

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for amendment of Rule 25-6.049, F.A.C., Measuring Customer Service, by 38 tenants of record at Dunedin Beach Campground.

DOCKET NO. 970647-EU
ORDER NO. PSC-97-1352-FOF-EU
ISSUED: October 27, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RULE WAIVER

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.

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 this Commission. In the interest of providing information, our Staff responded to the petition by letter. Mr. Earle C. Bartell, one of the petitioners, then wrote our Division of Appeals requesting that this Commission either

DOCUMENT NUMBER-DATE

11057 OCT 27 97

FPSC-RECORDS/REPORTING

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 June 10, 1997, for publication in the Florida Administrative Weekly. By Order No. PSC-97-0763-FOF-EU, issued June 27, 1997, we denied the petitioners' request to initiate rulemaking to amend Rule 25-6.049(5). We 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, we were required to rule on the waiver petition by August 25, 1997.

Staff brought its recommendation on this petition for discussion at our August 5, 1997, Agenda Conference. Based on representations made by Mr. Bartell at the Agenda Conference, we 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 by Section 120.542(7), F.S.

DECISION

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.

We find that the purpose of the underlying statute may be achieved by using individual submeters at the petitioners' RV sites and that application of the Rule creates a substantial hardship to the petitioners. Accordingly, we find that the rule waiver petition meets the criteria set forth in Section 120.542, Florida Statutes, and should 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. This 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. Richard Whalen, the park owner, has stated that if we grant 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. We agree that the installation of individual submeters will provide sufficient usage information to the tenants at the 38 sites at issue.

We recognize 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, we find 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 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.

We believe that, as a policy statement, the Rule's individual metering requirement is appropriate. However, we believe 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.

We do not conclude, however, that the Rule, due to the difference in costs mentioned above, 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. We do not consider such treatment discriminatory.

Conclusion and Conditions

In summary, we find that the rule waiver petition should be granted. In addition, we find that the following conditions should apply to this waiver, 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.

The park owner has 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 exceed 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.

We are reluctant to tie 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, we grant this waiver with the restriction that vehicles receiving service through the park's master meter must adhere to 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, the 30-day time frame for installing submeters, mentioned above, 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. After this conversion is completed, Mr. Whalen will 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 that this Commission receives from master-metered installations concerns the apportionment of the total master-metered bill to the individual units/lots. We believe that the method currently used in this park is appropriate. Although current management apparently has a good relationship with the tenants, management may change. Therefore, we believe that language concerning the park's apportionment methodology should be incorporated as a condition of this waiver.

We find that 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 our Rules 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 We remain 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 stated that he was not aware of any conservation programs for which the master-metered portion of the park would qualify. However, FPC has indicated that three conservation programs are applicable to the master-metered account. FPC has 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, we find that, as a condition of this waiver, the park's owner/manager must contact FPC a minimum of once every two years to review all conservation programs for which the master metered account(s) are eligible. The park's owner manager 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.

Based on the foregoing, it is

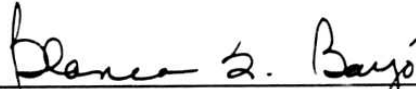
ORDERED by the Florida Public Service Commission that application of the requirements of Rule 25-6.049(5), Florida Administrative Code, is waived as to the 38 individually-metered sites at Dunedin Beach Campground, subject to the conditions stated in the body of this Order.

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 25-22.036, 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.

ORDER NO. PSC-97-1352-FOF-EU
DOCKET NO. 970647-EU
PAGE 10

By ORDER of the Florida Public Service Commission this 27th
day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

WCK

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 and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 November 17, 1997.

ORDER NO. PSC-97-1352-FOF-EU
DOCKET NO. 970647-EU
PAGE 11

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.