

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

September 25, 1997

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

FROM: DIVISION OF LEGAL SERVICES (ELIAS, KEATING) *RUE wax*
DIVISION OF ELECTRIC & GAS (JENKINS, KUMMER) *ckk JOS*

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: October 7, 1997 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE - Statutory Time Limit Waived by
Petitioner

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970647A.RCM

CASE BACKGROUND

Dunedin Beach Campground is a Recreational Vehicle (RV) park in Dunedin, Florida, served by Florida Power Corporation (FPC). Thirty-eight of the sites are individually metered, and the remaining 195 sites are master metered. By petition dated March 4, 1997, residents at the 38 individually metered sites (petitioners) requested a waiver of Rule 25-6.049(5), Florida Administrative Code. The rule waiver petition was addressed to the Office of Public Counsel (OPC) instead of the Commission. In the interest of providing information, Commission staff responded to the petition by letter. Mr. Earle C. Bartell, one of the petitioners, then wrote the Division of Appeals requesting that the Commission either amend Rule 25-6.049(5) or waive it. Mr. Bartell's request was received by the Division of Appeals on May 27, 1997.

Pursuant to Section 120.542(6), Florida Statutes, notice of the rule waiver petition was submitted to the Secretary of State on

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June 10, 1997, for publication in the Florida Administrative Weekly. By Order No. PSC-97-0763-FOF-EU, issued June 27, 1997, the Commission denied the petitioners' request to initiate rulemaking to amend Rule 25-6.049(5). The Commission declined, however, to rule upon the rule waiver petition until the comment period required by Section 120.542(6), Florida Statutes, had expired. No comments were submitted during the comment period which ended July 7, 1997. In accordance with Section 120.542(7), Florida Statutes, the Commission was required to rule on the waiver petition by August 25, 1997.

At the August 5, 1997, Agenda Conference, Staff recommended that the Commission deny the petitioners' request for waiver of Rule 25-6.049(5). Based on representations made by Mr. Bartell at the Agenda Conference, the Commission instructed Staff to gather additional information and bring the item to a subsequent agenda conference for further review. To allow time for Staff's investigation, Mr. Bartell agreed to waive the statutory time limit imposed on the Commission by Section 120.542(7), F.S. Mr. Bartell directed Staff to contact the Campground owner, Mr. Richard Whalen, for the additional information. Staff sent data requests to Mr. Whalen and FPC in order to clarify and verify statements made by Mr. Bartell at the Agenda Conference. This recommendation is based on the original petition and the information gathered from Mr. Whalen and FPC.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission waive application of the requirements of Rule 25-6.049(5), Florida Administrative Code, as to the residents at the 38 individually-metered sites at Dunedin Beach Campground, allowing those sites to be converted to receive service through a master meter and individual submeters?

PRIMARY RECOMMENDATION: Yes. The Commission should grant a waiver of Rule 25-6.049(5), Florida Administrative Code, as applied to the petitioners. Application of the Rule creates a substantial hardship for the petitioners, and the purpose of the underlying statute may be achieved by using individual submeters at the petitioners' RV sites. (Elias, Jenkins)

ALTERNATIVE RECOMMENDATION: No. The Commission should not waive application of Rule 25-6.049(5)(a), Florida Administrative Code, as to the residents at the 38 individually metered sites at Dunedin Beach Campground. The petition does not satisfy the statutory criteria for a rule waiver set forth in Chapter 120, Florida Statutes. (Keating, Kummer)

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PRIMARY STAFF ANALYSIS: Rule 25-6.049(5)(a), Florida Administrative Code, requires individual electric metering by the utility "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." The petitioners seek waiver of this rule as it applies to them.

The rule waiver petition states that Dunedin Beach Campground opened in 1973 with 195 RV sites constructed. The petition states that the original plans for the RV park called for the construction of 38 additional sites, but that matters beyond the developer's control postponed construction of those sites until 1982. Pursuant to Rule 25-6.049(5)(a), F.A.C., the 38 new sites required individual metering and were not permitted to receive service through the RV park's master meter. The petitioners complain that the lack of uniform electric metering throughout the RV park discriminates against them because they must pay higher per kWh rates, surcharges, and minimum monthly power charges that the 195 master metered sites are not required to pay. In addition, the petitioners complain that they, unlike the master-metered residents, are required to pay a reconnect fee when service is disconnected for a short period of time.

