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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200175-EU

Petition for emergency  
variance from or waiver  
of Rule 25-6.049(5)-(6),  
F.A.C., by Casa Devon  
Venture, LP.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 2

COMMISSIONERS  
PARTICIPATING: CHAIRMAN GARY F. CLARK  
COMMISSIONER ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, August 18, 2020

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: All right. Next up is Item  
3 No. 2, petition for emergency variance.

4 Mary Anne, would you address the item, please?

5 MS. HELTON: Yes, sir. Good morning, Mr.  
6 Chairman and Commissioners.

7 In Item 2, staff recommends that the  
8 Commission grant Casa Devon's petition for  
9 emergency variance or waiver of the individual  
10 metering requirement for Rule 25-6.049(5) for its  
11 apartment building subject to the condition that  
12 Casa Devon install the solar energy system in the  
13 apartment building substantially as described in  
14 the petition, and the system remains in operation  
15 and achieves energy conservation through reduced  
16 electricity purchases from the utility. If these  
17 conditions are not met, the variance or waiver  
18 should cease to be effective.

19 Staff also recommends that Casa Devon be put  
20 on notice that if the variance or waiver ceases to  
21 be effective, Casa Devon will be responsible for  
22 the cost of converting the apartment building from  
23 master metering to individual metering pursuant to  
24 Rule 25-6.049(7).

25 Under Section 120.542 of the Florida

1 Administrative Procedures Act, variances and  
2 waivers must be granted when the petitioner  
3 demonstrates that the purpose of the underlying  
4 statute will be or has been achieved by other  
5 means, and the application of the rule would create  
6 a substantial hardship or violate principles of  
7 fairness. The specific facts making this  
8 demonstration must be included in the petition.

9 A substantial hardship means a demonstrated  
10 economic, technological, legal or other type of  
11 hardship.

12 A petition for an emergency variance or waiver  
13 must state the specific facts that make the  
14 situation an emergency, and to show that the  
15 petitioner will suffer an immediate adverse effect  
16 unless the variance or waiver is issued more  
17 expeditiously than the timeframes provided for a  
18 non-emergency variance or waiver.

19 Chapter 120 allows agencies to impose  
20 conditions on a waiver only to the extent necessary  
21 for the purposes of the underlying statute to be  
22 achieved.

23 Mr. Chairman, there is folks on the line. Ken  
24 Rubin on behalf of Florida Power & Light would like  
25 to make a brief comment, and he is also available

1           for questions. In addition, Christopher Horton,  
2           representing Casa Devon, is available to answer any  
3           questions and to respond to any comments made by  
4           Power & Light. And also Kyle Hudson with Casa  
5           Devon is available to answer questions. And  
6           finally, you have got some staff members on the  
7           line who can help as well.

8                   CHAIRMAN CLARK: Thank you very much, Ms.  
9           Helton.

10                   Mr. Rubin, would you like to begin?

11                   MR. RUBIN: Yes. Good morning, Chairman Clark  
12           and Commissioners, and thank you.

13                   For the record, I am Ken Rubin, appearing on  
14           behalf of Florida Power & Light Company, and I  
15           appreciate the opportunity to make some brief  
16           comments here this morning.

17                   Mr. Chairman, I would note that FPL filed  
18           comments opposing this waiver request back on July  
19           27 of this year. We stand by those comments, so I  
20           will not repeat them here. I plan to focus on just  
21           two central points.

22                   First, it's important to remember that we are  
23           talking about 210 permanent housing units, not  
24           transient facilities of the type appropriate for  
25           master metering under either your rule or your

1 prior rule waivers. And these apartments already  
2 have individual meters installed by FPL. And as we  
3 stated in our comments, the solar panels for the  
4 building can be accommodated through individual  
5 metering and through the provision of micro  
6 inverters or string inverters, these would allow  
7 individual net metering for each individual unit.

8 So from a physical or electrical perspective,  
9 as well as an energy conservation perspective, not  
10 to mention conserving -- I am sorry, preserving the  
11 consistency of your precedent in this area, solar  
12 panels with individual meters is the optimal  
13 solution here.

14 Second, we are very concerned regarding the  
15 precedent that would result from granting this  
16 waiver request. Here in this case, the Commission  
17 has been placed in the so-called, and I quote,  
18 emergency situation because the developer took some  
19 action here entering into a contract that simply  
20 assumed a favorable resolution of a regulatory  
21 issue that lies within the exclusive jurisdiction  
22 of this commission.

23 You are being asked to approve a variance or  
24 waiver from the rule requiring individual customer  
25 metering because of a situation specifically

1 created by the petitioner.

2 Casa Devon entered into a contract with HUD  
3 requiring master metering without first seeking and  
4 securing a waiver of the Commission's rules from  
5 the Commission to determine whether master metering  
6 would be allowed in this situation. And so the  
7 economic or contractual hardship that they argue in  
8 support of a variance or waiver was of their own  
9 making because they sidestepped the necessity of  
10 first seeking Commission approval to master meter  
11 before entering into this contract. And that's the  
12 precedent that concerns us, so we oppose this  
13 petition.

14 If you decide to approve the staff  
15 recommendation, we ask that the Commission make it  
16 abundantly clear not just that this is of no  
17 precedential value, as noted by your staff, but  
18 explicitly state that parties will not be permitted  
19 to benefit from the failure to seek required  
20 regulatory approvals by the use of a waiver  
21 request.

22 Commissioners, thank you for your time and  
23 consideration this morning. I am available to  
24 answer any questions.

25 CHAIRMAN CLARK: Thank you, Mr. Rubin.

1           Mr. Horton, your response.

2           MR. HORTON: Yes, thank you, Mr. Chairman.

3           Just very briefly responding to the two points  
4 that were just raised by FPL.

5           It is our client's position that the  
6 individually metered installation of solar panels  
7 on each individual meter is not feasible. That was  
8 within our petition. It was also included within  
9 some of the exhibits that were included within our  
10 petition which included a memorandum from a third  
11 party who is actually not involved in the actual  
12 construction or project who came in and who looked  
13 at this and determined that it would not be ideal.  
14 It is our understanding that it would -- it would,  
15 almost certainly, if this project was individually  
16 metered, and stayed individually metered, that  
17 the -- the system that is currently planned to be  
18 installed would not be installed, and that there is  
19 not an alternative to meet the energy consumption  
20 that we are trying to meet -- that Casa Devon is  
21 trying to meet.

