

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20200175-EU
ORDER NO. PSC-2020-0481-S-EU
ISSUED: December 8, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

FINAL ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT,
CONSUMMATING, WITH MODIFICATIONS, ORDER NO. PSC-2020-0295-PAA-EU, AND
GRANTING RULE WAIVER

BY THE COMMISSION:

Case Background

On July 1, 2020, Casa Devon Venture, LP (Casa Devon) filed a Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6), Florida Administrative Code (F.A.C.). We denied Casa Devon's petition by Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued on September 2, 2020.

On September 17, 2020, Casa Devon filed a petition for a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.). Casa Devon seeks a final order granting its petition for emergency variance from or waiver of the individual metering requirement of Rule 25-6.049(5), Florida Administrative Code (F.A.C.). On October 6, 2020, Florida Power & Light Company (FPL) filed an unopposed corrected motion for leave to intervene, which was granted by Order No. PSC-2020-0346-PCO-EU, issued on October 7, 2020. Pursuant to Order No. PSC-2020-0335-PCO-EU, issued October 1, 2020 (Order Establishing Procedure), an administrative hearing was scheduled for November 19-20, 2020.

On November 9, 2020, Casa Devon and FPL filed a Joint Motion for a Continuance of the November 19-20, 2020 Hearing on the Merits (Joint Motion for Continuance). Also on November 9, 2020, they filed a Joint Motion for Approval of a Stipulation and Settlement Agreement (Joint Motion to Approve Settlement Agreement). In their Joint Motion for Continuance, Casa Devon and FPL requested that we: (1) consider their Joint Motion to Approve Settlement at the hearing scheduled for November 19, 2020; and (2) continue the hearing on the merits pending the outcome of the disposition of the Joint Motion to Approve

Settlement Agreement. The Joint Motion for Continuance was granted by Order No. PSC-2020-0432-PCO-EU, issued November 10, 2020.

We considered the Joint Motion to Approve Settlement Agreement at the hearing on November 19, 2020. A copy of the Settlement Agreement is appended as Attachment A. We have jurisdiction pursuant to Section 120.542, F.S.

The Settlement Agreement

In their Joint Motion to Approve Settlement Agreement, Casa Devon and FPL state that after an extensive review and evaluation of Casa Devon's claims and the extensive discovery produced in this case, they entered into a Settlement Agreement. Casa Devon and FPL state that the Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." They further state that the proper standard for our approval of a settlement agreement is whether it is in the public interest. They assert that the Florida Supreme Court has explained that the determination of what is in the public interest rests exclusively with the Commission and that we have broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. They note that we are not required to resolve the merits of every issue independently and that a determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.

Casa Devon and FPL represent in the Settlement Agreement that under the renewed Housing Assistance Program (HAP) Contract with the United States Department of Housing and Urban Development (HUD), Casa Devon has committed to, among other things: (1) renovate the apartment complex; (2) install a solar energy system to reduce the total combined customer load at the apartment complex by an estimated 75 percent to 85 percent; and (3) convert the apartment complex from individually metered units to master metering so that the electric usage at the apartment complex would be paid by Casa Devon and not the tenants.

They state that under the unique circumstances surrounding the issues raised in this proceeding they have stipulated to the master metering of the Casa Devon apartment complex subject to the terms and conditions set forth in the Settlement Agreement. They stipulated that: (1) Casa Devon should have filed its petition for waiver or variance pursuant to Section 120.542, F.S., prior to entering into the HAP Contract with HUD; (2) "substantial hardship" under Section 120.542(2), F.S., may not be demonstrated "by taking actions that bypass the Commission's jurisdiction and the required Commission approval to master meter a facility and then seeking permission to master meter after such actions have been taken;" and (3) on any future projects, the owner or developer will investigate the feasibility of installing micro-inverters or string inverters to be used in conjunction with individual meters. *See* Settlement Agreement, paragraphs 1-3.

They stipulated that the tenants of the Casa Devon apartment complex are and will be low-income elderly lessees, that Casa Devon has committed to pay for all costs to provide each tenant with electricity at all times, regardless of the source, and Casa Devon will not bill the

tenants or otherwise recover said costs for electricity from the tenants of the Casa Devon apartment complex for the duration of the HAP Contract with HUD. *See* Settlement Agreement, paragraph 4.