Section 120.542(2), F.S., states:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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.

Primary Staff believes that the purpose of the underlying statute may be achieved by using individual submeters at the

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petitioners' RV sites and that application of the Rule creates a substantial hardship to the petitioners. Accordingly, Primary Staff believes that the rule waiver petition meets the criteria set forth in Section 120.542, Florida Statutes, and may be granted.

Purpose of the Underlying Statute

The language of Rule 25-6.049(5), Florida Administrative Code, was adopted in 1981 in response to the federal Public Utilities Regulatory Policies Act (PURPA). Sections 115(d), (f), and (g) of PURPA required state regulatory commissions to consider implementation of certain standards of regulation prior to 1981. The Commission opened dockets to investigate the merits of various topics such as cost of service, time-of-use rates, and lifeline rates. Docket No. 780886-RULE was opened to address the issue of master metering. Staff held an informal workshop and a staff-administered hearing in Docket No. 780886-RULE and determined that individual metering would make customers aware of their usage and encourage conservation. Order No. 9633, issued November 30, 1980, stated, "The Commission agrees further with the premise set out in the PURPA section 115(b)(1), which refers to section 115(d), that master metering is not conducive to energy conservation." (Order 9633, p.2). The only witness in the hearing summed up the rationale for using individual meters:

Customers who pay for electric power on the basis of the amount consumed have a clearer idea of the cost. These users are more likely to take this cost into account in deciding how much they will consume. As with many other economic trade-offs customers make, they must decide whether to spend more for electricity and thus have less money available for other goods or vice versa. (R.E. Lloyd, FPL)

The primary emphasis was on personal knowledge and responsibility which could only be provided by individual metering. The record in Docket No. 780886-RULE appears to indicate that the availability of conservation programs was a fortuitous side-effect of individual metering, not a specific reason for requiring individual metering.

Mr. Whalen has stated that, if the Commission grants the petitioners' waiver request, he will install individual submeters on the 38 sites currently served through FPC's individual meters. The petitioners and Mr. Whalen maintain

that the installation of individual submeters will serve the purpose of the Rule by providing sufficient information to make tenants aware of and responsible for their individual usage. Staff agrees that the installation of individual submeters will provide sufficient usage information to the tenants at the 38 sites at issue.

Staff recognizes that master metering will still allow a customer to significantly increase his/her total bill and only pay a pro rata share of that increase. However, both the petitioners and Mr. Whalen stated that most of the residents of this Park are already closely monitoring electric usage as a matter of financial necessity. Mr. Whalen indicates that all other sites at the Park are already individually submetered. Information provided by FPC for individually-metered tenants indicates the average monthly kWh usage during winter months ranges from 167 kWh to 515 kWh. Less than half of these residents show an average usage over 300 kWh per month. Assuming full occupancy of the 195 master-metered sites, the average kWh usage for the same time period for master-metered customers ranged from 155 kWh to 412 kWh. This similarity in usage characteristics, coupled with the statutory limitation on the size of the vehicles allowed in the Park, indicates that the addition of individual submeters is not likely to result in significant cross subsidies from the addition of the 38 sites at issue.

In summary, Staff believes that the purpose of the underlying rule may be achieved through the installation of individual submeters at the 38 sites currently served through FPC's individual meters.

Substantial Hardship

Tenants at the 38 individually-metered sites incur reconnect charges of \$15.00 each time they return to the Park and request service. Tenants at sites receiving service through the Park's master meter do not incur these charges, because service is not terminated and does not have to be reconnected each time a single tenant leaves and returns to the Park. When reconnect costs are factored into the monthly charges, the 38 individually-metered tenants experience higher overall average costs of electricity than tenants at the 195 master-metered sites, regardless of individual usage. Further, the individually-metered tenants pay an \$8.85 customer charge

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each month in addition to the kWh usage charges. This customer charge constitutes a significant portion of low usage bills. Master-metered customers pay only a pro rata share of a single customer charge on the master meter account.