22           And the second -- the second comment regarding  
23 precedent. We are not trying to set some new  
24 precedent here. We have no objection to a request  
25 to include some language in the order that makes it

1 clear that this is not setting precedent.

2 Unfortunately, due to the unique nature of the  
3 HUD negotiations here, this is kind of a train that  
4 started moving down the tracks, and very quickly,  
5 and Casa Devon couldn't get out in front of, and we  
6 are here asking the Commission for a variance or  
7 waiver.

8 That's all I have to say.

9 CHAIRMAN CLARK: Thank you, Mr. Horton.

10 Mr. Hudson, do you have a comment?

11 MR. HUDSON: Yes. Thank you for allowing me  
12 the opportunity to make a comment as well, just  
13 very briefly.

14 I want to reiterate the fact that we have no  
15 intent nor goal to set a precedent, and simply  
16 operate under the intent to make sure that all of  
17 our developments are providing safe, descent  
18 sanitary and environmentally friendly housing.

19 And especially with -- (inaudible) -- in  
20 Section VIII, subsidized developments, there are a  
21 lot of moving pieces and a lot of parties involved,  
22 and we like to employ -- or make a very specific  
23 and concerted effort to employ local professionals  
24 such as solar PV installers and local engineers to  
25 do our due diligence to make sure the products that



1 we are specifying to be installed will work.

2 We did that here, and I think that as with  
3 anything, perfection is difficult, but it can't  
4 always expected nor is it always achieved, so I  
5 think there are bumps in the road, but our intent  
6 is still the same, and we intend to install the  
7 solar PV array with engineered drawings with the  
8 intent of offsetting 55 to 75 percent of the  
9 straight load, and achieving a meaningful amount of  
10 energy conservation in our intent to continue to  
11 provide safety and sanitary housing for low income  
12 families, as well as in this specific case, low  
13 income seniors -- low income seniors.

14 That is all I have.

15 CHAIRMAN CLARK: All right. Thank you,  
16 Mr. Hudson.

17 Commissioners, any questions?

18 Commissioner Brown.

19 COMMISSIONER BROWN: Thank you.

20 I think this project is great, obviously, for  
21 the residents and for the environment, and I do get  
22 the unique nature of the HUD process. I also  
23 understand FPL's argument as well of setting a  
24 precedence of entering into an agreement before  
25 consulting the Commission rules.

1           That being said, is -- is master metering even  
2 possible at this building for any -- any of the  
3 parties here?

4           CHAIRMAN CLARK: Mr. Rubin, would you address  
5 that?

6           MR. RUBIN: Yes.

7           From FPL's perspective, we have not seen the  
8 type of detailed engineering or electrical plans to  
9 even, quite frankly, be able to respond to -- to  
10 that question at this point in time. We have  
11 pretty much what was attached to the petition, and  
12 there really has not been the technical interaction  
13 between the two entities, so we can't even say at  
14 this point -- and I believe that that's included  
15 within the staff recommendation -- that master  
16 metering would even be possible here. So, you  
17 know, that's -- that's a to-be-determined  
18 situation, I believe.

19           COMMISSIONER BROWN: Okay. It's just  
20 something that, you know, you go through this  
21 process, you go through the negotiation, and I  
22 would think that the -- the owner would have some  
23 type of knowledge before they sign a contract with  
24 HUD about whether master metering is even possible.

25           MR. HORTON: Commissioner Brown, this is Chris

1 Horton, and I can answer that question.

2 It -- it -- in speaking with the solar  
3 subcontractor that will be actually installing the  
4 solar system on the project, they believe that  
5 master metering is possible.

6 One of the exhibits attached to our petition  
7 is a PV1 diagram which shows the current plan,  
8 which is to include two master meters on the  
9 project. They believe this will achieve the  
10 ultimate goal of installing the solar system and --  
11 and the current specifications as planned in the --  
12 in the drawings and the subcontract agreement with  
13 the owner.

14 The only other thing to mention is that the  
15 owner and the subcontractor, the solar  
16 subcontractor in this case did attempt at one point  
17 to kind of go down this road to just kind of make  
18 sure that everything could proceed in this manner  
19 with FP&L, and FP&L at the time was not receptive  
20 and not agreeable to proceeding down that -- that  
21 road. They advised the subcontractor in this case  
22 that they would only consider whether this master  
23 metering was acceptable on their end once a  
24 petitioner variance is actually granted.

25 COMMISSIONER BROWN: Oh, got it. Okay. Thank

1           you for that.

2           I mean, this is a great public project. You  
3           know, you don't see too many of these -- I haven't  
4           seen any of these in the years that I have been  
5           here with the low income component, and the nature  
6           of the affordable housing to senior citizens. So  
7           it's a great project to begin with, so -- and to  
8           get the arrangement to meet the underlying intent  
9           by producing those solar panels really, I think, is  
10          a nice balance, and I do think that you meet that  
11          intent, but I want to focus on the economic and  
12          financial hardship really.

13          So if you -- you came up with a number that  
14          says -- I guess the tax incentives would be  
15          significantly reduced if you cannot master meter,  
16          and you go with the -- under the solar investment  
17          tax credit, and you go with the micro inverters.  
18          Can you kind of just elaborate a little bit more so  
19          I can understand the financial hardship of the  
20          petitioner?

21                   CHAIRMAN CLARK: Mr. Hudson.

22                   MR. HUDSON: Yeah, this is Kyle Hudson. I can  
23                   speak to that briefly.

24                   So the third-party engineer that we employed  
25                   to do an analysis of the building systems, as well

1 as the proposed PV array, determined that if we  
2 were to make an attempt to install PV that was  
3 applied to each individual meter, that it would not  
4 only be extremely esoteric and difficult in  
5 engineering in the install, it would also be  
6 cost-prohibitive.

