

FLORIDA PUBLIC SERVICE COMMISSION  
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FPSC - Records/Reporting

MEMORANDUM

June 12, 1997

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

FROM: DIVISION OF APPEALS (HELTON) *Walt DS*  
DIVISION OF LEGAL SERVICES (WAGNER) *LW RUE*  
DIVISION OF ELECTRIC & GAS (KUMMER)  
DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT) *CBX RTA*

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: JUN: 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.

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DISCUSSION OF ISSUES

ISSUE 1: 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

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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 developer's 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 rule's 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 developer's control. In addition, confusion would surround what constitutes a planned development for purposes of the exemption.

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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 micromETER's 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 FPC's 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 Commission's 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 Commission's consideration.

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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.

1 25-6.049 Measuring Customer Service.

2 (1) All energy sold to customers shall be measured by  
3 commercially acceptable measuring devices owned and maintained by  
4 the utility, except where it is impractical to meter loads, such  
5 as street lighting, temporary or special installations, in which  
6 case the consumption may be calculated, or billed on demand or  
7 connected load rate or as provided in the utility's filed tariff.

8 (2) When there is more than one meter at a location the metering  
9 equipment shall be so tagged or plainly marked as to indicate the  
10 circuit metered. Where similar types of meters record different  
11 quantities, (kilowatt-hours and reactive power, for example),  
12 metering equipment shall be tagged or plainly marked to indicate  
13 what the meters are recording.

14 (3) Meters which are not direct reading shall have the  
15 multiplier plainly marked on the meter. All charts taken from  
16 recording meters shall be marked with the date of the record, the  
17 meter number, customer, and chart multiplier. The register ratio  
18 shall be marked on all meter registers. The watt-hour constant  
19 for the meter itself shall be placed on all watt-hour meters.

20 (4) Metering equipment shall not be set "fast" or "slow" to  
21 compensate for supply transformer or line losses.

22 (5) (a) Individual electric metering by the utility shall be  
23 required for each separate occupancy unit of new commercial  
24 establishments, residential buildings, condominiums,  
25 cooperatives, marinas, and trailer, mobile home and recreational

CODING: Words underlined are additions; words in  
~~struck-through~~ type are deletions from existing law.

1 | vehicle\* parks for which construction is commenced after January  
2 | 1, 1981. Individual electric meters shall not, however, be  
3 | required:

- 4 | 1. In those portions of a commercial establishment where  
5 | the floor space dimensions or physical configuration of  
6 | the units are subject to alteration, as evidenced by  
7 | non-structural element partition walls, unless the  
8 | utility determines that adequate provisions can be made  
9 | to modify the metering to accurately reflect such  
10 | alterations;
- 11 | 2. For electricity used in central heating, ventilating  
12 | and air conditioning systems, or electric back up  
13 | service to storage heating and cooling systems;
- 14 | 3. For electricity used in specialized-use housing  
15 | accommodations such as hospitals, nursing homes, living  
16 | facilities located on the same premises as, and  
17 | operated in conjunction with, a nursing home or other  
18 | health care facility providing at least the same level  
19 | and types of services as a nursing home, convalescent  
20 | homes, facilities certificated under Chapter 651,  
21 | Florida Statutes, college dormitories, convents,  
22 | sorority houses, fraternity houses, motels, hotels, and  
23 | similar facilities;
- 24 | 4. For separate, specially-designated areas for overnight  
25 | occupancy at trailer, mobile home and recreational

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1 vehicle parks and marinas where permanent residency is  
2 not established.

- 3 5. For new and existing time-share plans, provided that  
4 all of the occupancy units which are served by the  
5 master meter or meters are committed to a time-share  
6 plan as defined in Section 721, Florida Statutes, and  
7 none of the occupancy units are used for permanent  
8 occupancy. When a time-share plan is converted from  
9 individual metering to master metering, the customer  
10 must reimburse the utility for the costs incurred by  
11 the utility for the conversion. These costs shall  
12 include, but not be limited to, the undepreciated cost  
13 of any existing distribution equipment which is removed  
14 or transferred to the ownership of the customer, plus  
15 the cost of removal or relocation of any distribution  
16 equipment, less the salvage value of any removed  
17 equipment.

- 18 6. In recreational vehicle parks constructed prior to  
19 January 1, 1981, where completion of the park in line  
20 with original approved plans was delayed until after  
21 January 1, 1981, by circumstances beyond the park  
22 owners control, i.e., County sewer systems incomplete,  
23 etc.

24 (b) For purposes of this rule:

- 25 1. "Occupancy unit" means that portion of any commercial

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1 establishment, single and multi-unit residential  
2 building, or trailer, mobile home or recreational  
3 vehicle park, or marina which is set apart from the  
4 rest of such facility by clearly determinable  
5 boundaries as described in the rental, lease, or  
6 ownership agreement for such unit.

- 7 2. The construction of a new commercial establishment,  
8 residential building, marina, or trailer, mobile home  
9 or recreational vehicle park shall be deemed to  
10 commence on the date when the building structure permit  
11 is issued. These provisions shall be waived in those  
12 cases of RV park completion's after January 1, 1981,  
13 provided the original approved plan was defined  
14 accordingly. See subsection (5)(a)6.
- 15 3. "Overnight Occupancy" means use of an occupancy unit  
16 for a short term such as per day or per week where  
17 permanent residency is not established.
- 18 4. The term "cost", as used herein means only those  
19 charges specifically authorized by the electric  
20 utility's tariff, including but not limited to the  
21 customer, energy, demand, fuel, and conservation  
22 charges made by the electric utility plus applicable  
23 taxes and fees to the customer of record responsible  
24 for the master meter payments. The term does not  
25 include late payment charges, returned check charges.

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1 the cost of the distribution system behind the master  
2 meter, the cost of billing, and other such costs.

3 (6) (a) Where individual metering is not required under  
4 Subsection (5) (a) and master metering is used in lieu thereof,  
5 reasonable apportionment methods, including sub-metering may be  
6 used by the customer of record or the owner of such facility  
7 solely for the purpose of allocating the cost of the electricity  
8 billed by the utility. In those instances of RV park  
9 completion's after January 1, 1981, the apportionment method  
10 currently used on the prior built sites shall be implemented in a  
11 uniform and non-discriminatory manner on all those sites built to  
12 the original approved plan after January 1, 1981.

13 (b) Any fees or charges collected by a customer of record for  
14 electricity billed to the customer's account by the utility,  
15 whether based on the use of sub-metering or any other allocation  
16 method, shall be determined in a manner which reimburses the  
17 customer of record for no more than the customer's actual cost of  
18 electricity.

19 (7) Each utility shall develop a standard policy governing the  
20 provisions of sub-metering as provided for herein. Such policy  
21 shall be filed by each utility as part of its tariffs. The policy  
22 shall have uniform application and shall be nondiscriminatory.

23 Specific Authority 366.05(1) FS.

24 Law Implemented 366.05(3) FS.

25 History--Amended 7-29-69, 11-26-80, 12-23-82, 12-28-83, Formerly

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1 25-6.49, Amended 7-14-87, 10-5-88, 3-23-97.

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