They stipulated to the unique circumstances surrounding this case, specifically, that Casa Devon's expert concluded that it would be impractical, extremely costly, or impossible to complete the work inside each Casa Devon apartment unit necessary to install individual inverters for each low-income lessee or tenant since wiring and conduit would have to be run from the roof to each dwelling unit; the concrete walls, ceilings, and some floors would have to be cut open in each unit; and the 210 tenants of the Casa Devon apartment complex may have to be relocated during the existing COVID-19 pandemic. *See* Settlement Agreement, paragraph 5.

The Settlement Agreement states that under the unique set of circumstances surrounding the issues raised in this proceeding, FPL has no objection to Casa Devon master metering its project, subject to the terms and conditions of the Settlement Agreement. *See* Settlement Agreement, paragraph 6.

In their Joint Motion to Approve Settlement Agreement, Casa Devon and FPL state that the Settlement Agreement represents a reasonable compromise of competing positions and reflects their collaborative efforts to reach a reasonable and mutually acceptable compromise on all issues. They state that, if approved by us, the Settlement Agreement will validate a series of stipulations that eliminate all issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU. They also state that they believe that approval of the Settlement Agreement will reduce the time and expense that would be incurred to litigate this case, while at the same time conserving Commission time and resources. They further state that they believe that, considered as a whole, the Settlement Agreement fairly and reasonably balances the interests of Casa Devon and FPL and its customers and is consistent with the public interest. They submit that approving the Agreement is consistent with our long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to our regulatory jurisdiction.

Casa Devon and FPL request that we enter a Consummating Order stating that the determinations in Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020, in this docket, shall be deemed final and effective with the express exception of the denial of Casa Devon's initial petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, and that the initial petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049, F.A.C., be granted pursuant to the terms and conditions of the Settlement Agreement.

Decision

Based on the unique facts and circumstances of this case, as stipulated to and agreed upon by Casa Devon and FPL, we find that approval of the Settlement Agreement is in the public interest, and we grant the Joint Motion for Approval of a Stipulation and Settlement Agreement.

We further find that Casa Devon has demonstrated that the purpose of the underlying statute will be or has been achieved by other means by Casa Devon and that application of the individual metering requirement of Rule 25-6.049(5), F.A.C., would create a substantial hardship. We hold that the determinations in Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020, in this docket, are deemed final and effective with the express exception of the denial of Casa Devon's initial petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the Proposed Agency Action Order No. PSC-2020-0295-PAA-EU. Casa Devon's initial petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5), F.A.C., is granted as meeting the requirements of Section 120.542(2), F.S., and pursuant to the terms and conditions of the Settlement Agreement and this Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Joint Motion of Casa Devon Venture, LP and Florida Power & Light Company for Approval of a Stipulation and Settlement Agreement is hereby approved, as is the Settlement Agreement, attached hereto as Attachment A. It is further

ORDERED that Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020 in this docket, is final and effective, subject to the modifications set forth in the Stipulation and Settlement Agreement and in body of this Order. It is further

ORDERED that Casa Devon Venture, LP's Petition for Variance from or Waiver of the individual metering requirement of Rule 25-6.049(5), F.A.C., is granted as meeting the requirements of Section 120.542(2), F.S., and pursuant to the terms and conditions of the Stipulation and Settlement Agreement and this Order. It is further

ORDERED that this docket shall be closed upon issuance of this order.

By ORDER of the Florida Public Service Commission this 8th day of December, 2020.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KGWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for emergency variance from or waiver of Rule 25-6.049(5)-(6), F.A.C., by Casa Devon Venture, L.P.	Docket No: 20200175-EU Date: November 9, 2020
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STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Casa Devon Venture, LP (“Casa Devon”) and Florida Power & Light Company (“FPL”) (Casa Devon and FPL are collectively referred to as the “Parties”) have entered into this Stipulation and Settlement Agreement (the “Agreement”) to resolve the issues raised in Docket No. 20200175-EU;

WHEREAS, Casa Devon is the owner and developer of the Casa Devon apartment building, an existing 210-unit apartment in Miami that provides low-income, affordable housing to senior citizens through a Housing Assistance Payments (“HAP”) contract with the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, on January 1, 2020, Casa Devon entered into a HAP contract renewal with HUD for a new twenty-year term, with a preservation agreement that automatically renews the HAP contract for an additional sixteen years, providing affordable housing at the Casa Devon apartment complex until December 31, 2055;