7 And because this is like a Section VIII  
8 subsidy project, we do have a fixed budget that we  
9 are working on, and it takes into consideration the  
10 due diligence that we bid with the local PV  
11 engineers and installers in order to determine what  
12 -- (inaudible) -- we could install, and that also  
13 place into initially the agreement that we had with  
14 HUD -- or that we have with HUD -- that sets forth  
15 we will remove utilities from the residents' bills  
16 and cover them under our own bill that's going to  
17 be reduced with the master meter, and then the cost  
18 of that system is taken by our tax credit investor  
19 who provides equity in the project that helps fund  
20 the rehabilitation in return for those ITC tax  
21 credits.

22 So if we can't install the system, which the  
23 budget certainly would not allow if we were to go  
24 individually, then we cannot provide those tax  
25 credits to the tax credit investor, and then they

1 cannot take that tax credit and they cannot provide  
2 the equity to actually see the rehabilitation  
3 through to the end. And because we've already  
4 started the rehabilitation, that provides --  
5 (inaudible) -- for the issue.

6 COMMISSIONER BROWN: Okay. So it would not  
7 just effect Casa Devon, the financial hardship, it  
8 would also ultimately affect the 210 residents as  
9 well?

10 MR. HUDSON: Yes, both. Absolutely.

11 COMMISSIONER BROWN: Thank you.

12 CHAIRMAN CLARK: Thank you, Commissioner  
13 Brown.

14 COMMISSIONER BROWN: Nothing further.

15 CHAIRMAN CLARK: Commissioner Fay.

16 COMMISSIONER FAY: Thank you, Mr. Chairman.

17 And Commissioner Brown hit on some of my  
18 issues, but one thing I just -- I wanted to point  
19 to was this purpose of the underlying statute.  
20 This was an educating item for me as far as master  
21 metering goes, and how it -- how it works. And  
22 when you think of the intent of -- of the  
23 conservation goals and the statutes, an individual  
24 meter -- meter makes a lot more sense than a master  
25 meter. You are going to pay more attention to what

1           your charges are specifically that you would be  
2           paying and how that would affect the usage that is  
3           provided.

4           I think, under these circumstances, that --  
5           that conclusion then shifts back to the specific  
6           tax credits and the solar component of this -- this  
7           project. So although I don't -- I didn't -- I  
8           didn't necessarily agree with the emergency  
9           component of the filing, I did believe the -- the  
10          requirements were met to satisfy that master meter  
11          waiver.

12          And I do think overall it's a very good  
13          project. I think these low income projects that  
14          have the subsidization from HUD that put them at 60  
15          or 30 percent of the income provided are beneficial  
16          to those residents, and I think as Commissioner  
17          Brown pointed out, they -- they have the potential  
18          of being harmed here too.

19          So I think under these circumstances, these  
20          facts are just -- they are so unique with the  
21          senior low income housing component and the tax  
22          credit and everything else that is provided in the  
23          record, I think it meets those -- those  
24          requirements.

25          So, Mr. Chair, if anyone else has comments,

1 otherwise I was prepared to motion the item.

2 CHAIRMAN CLARK: I think -- I am sure we have  
3 got a few more comments. Give us just one second,  
4 Commissioner -- are you through, Commissioner Fay?  
5 Is that all? I am sorry.

6 COMMISSIONER FAY: Yep, that's it. Thank you.

7 CHAIRMAN CLARK: Okay. Commissioner Polmann.

8 COMMISSIONER POLMANN: Thank you, Mr.  
9 Chairman.

10 As my colleagues have indicated, I see this in  
11 principle and in fact. The nature of the HUD  
12 project and the improvements with regard to the  
13 solar aspect and the notion of the efficiency, and  
14 so forth, alternative energy, and whatnot, is a  
15 good project.

16 In many other respects in terms of the means  
17 and methods -- the notion of the timing, the waiver  
18 request, and so forth, I am entirely sideways on  
19 the -- the manner by which this petition has come  
20 to us.

21 I have had extensive discussion with staff on  
22 this, and the staff position I recognize. The  
23 petitioner, as a practical matter, in a legal  
24 context, appears to have met the requirements in  
25 their filing, and on -- on its face has met the



1 requirements of the law. And if I understand it  
2 correctly, the staff, legal staff in particular,  
3 has indicated to us that we are essentially  
4 required under the law to issue this. As a  
5 commissioner, I feel like I am boxed into that,  
6 which troubles me, because some of us will  
7 recognize that the question of when did the  
8 petitioner know about this requirement, what did  
9 they know, and when did they know it?

10 The notion of economic hardship with regard to  
11 this project was self created, in my mind. And the  
12 notion of going to HUD and entering into a  
13 contract, obtaining the funds and creating an  
14 economic feasibility without the waiver, and then  
15 depending on the waiver seems after-the-fact as a  
16 critical aspect of this in simple thinking just  
17 doesn't -- just doesn't seem right.

18 Now, that doesn't make it a bad project for  
19 the residents, or for the notion of -- of the  
20 public good. But the hardship that -- that may be  
21 imposed upon the residents in the absence of -- of  
22 the project doesn't exist today. It -- it exists  
23 if you go forward in time, you create the solar  
24 project, you install the master meter, their  
25 utility bills go down, and then you back up and

1           undo it, which comes to the point of the staff  
2           recommendation, which -- which again, I am troubled  
3           by, because the recommendation is to go ahead and  
4           grant the waiver conditioned upon things that --  
5           that -- that cannot be realized, which is to  
6           somehow achieve energy conservation which can't be  
7           measured, because we don't have a baseline.

8                   And -- and the notion that the installed solar  
9           equipment continued to exist is almost nonsensical.  
10          So I don't understand in the recommendation  
11          other -- anything other than the word yes. And I  
12          have discussed this with staff. And -- and, in  
13          effect, everything after yes is somehow self  
14          implementing and -- and there is no follow-up.

