced or changed. Second, Tampa Electric fails to recognize that they were involved in the beginning of this renovation process and reviewed and informally approved of the plans and drawings. *See* Exhibit "A" attached hereto, which is a Report and pictures from a Tampa Electric representative wherein Tampa Electric noted the submetering and confirmed that master metering would continue. 1150 WHG noted the changes made and the costs involved simply because Tampa Electric is raising this issue now at the eleventh hour after having months and months to interject previously. By raising this issue at the eleventh hour, Tampa Electric is unnecessarily and, against public policy and the purpose of the Rule, causing 1150 WHG economic hardship.

II. The Staff Complaint Resolution Was Limited in Scope and Has No Precedence on this Petition.

Tampa Electric raises on numerous occasions the fact that the Staff issued a complaint resolution on September 27, 2023 that found Tampa Electric had not violated the Rule. While the Staff did issue such a complaint resolution, the Staff was not afforded the full set of facts or legal precedence. The Staff's determination was uninformed and focused solely on whether Tampa Electric was violating the Rule—rather than whether 1150 WHG fit within the “grandfather exception”. Further, the Staff's complaint resolution has no legal precedence on this proceeding.¹

III. Tampa Electric's Tortured Interpretation of the Rule is Inconsistent with the Plain Language of the Rule.

1150 WHG agrees with Tampa Electric's legal grounds for how this Commission should read and interpret the “plain language” of the Rule. 1150 WHG urges this Commission though to not do what Tampa Electric has done in its Response—which is to omit a key word in the construction of the Rule. Specifically, Tampa Electric fails to head its own legal argument that the “proper interpretation requires consideration of the entire text, in view of its structure and of the physical and logical relation of its many parts.” Tampa Electric's flaw is that it omits consideration of “new” within the context of the Rule. This is fatal to Tampa Electric's argument.

The Rule requires individual metering for each separate occupancy unit “*of new commercial establishments, residential buildings...*” Here, the property is an occupancy unit and is a new residential building. The grandfather clause is only triggered here because the occupancy unit is now a residential building. There was no need for the grandfather clause to be triggered before when the building was previously an exempt building under the Rule. This is exactly how

¹ See *Rolling Oaks Utilities, Inc. v. Florida Public Service Commission*, 533 So. 2d 770 (1988); *Gulf Power Co. v. Florida Public Service Commission*, 453 So. 2d 799 (1984) (affirming Commission's rejection of Staff's recommendation).

the Rule was written and how it is supposed to apply. There is no other logical way to read the Rule. The Commission would have to ignore the word NEW from the Rule and interject language not found in the Rule to reach Tampa Electric's conclusion.

Thus, a plain language interpretation results in 1150 WHG failing within the grandfather clause. First, the Property is an "occupancy unit" under Rule 25-6.049(5) as it will serve as a residential building comprised of 224 small one- and two-bedroom residential units. Pet'r Pet. at 3; Aff. of Jack Boyajian, ¶5. Second, it is a "new" residential building, having converted from previously being a motel, which was exempt under the Rule. Nothing within the Rule states that "new" residential building had to be as of 1981 and there is no legal precedence for this conclusion. Tampa Electric cites to no legal precedence for the conclusion that the Rule should be interpreted to include additional, omitted language, that the grandfather clause either requires the "new" residential building be as of 1981 or that the grandfather clause ONLY applies if the occupancy unit was a residential building prior to 1981 and then continuously used as a residential building since 1981.

Third, it is undisputed by Tampa Electric that the construction permit was issued prior to 1981. Since this is an occupancy unit now, which was built under a permit pre-1981, the third prong or requirement applies. Again, nothing within the Rule nor any legal precedence supports Tampa Electric's interpretation that the current permits and change in use from a motel to a residential unit would somehow trump or invalidate the fact that the occupancy unit was built pre-1981 under a pre-1981 permit. Lastly, the Property has been continuously master-metered since 1981, which again Tampa Electric does not dispute.

Tampa Electric's chief dispute in relation to the "plain language" of the rule centers on this idea that since the property was previously a motel and is now an apartment the grandfather clause

does not apply and cannot be used. Nothing within the plain language interpretation of the Rule supports this theory, there is no legal precedence, and it is an illogical interpretation of the plain language of the Rule.

IV. Tampa Electric's Reliance on Commission Precedence is Misplaced.

Tampa Electric cites to a Commission Order that was issued in response to a waiver sought by a consumer that wanted to switch the individually metered property back to a master meter. *See* Order No. PSC-98-0449-FOF-EI, issued March 30, 1998, in Docket No. 971542-EI. There, the Petitioner claimed that the property was built pre-1981 and permitted pre-1981 so the Petitioner should be able to change the property, which was currently being individually metered, back to master metering. The Commission determined that the “grandfather clause” did not create a new non-conforming use. That Petition involved a set of facts clearly distinguishable from these set of facts. Here, 1150 WHG is not seeking to create a new non-conforming use. The property has always been master metered. And, 1150 WHG's interpretation is consistent with the Commission's prior Order, in that the Commission would simply be tolerating a pre-existing non-conforming use.

