**FLORIDA PUBLIC SERVICE COMMISSION**

 **Capital Circle Office Center 2540 Shumard Oak Boulevard**

 **Tallahassee, Florida 32399-0850**

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

 **June 12, 1997**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)**

**FROM: DIVISION OF APPEALS (HELTON)**

**DIVISION OF LEGAL SERVICES (WAGNER)**

**DIVISION OF ELECTRIC & GAS (KUMMER)**

**DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT)**

**RE: DOCKET NO. 970647-EU - REQUEST FOR AMENDMENT OF RULE 25-6.049, F.A.C., MEASURING CUSTOMER SERVICE, BY 38 TENANTS OF RECORD AT DUNEDIN BEACH CAMPGROUND**

**AGENDA: JUNE 24, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES: Petition to initiate rulemaking - the Commission must vote by June 26, 1997.**

**SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\970647.RCM**

 **CASE BACKGROUND**

By Petition dated March 4, 1997, residents of Dunedin Beach Campground requested a waiver of Rule 25-6.049(5)(a), Florida Administrative Code. Dunedin Beach Campground is a 195 site Recreational Vehicle (RV) park in Dunedin, Florida, served by Florida Power Corporation (FPC). Thirty-eight of the sites are individually metered, and the remaining 157 sites are master metered. All of the petitioners reside at individually metered sites.

The rule waiver petition was addressed to the Office of Public Counsel (OPC) instead of the Commission. After Commission staff responded to the petition by letter, Mr. Earle C. Bartell, one of the residents, wrote the Division of Appeals requesting that the Commission either amend rule 25-6.049 or waive it. Staff is recommending below that the correspondence from the park residents be treated as a petition to initiate rulemaking, or, in the alternative, a request for a rule waiver.

 **DISCUSSION OF ISSUES**

**ISSUE :** Should the Commission grant the Dunedin Beach Campground residents petition to initiate rulemaking?

**RECOMMENDATION:** Staff recommends that the Commission treat the letter to the Division of Appeals as a petition to initiate rulemaking, and that the petition be denied.

**STAFF ANALYSIS:** Section 120.54(7)(a), Florida Statutes, states:

Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule . . .. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Staff recommends that the letter addressed to the Director of the Division of Appeals be treated as a petition to initiate rulemaking under Section 120.54(7), Florida Statutes. The letter was received on May 27, 1997. In order to meet the statutory deadline, the Commission must vote to initiate rulemaking or deny the petition by June 26, 1997. For the reasons discussed below, staff recommends the petition to initiate rulemaking be denied.

Rule 25-6.049, Florida Administrative Code, Measuring Customer Service, sets out the guidelines for determining when service should be individually or master metered. Paragraph (5)(a) requires RV parks to be individually metered unless construction for the park commenced prior to January 1, 1981. Under subparagraph (5)(a)4., however, individual meters are not required for RV parks in which permanent residence is not established.

According to the petitioners, the Dunedin Beach Campground developer could not build the 38 individually metered lots prior to January 1, 1981, due to circumstances beyond his control, even though he was willing to do so.

The petitioners argue that they are being discriminated against because the other 157 master metered lots are not required to pay the higher rates, surcharges, and minimum monthly power charge the individually metered residents must pay. In addition, unlike the individually metered residents, the master metered residents are not required to pay a reconnect fee when service is disconnected for a short period of time.

In order to redress this alleged discrimination, the petitioners argue the attached underlined changes should be proposed for Rule 25-6.049. Specifically, the petitioners argue a sub-paragraph should be added to paragraph (5)(a) to establish an exemption from the individual metering requirement for RV parks that commenced construction prior to January 1, 1981, but construction for the remainder of the development was not started until after January 1, 1981, due to circumstances beyond the developers control, such as the lack of municipal infrastructure. According to the petitioners, the attached language exempts only those plans which encompassed the entire development and does not exempt new sections or new portions not originally part of the development. Further, lack of funds would not be a sufficient reason for exemption.

The petitioners also urge the Commission to add language to sub-paragraph (5)(b)2. to ensure the rules consistency with the exemption that would be created above.

Finally, the petitioners argue that paragraph (6)(a) should be amended to ensure the apportionment method currently used on the prior built sites shall be implemented in a uniform and non-discriminatory manner on all those sites built to the original approved plan after January 1, 1981. According to the petitioners, this amendment would allow only one method of apportionment for master metered billing. In addition, the amendment would guarantee uniformity.

Staff recommends the Commission should deny the petition to amend the rule as attached. As it is currently written, the rule grandfathers condominiums, cooperatives, marinas, and trailer, mobile home, and RV parks if construction is commenced prior to January 1, 1981. This exemption is clearly defined and easily verified. The amendments urged by the petitioners would create murkiness in a well defined area since the Commission has no expertise to determine what circumstances would be beyond the control of the developer. Moreover, it is now over 16 years since the grandfather exemption became available. This significant lapse in time would make it difficult to determine what circumstances were beyond the developers control. In addition, confusion would surround what constitutes a planned development for purposes of the exemption.

Finally, the petition to initiate rulemaking should be denied because the 38 individually metered residents have no right to a particular rate because it would lower their bill. In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by microMETER Corporation, Order No. PSC-97-0074-FOF-EU, 97 F.P.S.C. 1: 450, 452 (1997). As discussed in the order denying microMETERs petition to initiate rulemaking concerning the same rule, taking the individually metered customers off of the residential rate creates a mismatch between costs and revenues. Extending the exemption as suggested by the petitioners would obviate the policy reason for the rule, which is to encourage energy conservation.

Based on the assertions in the petitioners correspondence, the 38 individually metered residents are not being unduly discriminated against. They appear to be permanent residents taking service under FPCs residential rate, as do other residential customers throughout the state.

**ISSUE 2:** Should the Commission grant the petitioners petition for waiver of Rule 25-6.049(5)(a)?

**RECOMMENDATION:** The Commission should not rule on the rule waiver request at this time. After notice of the rule waiver petition has been published in the Florida Administrative Weekly as required by Section 120.542(6), Florida Statutes, staff will bring another recommendation for the Commissions consideration.

**STAFF ANALYSIS:** Section 120.542(6), Florida Statutes, requires notice of a petition for rule waiver to be made in the Florida Administrative Weekly. Since notice of the rule waiver petition will not be published until June 20, 1997, and the comment period will not end until July 7, 1997, it is not appropriate for the Commission to vote on the rule waiver petition at this time. After the notice requirements in Section 120.542 are met, staff will bring a substantive recommendation on the rule waiver request for the Commissions consideration.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No, this docket should not be closed.

**STAFF ANALYSIS:** This docket should remain open so that the Commission can rule upon the petitioners rule waiver petition as discussed above in Issue 2.

Attachment:

Suggested amendments to Rule 25-6.049, F.A.C.