15                 So again, I -- I feel like the petitioner has  
16          come forward with a request for a waiver at a point  
17          in the project that, quite frankly, makes no sense  
18          to me, but nonetheless, here we are. That doesn't  
19          make the project not a good project. And they --  
20          they appear to have met the requirements, but I  
21          don't understand the rationale, the manner in which  
22          they implemented this, so it's disturbing to me --

23                   UNIDENTIFIED SPEAKER: Chairman Clark, this  
24          is --

25                   CHAIRMAN CLARK: Let's.

1 UNIDENDIFIED SPEAKER: I apologize, Chair.

2 CHAIRMAN CLARK: Please let Commissioner  
3 Polmann finish and be recognized.

4 UNIDENDIFIED SPEAKER: Yes, sir. I apologize.

5 COMMISSIONER POLMANN: Mr. Chairman, I can go  
6 on. I -- I -- I guess I simply have to say is they  
7 met the legal requirements, so I am told, but --  
8 but I would argue that the financial hardship  
9 that -- that they have described is self imposed,  
10 and -- and I am left just wondering how that was  
11 created.

12 I see absolutely no reason why -- why they  
13 could not have done this in a sequence that -- that  
14 seems reasonable and rationed with regard to this  
15 commission. It seems inappropriate to me.

16 Again, that doesn't make it a bad project, but  
17 it just seems totally inappropriate to come to this  
18 commission at this date and time with this  
19 circumstance that -- that appears on its face to  
20 box us into a corner.

21 That's all I have, Mr. Chairman.

22 CHAIRMAN CLARK: Thank you, Mr. Commissioner  
23 Polmann.

24 Mr. Horton, I will give you a second to  
25 respond to that.

1 MR. HORTON: Thank you, Mr. Chairman.

2 Just very briefly, I want to make it clear  
3 that Casa Devon did not learn and discover that  
4 this -- this project needed to be master metered  
5 until May of this year. It was their  
6 understanding, based upon the professionals that  
7 they were talking to and that they were -- they  
8 were subcontracting with, that they could move  
9 forward with this project, and that this plan was a  
10 sound plan. And it wasn't until they got into this  
11 project that they learned and discovered this. And  
12 I don't know that my client has anything further to  
13 add.

14 CHAIRMAN CLARK: Mr. Hudson.

15 MR. HUDSON: Yeah, so this is Kyle Hudson.  
16 Yeah, I can supplement that just a little bit. I  
17 don't want to bore everybody too much, but I can  
18 give a little bit of background as to how we ended  
19 up in this -- in this situation.

20 So in the process of underwriting a tax credit  
21 syndication, especially one that has a layer of  
22 complexity in the Section VIII subsidy and market  
23 to market where we submit to HUD for their approval  
24 a new 20-year renewal of the contracts so they  
25 continue to provide subsidies for the low income

1           seniors that occupy the building. In order to  
2           close on that financing and actually execute the  
3           project in the field from a construction  
4           standpoint, we have to have HUD's clear approval  
5           and the new contract fully executed by them, and  
6           HUD will not provide that full execution unless you  
7           have provided them with a third party independent  
8           ranked comparability study, which has to include  
9           very expressly written terms what is going to be  
10          happening on the project and how it's going to be  
11          executed.

12                   And essentially, what this amounts to is some  
13          form of cart before the horse, in that you have to  
14          employ the professionals in many different  
15          disciplines to provide clear, concise feedback to  
16          you that each of the things that you wish to  
17          undertake are physically feasible, and then you  
18          have to take those words and the report that are  
19          provided to you -- for example, we have energy  
20          conservation reports that analyze all of the bills  
21          and determine how much usage is actually taking  
22          place from an electrical standpoint; and have the  
23          solar PV arrays installer engineers come in and  
24          review that overlay a solar system. And then they  
25          made the attempt to touch base with FP&L, and that

1           was, as Mr. Horton referred to, refuted to an  
2           extent.

3                        So we had to proceed with the execution of  
4           this project through HUD to get the --  
5           (inaudible) -- so we could close and actually  
6           execute the project without having full  
7           jurisdictional approvals.

8                        And I -- I think of it in a way that's  
9           tantamount to when you go to build the building,  
10          you employ the proper engineers and professionals  
11          in order to design the systems, the structure, but  
12          it isn't permitted yet, but with that you  
13          understand that you can do a project, it just needs  
14          to be fully approved. And that's very similar to  
15          what happened here.

16                       We had an engineer inspect the property,  
17          design a PV array and tell us that it was feasible  
18          in order to complete this project, and that some  
19          jurisdictional approval needed to be had down the  
20          road. We attempted to do that, and at this point  
21          it was refuted, and now we were -- we were -- we  
22          were put in the position where we had to file a  
23          petition for variance in order to complete the  
24          project.

25                       MR. HORTON: And -- and just to add on to what

1 Kyle said, I want to be very clear on -- on  
2 something he said.

3 The -- the jurisdictional approval was  
4 something that was always going to have to be  
5 achieved here. The -- the engineers and the solar  
6 subcontractor always have to work with FP&L to  
7 ensure that the system can be implemented and  
8 installed. They knew that. This was always known  
9 to our client.

10 The specific issue, though, that has -- that  
11 has caused the roadblock here, the -- the master  
12 metering, that was not known to anyone until May of  
13 2020.

14 CHAIRMAN CLARK: All right. Thank you.  
15 Commissioner Graham.

16 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.  
17 I -- I agree with Commissioner Polmann on this  
18 one.

19 No. 1, I don't like the way this came to us by  
20 any means.

21 No. 2, one of the things that nobody has  
22 really touched on, the utility has already told us  
23 that they can do this exact same project using  
24 micro inverters. So you don't have to -- you don't  
25 have to master -- excuse me. You don't have to

1 master meter this for this project to work.

2 And people talk about the impact it's going to  
3 have on the residents. The reality is the resident  
4 is going to pay the same amount regardless. Where  
5 the money is going to go into the developer's  
6 pocket. He is either going to put more money in  
7 his pocket or less money in his pocket.

8 I mean, so if you asks me, I don't see -- I  
9 don't see waiving our rules so that this developer  
10 can butt more money in his pocket. I don't see  
11 waiving our rules because he went and got approval  
12 from HUD first before he came to us. And once  
13 again, I -- I don't like the way this came through.