Staff believes that, as a policy statement, the Rule's individual metering requirement is appropriate. However, Staff believes that application of the Rule as to the petitioners results in substantial hardship for the petitioners. In addition to paying higher overall electricity costs than their neighbors, the petitioners may be more restricted from traveling as frequently as they wish due to the costs of reconnection after any trip. Further, the petitioners' sites were not part of a staged development that contemplated different construction dates at the outset and were not added to the Park in 1982 as an afterthought; these sites were intended to be constructed at the same time as the other 195 sites according to the Park's original 1972 plans. In light of the additional costs imposed on the petitioners and the inclusion of their sites in the original Park plans, application of the Rule to them seems inappropriate and results in a substantial economic hardship as contemplated by Section 120.542(2), Florida Statutes.

Staff maintains, however, that the difference in costs mentioned above should not lead to the conclusion that the Rule creates a discriminatory rate structure. When there is a significant regulatory policy change, such as the one made through the adoption of this Rule, it is common to grandfather existing customers in order to avoid rate shock or unnecessary cost to either the utility or the customer. Such treatment has never been considered discriminatory.

In conclusion, Staff recommends that the Commission grant the petition for waiver. Staff also recommends that the waiver be granted subject to following conditions, as explained below:

- ◆ The size of the units subject to master metering must be no larger than 400 square feet measured on the outside of the unit and otherwise comply with the definitions and provisions of Section 320.01, Florida Statutes.
- ◆ The Park's owner/manager, shall be responsible for the total cost of removing and replacing, or

purchasing, existing utility facilities and installing individual submeters for each affected unit within 30 days following the removal of utility-owned meters.

- ◆ All units in the Park shall be individually submetered.
- ◆ The cents per KWh paid by each tenant for their submetered usage shall be equal to the total park bill for the master meter serving those tenants divided by the total KWh measured for that meter during the billing period. This may vary from month to month depending on residency and usage.
- ◆ The Park's owner/manager, shall be required to contact the Park's serving utility no less than every two years to determine what, if any, conservation programs are available for the master-metered load and to implement all such programs which are determined to be cost effective for the tenants.

Size Limitations. The petitioners and Mr. Whalen stated that the petitioners did not qualify for existing utility-sponsored conservation programs because the petitioners' usage was so low. Thus, they argued that waiver of the Rule as to them would not undermine the conservation purposes of the Rule. They claimed that this low usage was a result of the statutorily mandated size limits on their vehicles.

In response to Staff's data request, the park owner indicated that all vehicles residing in the Park must comply with the limitations contained in the Florida Statutes and ANSI Standard A-119.5. Section 320.01(1)(b)7., Florida Statutes, defines a park trailer as:

a transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceeds

400 square feet when constructed to ANSI A-119.5 standards and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

Staff is reluctant to recommend tying the waiver of a rule designed to promote conservation to standards which were likely set on a totally unrelated basis. However, absent any evidence that the ANSI standard referenced in this statute is unreasonable, Staff recommends granting the waiver with the restriction that vehicles receiving service through the Park's master meter must adhere the limitations imposed on them by Section 320.01(1)(b)7., Florida Statutes (1995).

Submetering for All Park Sites and Costs of Conversion. Mr. Whalen has stated that he is willing to assume all costs incurred by FPC for conversion of the Park's individually-metered sites to master metering. The utility has indicated that the 38 sites will be connected to the existing master meter and that the rewiring costs are minimal. Other than the meters which would be removed in the transition, no other utility facilities will be affected. In addition, Mr. Whalen has agreed to assume all costs of providing individual submeters for the 38 lots. FPC indicated that it is their understanding that the Park intends to install submeters as the utility pulls its existing meters. Therefore Staff's recommended time frame for installing submeters should not cause a hardship. The cost quoted by FPC to convert the existing utility facilities is \$363. This is primarily the cost of setting the master meter and removing some wiring. The cost of installing individual submeters quoted by Mr. Whalen is \$1,140. Mr. Whalen will then assume all responsibility for compliance with any state or local codes and the maintenance of all facilities behind the master meter.