The fact that the non-conforming use may have technically fallen within the motel exemption and now falls within the grandfather clause is irrelevant. Because, again, and Tampa Electric cites to this proposition, the entire purpose behind the “grandfather clause” is to avoid retrofit costs. Here, application of the “grandfather clause” would avoid retrofit costs. Tampa Electric attempts to claim that those costs have already been incurred—via the submetering installation. This is not accurate and misleading. The costs associated with the submetering are have already been spent and are significantly less than the cost to retrofit this property from master metering to individual metering. Moreover, Tampa Electric conveniently avoids the fact that they

previously confirmed master metering for this property and the renovations and that requiring 1150 WHG at this eleventh hour to change to individual metering would be more expensive than had Tampa Electric denied master metering from the first instance.

V. Tampa Electric’s Hidden Concern with 1150 WHG’s Interpretation of the Rule is that Tampa Electric will Make Less Money.

Contrary to Tampa Electric’s Response, the Commission’s interpretation of the Rule in the manner suggested by Tampa Electric would conflict with public policy because it would discourage property owners from making renovations to their property and would keep property owners from avoiding the expensive costs of updating their system from mater metering to individual metering—the entire purpose of the grandfather rule. Tampa Electric’s interpretation directly contradicts the entire meaning behind a “grandfather rule.” Further, as expressed by 1150 WHG in its Petition, the underlying purpose and goals of the Rule will be achieved despite master metering. The use of sub-meters will operate in the same fashion as individual metering, making unit residents responsible for their own electrical consumption as Tampa Electric states is the Rule’s implementation of FEECA’s purpose. Rather than show that 1150 WHG’s planned installation of sub-meters undermines the purpose of FEECA, Tampa Electric’s argument demonstrates one thing—Tampa Electric’s desire to simply charge customers more. Tampa Electric argues that the tenants will not be charged at residential rates, which are higher than commercial rates. So Tampa Electric’s hidden issue here is that the property will be billed at a lower rate per kilowatt usage.

VI. 1150 WHG Agrees to Never Sell Power to Tenants or Otherwise.

Lastly, Tampa Electric makes an odd argument, with no basis in fact, that 1150 WHG could effectively operate as its own electric generation and distribution system if permitted to proceed in this manner. 1150 WHG has no intentions or plans to do so. 1150 WHG would agree to whatever requirements the Commission wants to impose precluding 1150 WHG from selling electric to tenants or otherwise. 1150 WHG does not want to sell power. 1150 WHG's goals are simple—avoid retrofitting costs, upgrade the property for tenants, and achieve the goals of FEECA regarding energy conservation and sustainability.

CONCLUSION

1150 WHG has demonstrated that the Property meets all requirements of the “grandfather clause” under a plain language interpretation of Rule 25-6.049(4), Florida Administrative Code, qualifying for leave from the requirement to use individual electrical meters. 1150 WHG's continuous use of the master-meter system since 1973 is a pre-existing non-conforming use. 1150 WHG's plan to continue using the master-metering system on the Property, adding sub panels to each unit with sub-meters achieves the purpose of the Florida Energy Efficiency and Conservation Act.

WHEREFORE, 1150 WHG, LLC respectfully requests that the Commission grant its petition for a declaratory statement.

Dated: December 12, 2023

/s/ Christopher M. Horton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply in support of Petition, filed on behalf of 1150 WHG, has been served by electronic mail on this 12th day of December 2023 to the following:

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regdept@tecoenergy.com

EXHIBIT A



Commercial Energy Audit Report

Prepared for:

1150 WHG LLC
1150 3rd St SW Winter Haven, FL 33880-3909

Date Audit Performed:

1/30/2023

Energy Analyst:

Christopher Bouchard
cjbouchard@tecoenergy.com

Account Number:

211027040248

Energy Audit Number:

10064641

Executive Summary:

Thank you for contacting Tampa Electric to perform an energy analysis of your facility.

Our energy analysis identified 13 potential energy-saving opportunities. It is recommended that, once the site is complete and fully operational, the customer request an energy audit (at least a year from now) to establish a baseline of energy usage and identify any missed opportunities during construction. This document has been compiled to inform the customer about the potential energy incentives they may be eligible for.

Table of Contents:

1. Introduction
2. Additional Customer Facility Information
3. Specific Energy Saving Opportunity Recommendations

1. Introduction

The following energy audit report contains a list of specific recommended energy-saving opportunities to further enhance your efficient use of energy. The actual payback and return will vary depending upon the cost to implement it, how it is utilized, how it is incorporated into the facility, and how it interacts with the operations of the facility. Other independent variables that could also potentially influence the payback and return of the opportunity are weather conditions, operating hours, labor costs, energy rates, material costs, among others.