14 It's an interesting project. And once again,  
15 you can do the same project, the same solar array,  
16 you just use micro inverters to decide how much is  
17 going to each individual meter rather than to one  
18 big master meter. So my vote on this is going to  
19 be a no.

20 Thank you, Mr. Chairman.

21 CHAIRMAN CLARK: Thank you, Commissioner  
22 Graham.

23 Any other comments from any Commissioner? Any  
24 questions?

25 Commissioner Polmann.



1           COMMISSIONER POLMANN: Thank you, Mr.  
2           Chairman. I will simply say one phrase and I will  
3           be done.

4           I find the fact that -- that they did not know  
5           the need for a master meter until May 2020 is  
6           simply astounding. I -- I -- I simply cannot  
7           fathom that for a project of this size. That is  
8           astounding to me as a profession engineer.

9           I am with Commissioner Graham.

10          CHAIRMAN CLARK: All right. I believe we've  
11          had plenty of discussion.

12          Any motion? Anyone prepared to offer a  
13          motion?

14          MR. RUBIN: Mr. Chairman, if it's appropriate  
15          for FPL, I would like to respond to a couple of the  
16          points, if I could.

17          CHAIRMAN CLARK: Quickly, Mr. Rubin.

18          MR. RUBIN: Sure.

19          In terms the tax credits, I am not a tax  
20          expert, but these tax credits are based upon the  
21          cost of the solar panels, the solar system. So  
22          individual metering with all of these panels, I  
23          don't believe it would -- it would affect that  
24          aspect of the -- of the project.

25          The -- the other thing I want to mention is

1           that I have gone to the HUD website. They -- they  
2           do accept individual metering. They accept all  
3           types of metering. So it's not a HUD requirement  
4           that there is master metering here.

5           The individual -- Commissioner Graham just  
6           pointed out the individual residents will not be  
7           affected by this regardless of the way the  
8           Commission goes. And I think finally to the points  
9           raised by Commissioner Graham and Commissioner  
10          Polmann, and quite frankly, what was provided by  
11          Casa Devon, the -- the economic or legal hardship  
12          that they are claiming provides, or requires a  
13          waiver or variance was something that was created  
14          by them. Absent the creation of those,  
15          quote/unquote, hardships, there would be no request  
16          for a waiver or variance here.

17          And I this finally what I heard was that a  
18          third party solar panel provider said that this  
19          would be an appropriate way to master meter the  
20          building. And with all due respect, unless that  
21          solar panel provider is a licensed electrical  
22          engineer, that would not be sufficient for our  
23          purposes, having been approached in May of this  
24          year, just a few months ago.

25          So thank you for the opportunity to -- to

1           respond, Mr. Chairman.

2           CHAIRMAN CLARK: Thank you.

3           Commissioner Brown. Commissioner Brown.

4           COMMISSIONER BROWN: Thank you, Mr. Chairman.

5           And I -- I respect all of my colleagues here  
6           on this, but I think we are -- we are really maybe  
7           missing the point of the rule, quite frankly,  
8           and -- and rather than the timing of when the  
9           applicant came in for the waiver, okay. I think  
10          staff did a really fair job in analyzing that  
11          specific component about the timing.

12          And I would love to just hear from staff.  
13          We've heard a lot from the different parties and  
14          from the Commissioners, so I would love to hear  
15          from staff about why they believe that this  
16          petitioner meets the intent of the rule -- the rule  
17          waiver, as well as regardless of timing of when  
18          they filed for the request, and -- and when they  
19          entered into the contract.

20          CHAIRMAN CLARK: All right. Staff, who is  
21          going to handle that? Ms. Helton, are you going to  
22          address that?

23          MS. HELTON: No, sir. I was going to punt the  
24          question to Ms. Cowdery. I think she's probably  
25          best situated to answer that question.

1           CHAIRMAN CLARK: Ms. Cowdery are you on the  
2 line?

3           MS. COWDERY: I am, sir.

4           CHAIRMAN CLARK: You are recognized.

5           MS. COWDERY: This is Kathryn Cowdery, Office  
6 of Legal Counsel.

7           I am going to start by going back to our  
8 statute and the uniform rules that we are looking  
9 under. And I want to make clear that we've got two  
10 different tests that we are looking at here. The  
11 first one is the consideration of the emergency  
12 nature of the petition.

13           The petition, in this -- and Ms. Helton went  
14 over this a little bit in the introduction. The  
15 petition for emergency waiver states the specific  
16 facts that make the situation an emergency. And it  
17 showed that the petition will suffer an immediate  
18 adverse effect unless the variance or waiver is  
19 issued.

20           And as to that particular portion of the  
21 request, you know, staff looked at the timing of  
22 the -- the issue that what was before us did have a  
23 contract deadline. And there were -- right now,  
24 the -- the project couldn't go ahead because there  
25 was no waiver, and this was going to cause problems

1 with getting the -- the -- the project done in  
2 time. So the timing issue, to us, went to whether  
3 or not this should be considered on an emergency  
4 basis.

5 The difference between considering a petition  
6 on an emergency basis and on a non-emergency basis  
7 is about really -- emergency basis, the Commission  
8 has to act within 30 days unless you get a -- a  
9 waiver of the time period, which is what Casa Devon  
10 did in this case in order to give us until the 18th  
11 to consider the -- the -- the matter. If it had  
12 been a non-emergency, the Commission would have 90  
13 days after the last requested information.

14 And in this case, staff did not see that there  
15 was any additional information that was required.  
16 The 90 days would have run on September 29th, which  
17 would have put us on the September 1st Agenda,  
18 which is two weeks from now.

19 COMMISSIONER BROWN: Kathryn, could I get you  
20 to focus on the hardship and the request of the  
21 waiver regardless of the timing?

22 MS. COWDERY: Yes. And the reason I brought  
23 up the emergency aspect of it is I feel like some  
24 of the concerns that go to substantial hardship are  
25 going to the timing, which is more, to me, part of

1 the emergency basis nature.

2 When you are looking at actually granting the  
3 petition itself, whether it's emergency or  
4 non-emergency, and that has -- looking at the  
5 substantial hardship, the focus that staff had was  
6 on what was -- what was in the petition that was  
7 being requested that needed the waiver. And what  
8 was being requested was a plan to master meter.