Bill calculation. The most common complaint Staff receives from master-metered installations is the apportionment of the total master-metered bill to the individual units/lots. Staff agrees that the method currently used in this park is appropriate. Although the current management apparently has a good relationship with the tenants, Staff believes this

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language should be incorporated in the requirements for granting the waiver in case management changes.

The method used to determine the cents per kWh applied to the individually submetered usage should be as follows:

The total cost of electricity billed by the utility to the customer of record for each master meter shall be divided by the sum of the kWh usage of all the submeters behind that master-meter. This calculated cents per kWh is then multiplied by the submetered kWh at each lot/unit to determine each tenant's portion of the total electric bill.

The master meter customer-of-record is prohibited by Commission Rule from collecting more in total from submetered tenants than the cost for electricity billed by the utility. "Costs" are defined in Rule 25-6.049(5)(b)(6), Florida Administrative Code, and are limited to the costs for customer, energy, demand, and cost recovery clauses. Any costs associated with late payment charges or returned checks may **not** be included in the cost of electricity billed to tenants. In addition, no cost associated with the installation or maintenance of the distribution system behind the master meter or with any billing or meter reading activities may be included in the cost per kWh calculation.

Conservation measures. Finally, Staff remains concerned about eliminating the option of individual customer participation in conservation programs. Even though tenants are not currently eligible for certain programs, new conservation programs and techniques may evolve with technology. Individually-metered customers may take advantage of new programs at their own discretion. Master-metered customers do not exercise control over what, if any, conservation programs or measures are implemented.

Mr. Whalen indicated that he was not aware of any conservation programs for which the master-metered portion of the Park would qualify. However, FPC listed three conservation programs applicable to the master-metered account. FPC also indicated that, apart from a Business Energy Check of the Park office, the Park had not participated in any available conservation programs on behalf of the master-metered tenants. Almost half of the 38 individually-metered customers, however,

had participated in some form of residential conservation program.

Therefore, Staff recommends that, as a condition for granting the waiver, Mr. Whalen or his successor must contact FPC a minimum of once every two years to review all conservation programs for which the master metered account(s) are eligible. Mr. Whalen or his successor should be required to implement all programs which are cost effective for the tenants. If any tenant believes the Park has failed to adhere to this directive, that tenant may bring a complaint before this Commission for review.

ALTERNATIVE STAFF ANALYSIS: As a preliminary matter, Alternative Staff notes that this statute is intended "to adopt a procedure for agencies to provide relief to persons subject to regulation." §120.542(1), Florida Statutes (1996) (emphasis added). The petitioners are arguably not persons subject to regulation by the Commission. The Commission could dismiss the petition on that basis. Staff recommends, however, that the Commission consider the merits of the petition. In this case, FPC is clearly a person subject to regulation that could request waiver of Rule 25-6.049. FPC advised the petitioners to seek a rule waiver to address their concerns and indicated to the petitioners that FPC will make the necessary meter changes if a rule waiver is granted. In addition, because the Rule governs service, it affects both the regulated utility and the petitioners/customers.

On the merits, Alternative Staff recommends that the Commission deny the rule waiver petition. Although Alternative Staff agrees that the purpose of the underlying statute may be achieved if the waiver is granted, we maintain that the petitioners have failed to demonstrate that application of the Rule would create a substantial hardship or violate principles of fairness.

Substantial Hardship

The petitioners estimate that they pay approximately \$16.00 per month more than those residents receiving service through master metering. The petitioners attribute this difference to the fact that they receive service as part of FPC's residential class, while all other residents of the RV park receive service through the master meter under commercial

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class rates and terms. As residential class customers, the petitioners are required to pay a monthly service charge, slightly higher KWH charges, and, in certain circumstances, a minimum monthly billing charge. The petitioners are also subject to reconnect charges after temporary disconnections, while all other residents are not subject to such charges.