Our certified energy analysts want to help you use energy in a cost-efficient and responsible manner. Not only will this help your bottom line, but it has a positive impact on our environment and helps Tampa Electric defer the need to construct electric generating units. We also suggest you consider taking advantage of these TECO Tools for Business, which can assist you in your business:

Register your account online – It’s never been easier to manage your TECO account online from any device – PC, laptop, tablet or phone. If you’re not already registered, visit tecoaccount.com and get started today.

Have other business with us? Here are a few things you can do through your online account:

- View and pay bills online
- Search your payment history by the check number, date the payment was received or by the payment amount on the selected account
- Select a specific account at the login screen for businesses and other users with multiple accounts
- Automatically sign up for Power Updates and other programs and services

Online Outage Map – Providing reliable power is a priority for us. However, sometimes there are circumstances beyond our control when you will lose power. Visit <https://www.tampaelectric.com/residential/outages/outagemap> to monitor and track outages. Here are other advantages you can take advantage of:

- Access to the latest outage information 24/7

- The ability to search for an address to get an estimated restoration time when available
- Map updates that occur every 5 minutes
- Map or Hybrid format views
- Information about the cause of outage when available

Billing & Payment options – Our free Paperless Billing program sends you a monthly email notification when your bill is ready to view through your online account. It's fast, secure and a good way to help the environment. We also offer convenient ways to pay online through your checking/savings account or credit card* at tecoaccount.com.

* A convenience fee applies

Get Power UpdatesSM – Our Power Updates program will help keep you informed about your electric service. When you sign up, you can let us know how you would like us to contact you. You can receive texts, emails, and/ or phone calls regarding your service and other important information. Visit tecoaccount.com/communication to enroll today.

Join us on the Power Blog! – We know the success of your business depends on comprehensive knowledge from experts on your side and solutions tailored to your unique needs. Check out our Power Blog at tampaelectricblog.com for articles about energy efficiency, payment options, events around the community and more.

1. **Get free e-News Updates** – Get updates right to your inbox. Topics include ways to save on energy costs, programs and services that can help you operate more efficiently, weather updates, community events and more. Sign up at tampaelectric.com/emailsignup today. It's free.

2. Additional customer facility Information

Facility Contact: Jack Boyajian

Address: 1150 3rd St SW Winter Haven, FL 33880-3909

Facility Type = Commercial

Meter number(s) = C03460

Square footage approx. = 120,000

Employees = 1

Fuels used at site = Electric & Gas

Hours: 8,760 hrs. Per year

3. Specific Energy Saving Opportunity Recommendations

Lighting

- The customer is undergoing a comprehensive property renovation. It is advised that they apply promptly for rebates for their conditioned and non-conditioned lighting spaces. The estimated annual energy savings are expected to result in a 40-50% reduction. The lighting fixtures, their locations, and the estimated rebate amounts are broken down as follows:

Amount		LED Lighting Replacement					
Conditioned	Non-Conditioned	Fixture Type	Estimated Wattage	Estimated LED Wattage	% Energy Reduction	COND. REBATE	NON-COND. REBATE
0	120	(1) lamp 13w Wall Sconce Exterior Fixture	13	7	46%	\$ -	\$ 144.00
230	0	(1) lamp 26w CFL Wall Sconce - Guestroom	52	30	42%	\$ 1,265.00	\$ -
230	6	T12 4' (2) Lamp - Guestroom & Exterior Breezeway	72	30	58%	\$ 1,667.50	\$ 34.80
230	0	32W Circline Lamp - Guestroom	40	22	45%	\$ 1,035.00	\$ -
24	0	T8 2x2 U-Tube - Ballroom	30	15	50%	\$ 90.00	\$ -
4	3	T8 4' (2) Lamp - Mechanical & Storage	59	30	49%	\$ 29.00	\$ 17.40
Total						\$ 4,086.50	\$ 196.20

Your facility may be eligible for Tampa Electric Company's Commercial Lighting Rebate Program. For reduced wattage in conditioned lighting, the rebate is \$250 per kW, yielding an estimated rebate of **\$4,086.50**. For non-conditioned lighting, the rebate is \$200 per kW, with an estimated rebate amount of **\$196.20**.

You must submit an application and obtain a pre-approval certificate before any work begins.

Visit (<https://www.tampaelectric.com/business/saveenergy/lighting>)

2. It is recommended that occupancy sensors be installed in storage areas, restrooms, and offices. Your facility may qualify for the Tampa Electric Company's Commercial Lighting Occupancy Sensor Rebate Program, which pays \$40 per unit for the installation of permanent lighting sensors that meet our specifications.