9 And under the circumstances, we looked at  
10 the -- the master metering. We looked at what the  
11 outcome without the waiver was this -- was this  
12 project could not be accomplished, and that is a  
13 substantial hardship.

14 So that -- that was basically what we were  
15 looking at, and whether or not if the -- if the  
16 company had come in last year and said, this is the  
17 project we want to do, and they laid it all out,  
18 these are the benefits under our situation. If we  
19 do this project, we are going to meet the  
20 underlying purpose of the statute. If we don't  
21 make -- do the project, we are not going to be able  
22 to do this renovation because we cannot, in the way  
23 we want to, allow the conservation elements and the  
24 efficiency of using solar energy, which we can't  
25 afford to do if we use the other -- the method with

1 the micro inverters, and we've looked into this,  
2 that analysis would have been the same whether they  
3 had done it last year or done it now.

4 The timing issue was not really an element of  
5 it. They could have asked for the same thing in  
6 advance that we are asking for now. And so to us,  
7 that would cause a substantial hardship.

8 COMMISSIONER BROWN: Thank you, Kathryn. I  
9 appreciate the analysis too, and the explanation.  
10 Excellent job as always.

11 And again, I respect my colleagues, but  
12 just -- you know, as a lawyer looking at the  
13 requirements of this rule waiver, I think the  
14 applicant, regardless of timing, you know, dealing  
15 with -- with HUD is a cumbersome process. I  
16 personally had the pleasure of doing that back in  
17 the day when I was a junior attorney.

18 So I would say that just looking at the  
19 requirements of this rule waiver, I think it's  
20 clearer, quite frankly, to me that the applicant  
21 meets the intent of the underlying statutes and the  
22 rule, and I would support the staff recommendation.

23 CHAIRMAN CLARK: Commissioner Graham.

24 COMMISSIONER GRAHAM: Thank you, Mr. Chair.

25 And I won't prolong this very long, but during

1 all of this conversation, once again, I haven't  
2 heard anybody say that this project would not work  
3 with mikro inverters, and therefore, if we use the  
4 micro inverters, we do not have to waive our rule.  
5 It's just that simple.

6 Even if they came in a year ago, I would still  
7 have the same question. Why do you have to micro  
8 meter -- why do you have to master meter this? Why  
9 can't you use micro inverters? It may cost them a  
10 couple extra dollars, but once again, that's not my  
11 problem. That's not my concern. This project can  
12 still move forward.

13 Thank you, Mr. Chairman.

14 CHAIRMAN CLARK: Thank you, Commissioner  
15 Graham.

16 Commissioner Brown made a motion. Do have a  
17 second?

18 Commissioner Polmann?

19 COMMISSIONER BROWN: I -- I didn't --

20 COMMISSIONER POLMANN: I don't --

21 COMMISSIONER BROWN: I did not make a motion.  
22 I don't know majority here, so I will hold back and  
23 wait to see if my other colleagues, including you,  
24 Mr. Chairman, where you are at.

25 CHAIRMAN CLARK: I am sorry, Commissioner



1 Brown. I thought I heard you move staff  
2 recommendation. We will hold off on that.

3 Commissioner Polmann?

4 COMMISSIONER POLMANN: Yeah --

5 UNIDENDIFIED SPEAKER: Mr. Chairman.

6 COMMISSIONER POLMANN: -- I have a question  
7 for staff.

8 CHAIRMAN CLARK: Commissioner Polmann has been  
9 recognized. Hang tight, please.

10 COMMISSIONER POLMANN: I think -- I think what  
11 our attorney just said was as to the emergency --  
12 and I think this comes back to a substantive matter  
13 here, was that the petitioner represented that the  
14 project cannot go ahead with -- without the waiver,  
15 and that the emergency aspect of this came about  
16 when staff determined that no additional  
17 information was needed.

18 And my question is: How was it determined  
19 that no additional information was needed? You  
20 know, staff -- the petitioner came subsequent to  
21 May, when they found out by working with the  
22 utility, the electric utility, that it required  
23 master metering, and then they came to us and  
24 somehow staff determined that they didn't need any  
25 additional information, and then set about with

1           this emergency circumstance. I want to know how  
2           staff decided that no additional information was  
3           needed.

4                   CHAIRMAN CLARK: Mr. Futrell, would you  
5           respond?

6                   MR. FUTRELL: Well, as I understand, this is  
7           primarily a legal analysis regarding whether the --  
8           the circumstances presented in the petition meet  
9           the requirements to establish a rule waiver,  
10          whether a rule variance or waiver is appropriate.

11                   Regarding additional information, staff felt  
12          like what was provided in the petition was  
13          sufficient. This is not something that we  
14          traditionally evaluate as far as a project analysis  
15          to evaluate alternatives that may have been  
16          considered. We take the facts as presented to us  
17          in the petition and then conduct a legal analysis  
18          based upon those facts.

19                   But this is not something where staff would --  
20          would apply an assessment of the -- the project  
21          and -- and seek information of how alternatives  
22          were considered and -- and bore into the costs and  
23          the structure of the project as presented.

24                   CHAIRMAN CLARK: Ms. Helton, would you address  
25          the remaining legal aspect of that?

1 MS. COWDERY: Commissioner, this is Kathryn  
2 Cowdery. Could I offer some clarification?

3 CHAIRMAN CLARK: Yes. Ms. Cowdery, you are  
4 recognized.

5 COMMISSIONER POLMANN: Well, Mr. Chairman, may  
6 I -- may I interject that what this leads to, and  
7 my point, Mr. Futrell and Ms. Cowdery, comes back  
8 to what -- what Commissioner Brown, I think,  
9 raised, and maybe I misunderstood it, but it comes  
10 back to the notion of the substantial financial  
11 hardship. And I understand -- I think I understand  
12 Mr. Futrell's notion that no additional information  
13 was needed, but -- and -- and I accept the  
14 notion -- perhaps I accept the notion of the timing  
15 of the request. But the petitioner represented  
16 that they can't do the project because of the  
17 money, and -- and apparently that doesn't really  
18 affect the residents to -- to a significant degree  
19 plus or minus whatever it's going to be on -- on  
20 their electric bill, but -- but the significant  
21 financial hardship has to do with -- with the  
22 owner, developer, however those people are -- are  
23 designated, so the hardship is on the petitioner.  
24 And I want to know how -- how staff determined that  
25 the waiver, that aspect of -- of the rule

1 requirement is met, because I think that it rests  
2 right there.