Staff notes, however, that the tariffed residential rate charged to individually-metered customers may be higher or lower than a master-metered tenant's recurring monthly kWh charge, computed from a master meter bill. For example, the residential rates paid by individually-metered customers include a single per kWh charge that covers both demand and energy costs. A master-metered facility typically receives service at a commercial demand rate that includes separate charges for demand and energy; the cost per kWh on a commercial demand rate is sensitive not only to total kWh usage but also to load factor. Residential customers typically have high peak demands for short periods, or low load factors. Spreading high monthly maximum demand charges over a relatively small number of kWh can result in the cost per kWh on a commercial demand rate being higher than the cost for the same kWh usage under a residential tariff.

In addition, customers receiving service through a master meter typically pay for more than their individual unit usage. Costs for common area electric usage such as street lights or pool/clubhouse facilities may be included in the master meter bill. If so, those costs will be factored into the cost per kWh applied to individually submetered customers. Individually-metered customers are not charged any costs for common facilities on their electric bills. Further, costs for common facilities may remain virtually fixed, despite the number of tenants in residence. Spreading this fixed cost over smaller measured usage when tenancy is low due to seasonal variations can result in rates higher than the current tariffed residential rate on a cents per kWh basis.

In summary, Staff recognizes that the petitioners, as individually-metered customers, are subject to some additional charges. In some instances, however, they may also receive the benefit of lower rates than their master-metered neighbors. While the additional charges cited by the petitioners may now seem burdensome to the petitioners, they do not rise to the level of creating a substantial hardship. These rates are

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applicable to every FPC customer receiving residential service and have been approved by the Commission as fair and reasonable.

Principles of Fairness

The petitioners' argue that the application of Rule 25-6.049 creates non-uniform electric metering and discriminatory billing within the RV park. Staff believes that this does not amount to a violation of principles of fairness that would justify waiver of the Rule as applied to the petitioners.

As previously stated, Section 120.542(2), Florida Statutes, provides that "'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." Staff does not believe that the petitioners and the grandfathered residents are "similarly situated persons" for purposes of determining whether principles of fairness are violated by the Rule's application.

Rule 25-6.049(5), Florida Administrative Code, contains a grandfather clause which, like any other grandfather clause, draws a line between two groups and provides for different treatment of those groups. The two groups are not similarly situated under the Rule, and the treatment of one cannot be compared to the treatment of the other to determine what is fair. Treatment of the group to which the petitioners belong must be compared to the treatment of similarly situated persons who are subject to the Rule, i.e., other persons who were not grandfathered by the Rule.

The petitioners have not shown that the Rule affects them in a manner significantly different from the way it affects other persons not grandfathered by the Rule. The petitioners simply state the obvious effects of the grandfather clause: their group is treated differently from the grandfathered group. Therefore, different treatment of the two customer groups does not violate principles of fairness.

Conclusion

In conclusion, Alternative Staff recommends that the Commission deny the rule waiver petition because the petition

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fails to demonstrate that application of the Rule to the petitioners would create a substantial hardship or violate principles of fairness. There is virtually nothing to distinguish Dunedin Beach Campground from the thousands of RV parks located across Florida. All are subject to the same statutory size restrictions which, in turn, limit usage. FPC lists over 142,000 active individual accounts within mobile home parks across its service territory alone. Granting the instant petition could result in a flood of these customers seeking a waiver of the individual metering requirements of Rule 25-6.049(5).

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action order files a protest within 21 days of the issuance of the order, this docket should be closed.

STAFF ANALYSIS: If no person whose substantial interests are affected by the Commission's proposed agency action order files a protest within 21 days of the issuance of the order, this docket should be closed. The utility, the petitioners, and the Park owner appear to be in agreement with the steps to be taken to convert the 38 lots at issue to the master meter. Upon Commission approval of the conversion, no further action is necessary.