WHEREAS, under the renewed HAP contract with HUD, Casa Devon committed to, among other things; (1) renovate the apartment complex; (2) install a solar energy system to reduce the total combined customer load at the apartment complex by an estimated 75%-85%; and (3) convert the apartment complex from individually metered units to master metering so that the

electric usage at the apartment complex would be paid by Casa Devon and not the tenants (hereinafter the “Project”);

WHEREAS, Commission Rule 25-6.049, Florida Administrative Code (“F.A.C.”), requires individual electric metering by the utility for commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks unless they meet one of the exemptions set forth in subsections (5) of the Rule;

WHEREAS, the Casa Devon apartment tenants are currently individually metered customers of FPL;

WHEREAS, on July 1, 2020, Casa Devon filed a Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6) of the Florida Administrative Code (“Initial Petition”), so that it would be able to master meter its Casa Devon apartment building. As alternative relief, Casa Devon asked that if the Commission did not grant the variance or waiver, it should find that Casa Devon does not need a rule variance or waiver because the Casa Devon apartment building falls within one of the individual metering requirement exceptions described in Rule 25-6.049(5)(c) or (d), F.A.C.;

WHEREAS, on July 27, 2020, FPL submitted comments for the Florida Public Service Commission’s (the “Commission”) consideration as it reviewed and decided the merits of Casa Devon’s Initial Petition;

WHEREAS, the Commission considered Casa Devon’s Initial Petition during its August 18, 2020 Agenda Conference. At the conclusion of the Commission’s deliberations on this item, the Commission voted to deny Casa Devon’s Initial Petition;

WHEREAS, on September 2, 2020, the Commission issued a Notice of Proposed Agency Action Order No. PSC-2020-0295-PAA-EU (“PAA Order”), denying Casa Devon’s request for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5) and (6), F.A.C., as well as Casa Devon’s alternative request for relief;

WHEREAS, on September 17, 2020, Casa Devon filed a Petition and Corrected Petition for Formal Administrative Hearing (“Hearing Petition”), protesting the Commission’s PAA Order;

WHEREAS, on October 1, 2020, the Commission issued an Order Establishing Procedure, setting a procedural schedule and scheduling Casa Devon’s Hearing Petition for a hearing on November 19-20, 2020;

WHEREAS, on October 5, 2020, FPL filed a Motion to Intervene, which was granted by Commission Order issued October 7, 2020;

WHEREAS, the Parties and Commission Staff have engaged in extensive discovery regarding the Project and the claims made in Casa Devon’s Hearing Petition, resulting in the production of more than 2,500 pages of documents by the Parties;

WHEREAS, after an extensive review and evaluation of Casa Devon’s Project and claims, as well as the extensive discovery produced in this case, the Parties to this Agreement have worked collaboratively to reach a full and complete resolution and settlement of all issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU subject to the terms and conditions specified in this Agreement;

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366, and 120, Florida Statutes (“F.S.”),

as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission, without modification, as to all matters addressed herein with respect to all Parties, upon acceptance of the Agreement as provided herein and upon approval as in the public interest; and

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

TERMS OF AGREEMENT

1. The Parties stipulate that the appropriate course of action for Casa Devon in this case was to file a petition with the Commission pursuant to Section 120.542, F.S., requesting a waiver or variance of the individual metering requirements of Rule 25-6.049, F.A.C., to master meter the Casa Devon facility prior to entering into the HAP Contract with HUD.
2. The Parties further stipulate that a party may not demonstrate “substantial hardship” from the application of a duly promulgated rule, as defined by Section 120.542(2), F. S., which is required in order for the Commission to grant a rule waiver or variance, by taking actions that bypass the Commission’s jurisdiction and the required Commission approval to master meter a facility and then seeking permission to master meter after such actions have been taken.
3. The Parties further stipulate that on any future projects, to the extent feasible for new or existing multi-tenant buildings intending to install solar panels, the owner or developer of the multi-tenant building shall take all necessary steps and due diligence to investigate the

feasibility of installing micro-inverters or string inverters to be used in conjunction with the individual meters.