3 CHAIRMAN CLARK: Commissioner Graham.

4 COMMISSIONER POLMANN: So clarification on how  
5 staff determined that, and -- and -- and they  
6 didn't need any additional information, then --  
7 then I can vote on this.

8 CHAIRMAN CLARK: All right. Mr. Futrell --  
9 Ms. Cowdery, would you address Commissioner  
10 Polmann?

11 MS. COWDERY: Yes, Commissioner.

12 So the first thing is that this was filed as a  
13 petition for an emergency variance. Under the  
14 statute, if you have a petition for an emergency  
15 variance -- first of all, there is no opportunity  
16 under the statute to specifically request in  
17 writing any additional information. The idea is it  
18 is an emergency. And in a non-emergency situation,  
19 within 30 days, you have to ask for additional  
20 information, and then, you know, it goes -- it  
21 pushes the deadline out. For an emergency  
22 situation, there is not that opportunity. However,  
23 in the staff recommendation, we pointed out that,  
24 you know, in any event, when staff looked at the  
25 petition, they had enough information to go ahead.

1           So it's not that we make any determination on  
2           the emergency nature of it. It's -- it is filed as  
3           an emergency petition, and therefore, we followed  
4           the procedure that's set out in the statute. And I  
5           can add -- I think that it would have to be more of  
6           a technical question as to looking at the -- the  
7           information as to whether -- why staff -- technical  
8           staff believed it was sufficient, but I think it's  
9           because the petition -- you know, the petition had  
10          attachments to it. They had some detailed  
11          drawings --

12           COMMISSIONER POLMANN: Understood.

13           MS. COWDERY: -- and staff was convinced.

14           COMMISSIONER POLMANN: I get that. Thank you.  
15          Thank you.

16           CHAIRMAN CLARK: All right. Commissioner  
17          Graham.

18           COMMISSIONER GRAHAM: Mr. Chairman, I agree  
19          with Commissioner Brown. It's a 2-2 vote, would  
20          you please get us off this fence?

21           COMMISSIONER BROWN: Thank you, Commissioner  
22          Graham.

23           MR. HORTON: Mr. Chairman.

24           CHAIRMAN CLARK: Yes.

25           MR. HORTON: This is Chris Horton. I just

1 want to chime in one -- one additional comment, and  
2 then I believe my client does before -- before this  
3 goes to a vote.

4 Mr. Graham mentioned -- Chairman Graham  
5 mentioned that this was really about money. It's  
6 not about money. The partner energy memorandum, it  
7 does detail that the material and labor costs will  
8 be higher if you were to install it at a -- in a  
9 different manner, but that's not the real issue.

10 The real issue here is that the -- the solar  
11 array that is planned to be installed here, the  
12 size of it is what is driving the energy  
13 conservation, which is 65 to 75 percent. And if  
14 that -- the size of that array has to be broken up,  
15 and it has to be broken up into individually  
16 metered units, 210 arrays, we will not achieve the  
17 same energy conservation, not even close.

18 And it's not only that it won't achieve the  
19 same energy conservation, but the partner -- but  
20 the memorandum also details how difficult it will  
21 be based upon FP&L's rate structure and other  
22 factors and actually achieving then that type of  
23 plan.

24 So it -- it is about the -- the size of the  
25 array being installed here is what is driving this.

1           And I believe my client, Mr. Hudson, has one other  
2           comment to address some of the other comments made.

3           MR. HUDSON: Yeah. The main thing I would  
4           just like to speak to is a comment was made about  
5           costs being defrayed, and the surplus there being  
6           applied to line the developer's pockets.  
7           Unfortunately that's just factually not true. It's  
8           not even close to accurate, because this is a --  
9           this is a Florida Housing Finance Corporation  
10          project. It's overseen by the Corporation, and  
11          they cap the developer fee at 18 percent of  
12          acquisition costs, and they will -- and they  
13          monitor you annually, and they force you to do cost  
14          certifications.

15          So every single bit of this project is  
16          overseen at a federal and a local level. Developer  
17          fees are capped. General contractor fees are  
18          capped. Management fees are capped. And the  
19          intent of this project, I think just to reiterate  
20          what Mr. Horton said, is that we want to take the  
21          bills that are currently being applied to senior  
22          citizens making 30 percent or less of the area  
23          median income in South Dade County and remove that  
24          burden from them. We are removing the utility  
25          bill, and in some cases for actual use can be

1 hundreds of dollars, and we are removing that from  
2 their plate. We are placing it on ourselves and we  
3 are offsetting that by installing a very large PV  
4 array that is both environmentally friendly and  
5 helps us to facilitate the removal of a very  
6 cumbersome burden on so income seniors, especially  
7 in a time where some of the seniors that still do  
8 have jobs and are forced to work are losing those  
9 jobs because of COVID-19.

10 So I just want to make sure that that is  
11 properly relayed, and that this --

12 CHAIRMAN CLARK: All right --

13 MR. HUDSON: -- is an additional cost being  
14 offset by a tax credit has nothing do with the  
15 developer fee and is not a straight offset.

16 CHAIRMAN CLARK: All right. If I can be  
17 allowed just to ask a couple of quick questions, I  
18 think I might can give a little bit of clear  
19 direction.

20 Mr. Hudson, what is going to be the monthly  
21 energy charge charged to the consumers that live in  
22 these residences?

23 MR. HUDSON: It will be zero dollars.

24 CHAIRMAN CLARK: So they will have no energy  
25 costs. So you are building that into your rental



1 rates?

