

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by Holiday Villas II  
Condominium Association, Inc.,  
for variance from or waiver of  
Rule 25-6.049(5)(a), F.A.C.,  
Regarding Electric Metering.

DOCKET NO. 980667-EU  
ORDER NO. PSC-98-1193-FOF-EU  
ISSUED: September 8, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF RULE 25-6.049(5)(a), FLORIDA  
ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Section 120.542, Florida Statutes, on May 18,  
1998, Holiday Villas II Condominium Association, Inc. (HVIICA),  
petitioned for a waiver of Rule 25-6.049(5)(a), Florida  
Administrative Code. This rule states that all occupancy units in  
condominiums are required to be individually metered. The waiver  
allows HVIICA to convert its existing individual meters to a single  
master meter which would measure usage for all of its units.  
Information regarding the petition was published in the Florida  
Administrative Weekly on June 12, 1998. No comments were received  
on the petition. Additional information was requested of the  
parties on June 11, 1998. The last of the responses was received  
on July 16, 1998.

The petitioner, HVIICA, is a not-for-profit corporation which  
operates Holiday Villas II Condominium (the condominium), a 72-unit

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condominium located in Indian Shores, Florida. Florida Power Corporation (FPC) serves the condominium. Currently, the occupancy units of the condominium are individually metered, and bills for electric service are sent to and paid by the individual unit owners. The units are billed on FPC's residential rate.

HVIICA asserts that its condominium is operated and licensed as a "resort condominium" as defined in Section 509.242(1), Florida Statutes. In response to staff discovery, HVIICA indicated that only two of the 72 units are used for permanent occupancy. They assert that the remaining unit owners do not occupy their units on a year-round basis, but treat their units as investments which are let on a daily or weekly basis to vacationers. HVIICA maintains a registration desk and lobby where guests are required to check in and check out, and a central telephone switchboard. The condominium is in direct competition with hotels and motels in the area for business.

When HVIICA asked FPC to convert individual meters to a single master meter which would serve the entire condominium, FPC declined to do so, citing Rule 25-6.049(5)(a), Florida Administrative Code, which requires the utility to individually meter the condominium units. The relevant portion of the rule reads as follows:

(5)(a) Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction is commenced after January 1, 1981. (Emphasis added.)

HVIICA then requested a waiver to allow the condominium to convert to a single master meter which would serve all of the occupancy units. This conversion would allow HVIICA to switch from separate residential accounts to a single commercial account, which would likely result in lower electricity costs.

#### I. REQUIREMENTS OF SECTION 120.542(5), FLORIDA STATUTES

Section 120.542(1), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules shall be granted:

. . . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has

been achieved by other means by the person and when application of the rule would create a substantial hardship . . . . For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

A. THE PURPOSES OF THE UNDERLYING STATUTE

Section 366.05(1), Florida Statutes, states in pertinent part:

In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility . . . .

Rule 25-6.049(5)(a), Florida Administrative Code requires HVIICA, as a condominium constructed after January 1, 1981, to have individual meters.

In Docket No. 960020-EU, we amended Rule 25-6.049, Florida Administrative Code, to exempt timeshare plans from the individual metering requirement. In a timeshare plan, owners purchase the right to use a unit for a specified period of time, typically one week. The units are not utilized for permanent occupancy, and operate in a manner similar to hotels and motels. As such, the electricity usage patterns of timeshare plans are more similar to motels and hotels than those of facilities which are used for year-round residential occupancy. Therefore, allowing timeshare plans to take service under a single commercial account in lieu of individual residential accounts does not result in a rate inequity. Based on the representations of the petitioner, the same reasoning would apply to HVIICA, because its facility is operated in a manner similar to timeshare plans, hotels and motels.

If the individual metering rule requirement is waived for HVIICA, the individual occupancy units will no longer be metered and billed by FPC. However, HVIICA has indicated that it will install submetering devices which will measure the usage of the individual units, and allow the member unit owners to be billed for their usage. Pursuant to Section 120.542, Florida Statutes, the petitioner must demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the person. We believe that HVIICA has adequately demonstrated that they will

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use a "reasonable method of apportionment" of the charges for electricity among its unit owners as contemplated by Rule 25-6.049(6)(a), Florida Administrative Code.

B. SUBSTANTIAL HARDSHIP/PRINCIPLES OF FAIRNESS

Substantial hardship is defined as a demonstrated economic, technologic, legal or other type of hardship to the person requesting the waiver. Principles of fairness are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

HVIICA believes that it is at a competitive disadvantage because it is not allowed to convert to master metering. Rule 25-6.049, Florida Administrative Code, specifically exempts hotels and motels from the individual metering requirement. HVIICA requests a waiver from the individual metering requirement for as long as they are licensed and operated as a "resort condominium."

We believe that the application of Rule 25-6.049, Florida Administrative Code, in this particular instance, results in different treatment to similarly situated facilities. HVIICA operates in a manner similar to timeshare plans, hotels, and motels, which are exempted from the master metering requirement. We believe that this disparity, and the higher cost paid by HVIICA constitutes a substantial hardship within the meaning of Section 120.542, Florida Statutes. We believe that the similarities of the facilities are sufficient to grant HVIICA's request for a waiver of Rule 25-6.049(5)(a), Florida Administrative Code.

II. CONCLUSION

We believe that the requested rule waiver should be granted, provided that the waiver is effective only so long as the condominium is operated and licensed pursuant to Section 509.242(1), Florida Statutes. At such time the condominium is no longer so operated and licensed, HVIICA must immediately inform the utility, at which time the utility will install individual meters on all the occupancy units.

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Based on the foregoing, it is therefore

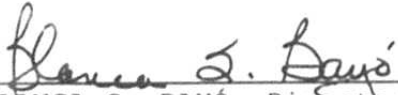
ORDERED by the Florida Public Service Commission that Holiday Villas II Condominium Association, Inc.'s Petition for Waiver of Rule 25-6.049(5)(a), Florida Administrative Code, is granted as set forth in the body of this Order. It is further

ORDERED that at such time the condominium is no longer operated and licensed under Section 509.242(1), Florida Statutes, HVIICA must immediately inform the utility, at which time the utility will install individual meters on all the occupancy units. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of September, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 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 an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 29, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.