4. The Parties further stipulate that the tenants of the Casa Devon apartment complex are and will be low-income elderly lessees, and that Casa Devon has committed to pay for all costs to provide each tenant with electricity at all times, regardless of the source, and Casa Devon will not bill the tenants or otherwise recover said costs for electricity from the tenants of the Casa Devon apartment complex for the duration of the HAP Contract with HUD.
5. The Parties further stipulate that Casa Devon's expert concluded that it would be impractical, extremely costly, or impossible to complete the work inside each Casa Devon apartment unit necessary to install individual inverters for each low-income lessee or tenant since wiring and conduit would have to be run from the roof to each dwelling unit; the concrete walls, ceilings, and some floors would have to be cut open in each unit; and the 210 tenants of the Casa Devon apartment complex may have to be relocated during the existing COVID-19 pandemic.
6. Under the unique circumstances surrounding the issues raised in this proceeding, including the stipulated terms in paragraphs 4 and 5 above, and subject to the terms and conditions below in paragraph 7, FPL takes the position that it has no objection under this unique set of circumstances to the master metering of the Casa Devon apartment complex.
7. FPL's position that it has no objection to the master metering is predicated and conditioned on the following:
 - a. That the stipulations set forth in paragraphs 1-3 above shall reflect Commission precedent.

- b. That the Commission will, based upon the unique circumstances described in paragraphs 4, 5, and 6, grant Casa Devon a waiver or variance from Rule 25-6.049, F.A.C., in accordance with the terms of this Agreement, permitting Casa Devon to master meter the apartment building to install the solar energy system it intends to install.
- c. That Casa Devon shall file a notice of voluntary dismissal with prejudice of its Hearing Petition within five (5) days after a Commission vote approving the Agreement, and the Commission shall issue a Consummating Order within twenty (20) days after the vote approving this Agreement stating that the determinations in the PAA Order shall be deemed final and effective with the express exception of the denial of Casa Devon's Initial Petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the PAA Order, which Initial Petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049, F.A.C., shall be granted pursuant to the terms and conditions of the Agreement.
- d. That the determinations concerning "substantial hardship" in the PAA Order shall reflect Commission precedent as applied to any future substantially or materially similar set of facts.
- e. That Casa Devon will pay FPL for costs of work that must be carried out by FPL to implement the master metering at the Casa Devon apartment complex, including, if applicable, the removal of the individual meters, the costs of installation of the master meter, and, if applicable, the costs for associated sub-meters, infrastructure, improvements, or equipment necessary on the Casa Devon apartment complex site.

- f. Casa Devon will make a \$25,000 tax-deductible, charitable contribution to FPL's Care to Share program for distribution to local agencies to assist customers in need of financial assistance to pay their electric bills.
- 8. It is understood and agreed that this Agreement is a compromise between the Parties regarding a disputed petition for a variance or waiver, and that the stipulations made by the Parties are in furtherance of this Agreement and not an admission by either party of any disputed issues.

OTHER PROVISIONS

- 9. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification.
- 10. Except as expressly set out herein, no Party agrees, concedes, or waives any position with respect to any of the issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU, and this Agreement does not expressly address any specific issue or any position taken thereon.
- 11. The Parties will support approval of the Agreement and will not request or support any order, relief, outcome, or result in conflict with it. No Party to the Agreement will request, support, or seek to impose a change to any provision of the Agreement.
- 12. Approval of the Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final and the Consummating Order has been issued. No Party to the Agreement will seek appellate review of any order issued in this docket.

13. The Parties agree that approval of the Agreement is in the public interest.
14. This Agreement may be executed in counterpart originals, and a scanned pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

FLORIDA POWER & LIGHT COMPANY

By: _____
R. Wade Litchfield
Vice President and General Counsel
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

CASA DEVON VENTURE LP


By: Sydne Garchik
Sydne Garchik
Principal
Casa Devon Venture LP
c/o MRK Partners, Inc.
5230 Pacific Concourse Dr., Ste. 350
Los Angeles, CA 90045

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FLORIDA POWER & LIGHT COMPANY

CASA DEVON VENTURE, LP

By: 

R. Wade Litchfield
Vice President and General Counsel
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

By: _____
Sydne Garchik
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