2 MR. HUDSON: Correct. They currently pay  
3 utility bills, and after, they will pay zero  
4 dollars.

5 CHAIRMAN CLARK: So -- so do customers get to  
6 choose what their energy source is in any way,  
7 shape, form or fashion? Do they have any choice to  
8 opt out of this program?

9 MR. HUDSON: No, they -- if they want to turn  
10 on the oven, or anything that uses electricity,  
11 it's just built into the rental rates --

12 CHAIRMAN CLARK: Is there --

13 MR. HUDSON: -- they don't pay anything extra  
14 for it.

15 CHAIRMAN CLARK: Is there any incentive for  
16 customers to conserve energy in any shape, form or  
17 fashion in the system?

18 MR. HUDSON: We provide them information on  
19 the solar utility array, and we tell them that, of  
20 course, because we are installing this array, it's  
21 our intent as an entire project to conserve energy  
22 and be an environmentally friendly community. We  
23 post notices and have frequent interactions with  
24 the residents to tell them that that's our intent  
25 as an entire community as a management agent, and

1 we -- we do intend to ask them to do that through  
2 discussion.

3 CHAIRMAN CLARK: You incentivize that  
4 verbally. There is no financial incentive  
5 whatsoever?

6 MR. HUDSON: No, we don't provide any  
7 financial incentives.

8 CHAIRMAN CLARK: Are your rent rates capped  
9 for any period of time, and is there any inclusion  
10 in your contracts regarding the output of the solar  
11 arrays versus their rent rate? If the solar system  
12 was destroyed by, let's say, a tornado and you had  
13 to go to regular power at any point in time, do you  
14 have any provisions in there for if that changes or  
15 are you going to eat that loss?

16 MR. HUDSON: So, yes, our rents are capped by  
17 HUD, because we have a third party RCS performed to  
18 determine the rental rates, those are approved and  
19 capped by HUD. If the solar PV were to be  
20 destroyed, it would be incumbent upon us to  
21 reinstall that PV array.

22 CHAIRMAN CLARK: All right. Thank you.

23 Mr. Rubin, my next question is for you. In  
24 terms of your master metering, do you currently  
25 have a tariff in place that would handle this

1 master metering contract?

2 MR. RUBIN: Mr. Chairman, I can't tell you  
3 that, obviously, without looking at the tariff.

4 CHAIRMAN CLARK: Is it -- would this be  
5 similar to a -- a primary metering point, or would  
6 this customer be allowed to take, let's just say,  
7 primary voltage at a discount and build their own  
8 system internally?

9 MR. RUBIN: I think they would have to build  
10 their own system internally. I -- I believe that  
11 the 210 individual FPL meters that are currently  
12 there would have to be removed and the customer  
13 then -- I guess there would be one customer, Casa  
14 Devon, would have to design an internal system.

15 CHAIRMAN CLARK: Do you have a standby rate  
16 that would come into play at this point in time to  
17 cover your infrastructure capacity cost?

18 MR. RUBIN: I don't know the answer to that  
19 question in this situation, Mr. Chairman.

20 CHAIRMAN CLARK: Could -- could you give me  
21 any idea what size load it is for 210 houses? Are  
22 we talking a megawatt, a megawatt-and-a-half?

23 MR. RUBIN: I believe that the system, I think  
24 it's -- I think it's a little bit under a megawatt,  
25 if I am not mistaken.

1           CHAIRMAN CLARK: Okay. Okay. I think that  
2 covered most of my questions.

3           I -- I do not see any benefit to the customers  
4 on the backside for this agreement. I -- I can't  
5 support the variance.

6           Commissioner Polmann.

7           COMMISSIONER POLMANN: Thank you, Mr.  
8 Chairman.

9           I -- I -- I want to clarify a point. What I  
10 just heard was a representation by the developer,  
11 something to the effect that -- that the discussion  
12 here, I -- I presume he meant by the Commissioners,  
13 that with regard to the dollars is somehow we  
14 thought that any money left over was going to be  
15 lining the pockets of the developer. I -- I don't  
16 recall any -- any suggestion to that effect here.

17           He made a reference to caps on -- on the  
18 percentage of profits and management fees and so  
19 forth. We fully understand that. We are not  
20 talking in that regard whatsoever. Any discussion  
21 about the financial hardship had to do with a  
22 reduction against their caps.

23           I don't -- I don't understand what it is that  
24 they are saying that the project can't be done,  
25 other than money is taken off the table, which puts

1           them in the position of not being able to achieve  
2           what is the cap. There was never an assertion that  
3           I heard about excess money lining the pocket of  
4           anybody. So I am compelled to respond to that.

5           CHAIRMAN CLARK: Thank you, Commissioner  
6           Polmann.

7           COMMISSIONER POLMANN: Mr. Chairman -- Mr.  
8           Chairman, I don't know what the proper form of a  
9           motion is, but whatever that is, we may be ready to  
10          vote.

11          CHAIRMAN CLARK: Well, I think it's pretty  
12          simple. We can accept staff recommendation or move  
13          to deny the petition.

14          COMMISSIONER POLMANN: Mr. Chairman, I would  
15          move to deny the petition. I am moving to deny the  
16          petition.

17          CHAIRMAN CLARK: All right. Is there a  
18          second?

19          COMMISSIONER GRAHAM: Second.

20          CHAIRMAN CLARK: We have a second.

21          Any further discussion from the Commission?

22          All those in favor of denying the variance,  
23          please say aye.

24          Aye.

25          COMMISSIONER GRAHAM: Aye.

1 COMMISSIONER POLMANN: Aye.

2 CHAIRMAN CLARK: Opposed?

3 COMMISSIONER BROWN: Nay.

4 COMMISSIONER FAY: Nay.

5 CHAIRMAN CLARK: The motion passes on a 3-2  
6 vote. The variance is denied.

7 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby  
certify that the foregoing proceeding was heard at the  
time and place herein stated.

IT IS FURTHER CERTIFIED that I  
stenographically reported the said proceedings; that the  
same has been transcribed under my direct supervision;  
and that this transcript constitutes a true  
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
am I a relative or employee of any of the parties'  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

DATED this 26th day of August, 2020.



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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #HH31926  
EXPIRES AUGUST 13, 2024