You must submit an application and obtain a pre-approval certificate before any work begins.

Visit (<https://www.tampaelectric.com/business/saveenergy/lightingoccupancysensor/>)

Heating, Ventilation & Air Conditioning (HVAC)

3. **I suggest the customer install smart thermostats with Wi-Fi and scheduling functions in common areas and administrative offices.**

The thermostats can be set up to have different temperature setpoints based on your hours of operation, **reducing runtime of the equipment without affecting air quality**. There are many brands available which can allow for multiple thermostats to be controlled on a single web or phone application.

They may also have the ability to lock out the local control which would prevent a user from tampering with the setting.

Set thermostats to lowest comfortable setting for heating (68 degrees F) and the highest for cooling (76 degrees F). For every degree the thermostat is raised, you will save approximately 5-7% per degree on cooling costs.

You can receive a rebate of up to 50% of your total project cost, up to a maximum of \$4,500 when you install new smart thermostat(s).

Visit www.tampaelectric.com/business/saveenergy/smartthermostats/ learn more about the program and apply online.

4. Consider selecting new air conditioning units based upon our Cooling Program requirements. For unitary air conditioning units, the requirements are as follow. **Installing a new unit which meets our requirements may qualify for a rebate of \$19.00 / ton.**

For (230) @ 1 ton / unit, the estimated rebate amount is \$4,370.00

Revised: 10/22/2020

Electric Unitary Air Conditioners and Condensing Units – Electrical Operated	
Florida Building Code Requirements	TECO Requirements
(<65,000 Btu) – 11.18 EER	(65,000 Btu) – 12.18 EER
(≥65,000 Btu and <135,000 Btu) – EER 11.00	(≥65,000 Btu and <135,000 Btu) – EER 12
(≥135,000 Btu and < 240,000 Btu)- EER 10.8	(≥135,000 Btu and < 240,000 Btu)- EER 11.8
(≥240,000 Btu and <760,000 Btu) – EER 9.8	(≥240,000 Btu and <760,000 Btu) – EER 10.8
(≥760,000 Btu)- EER 9.5	(≥760,000 Btu)- EER - 10.5

Visit <https://www.tampaelectric.com/business/saveenergy/cooling/> to learn more about the program and apply online

Renewable Energy

5. The customer is contemplating installing on-site photovoltaic panels. The site has an estimated 1,739 hours of usable sunlight per year. Before installation, it is advised that the customer reach out to the Construction Team at 813-635-1500, to receive information on our specifications for installing a NET meter.



Photo Source: Google Project Sunroof

Furthermore, it is suggested that the customer request a "rate case analysis" around 6 months after installation. This will guarantee that they are on the most favorable rate. This can be done by contacting the Business and Industrial Team at (866) 832-6249.

Building Envelope

6. Consider maintenance of door sweeps and adjustment of door closures, where applicable on property, rear doors as well as front entrance. Where air gaps may be present consider installing weather stripping on the door edging. This action helps to tighten the conditioned space.

Best Practices

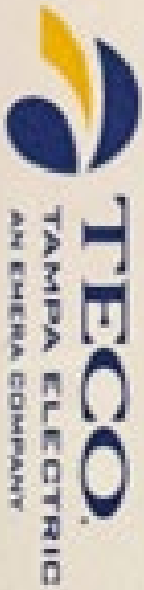
7. Choose a benchmarking tool: There are several benchmarking tools available, such as Energy Star Portfolio Manager, that can help you track and compare your building's energy performance over time.
8. Set energy goals: Define your energy goals and establish a baseline energy use profile for your building. This information will help you track your progress towards your goals and identify areas for improvement.
9. Collect accurate data: Ensure that you have accurate and complete data on your building's

energy use, including utility bills, sub metered data, and occupancy information.

10. Regularly monitor energy use: Regularly monitor your building's energy use to identify patterns and identify opportunities for improvement.
11. Implement energy-saving measures: Based on your energy benchmarking data, implement energy-saving measures such as lighting retrofits, HVAC upgrades, and behavior change programs.
12. Continuously track and evaluate progress: Continuously track your building's energy performance and evaluate the effectiveness of your energy-saving measures. Make adjustments as necessary to ensure that you are on track to meet your energy goals.
13. Share results: Share your benchmarking results with your building occupants, stakeholders, and the broader community to demonstrate your commitment to energy efficiency and sustainability.

Adopting these best practices for energy benchmarking can help you to optimize the energy performance of your building and reduce your energy costs.

Tampa Electric does not warrant or guarantee the audit findings or recommendations, nor is the utility liable as a result of the audit for the acts or omissions of any person who implements or attempts to implement those measures recommended by the auditor.



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Commercial Energy Management

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www.tampaelectric.com/business/saveenergy/energyaudit

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June 1/30

Hotel water Reservation

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ECS - 017.5

* Solar ; (commercial) ;

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