

STATE OF FLORIDA  
BEFORE THE PUBLIC SERVICE COMMISSION

THE COLONY BEACH & TENNIS  
CLUB, LTD.

Complainant

FLORIDA POWER & LIGHT  
Respondent

DOCKET NUMBER 991680-EL

FLORIDA PUBLIC SERVICE  
COMMISSION,  
Intervenor.

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EXCEPTIONS TO RECOMMENDED ORDER

COMES NOW PETITIONER, Colony Beach & Tennis Club, Ltd., through its undersigned representatives pursuant to Chapter 120.57(3)(k), Florida Statutes and Rule 28-106.217, Florida Administrative Code, and hereby files its Exceptions to the Recommended Order of the Administrative Law Judge in this cause.

EXCEPTIONS TO FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following exceptions are hereby requested:

- 1) The Colony is registered with, and licensed by, the Department of Business and Professional Regulation, Division of Hotels and Restaurants as a motel, not a condominium. It's Declaration of Condominium was filed with the Clerk of the Court in Sarasota County, as a Condominium Resort Hotel.

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2) The Colony's occupational license with Sarasota County, is that of a hotel, not a residential condominium, or resort condominium.

3) The Colony has at all times operated as a luxury resort hotel, held itself out as a hotel, been recognized in the community in which it is situated as a hotel, and been in direct competition with other hotels and motels in the area.

4) Colony paid the higher hotel/motel licensing fees to the Division of Hotels and Restaurants than did resort condominiums.

5) Colony was required to meet the more stringent inspection and safety requirements imposed on hotels and motels by the Division of Hotels & Restaurants. Resort Condominiums such as Holiday Villas, Dunes, and Sundestin did not.

6) Pursuant to statute, the Colony, has at all times been required to post its room rates in the same manner as other hotels and motels in the state of Florida, or be subject to possible criminal violations. Resort Condominiums like Holiday Villas, Dunes, and Sundestin are exempt from this rule.

7) The Colony received and paid all 232 individual electric bills from FP&L monthly. The unit owners did not receive the bills, see the bills, or pay the bills. Guests at the Colony

were not billed for individual usage of electricity, they paid a bundled rate for use of the room for a limited time.

8) Colony's Chief Engineer, Jerry Sanger, testified that for seventeen years, he, not the unit owners, has had personal responsibility for energy conservation at the Colony and has implemented many programs to reduce energy usage and costs.

9) By contrast, owners at Holiday Villas, Dunes, and Sundestin, resort condominiums that have applied for variances from the Public Service Commission's individual metering rule,

pay their own electric bills and had the responsibility to implement conservation measures for their units.

10) Unit owners at the Colony were required to place their units in a rental pool for use in the operation of the Colony as a hotel. At Holiday Villas, Dunes, and Sundestin the owners can choose to place their units in a rental pool or remove the units from the same and use them for permanent residences.

11) The individual metering requirement of the Commission was not intended to include hotels where the end user, the guest at the hotel, could not practically be billed for their usage for electric. As a result, the Commission set forth a specific exemption for certain types of facilities, including hotels and motels. No waiver or variance is required for a

hotel or motel to receive electric service on a master metered commercial rate.

12) Colony was serviced by FPL on the higher residential rate, which according to FP&L is for domestic purposes only, while Colony was licensed and operated as a commercial hotel.

13) Other hotels in the area that were in competition with the Colony were receiving service from FPL on the lower master metered commercial rate, not the individually metered residential rate.

#### **EXCEPTIONS TO CONCLUSIONS OF LAW**

14. Section 366.01, Florida Statutes, states: "[T]he regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all provisions hereof shall be liberally construed for the accomplishment of that purpose."

15. Construction of the Commissions metering rule falls Under this guideline. Therefore, it should be construed in this case liberally.

16. Commission policy as recently enunciated in Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, (attached as Exhibit "A", states that, "Rule 25-6.049(5)(a), Florida Administrative Code, provides certain exemptions from the

individual metering requirement for facilities such as hospitals, nursing homes, college dormitories, convents, fraternity and sorority houses, hotels, and motels. The types of facilities that are exempted from the individual metering requirement are those in which, due to their nature or mode of operation, it is not practical to attribute usage to individual occupants. For example, hotels and motels are commercial enterprises in which occupants of the units are not billed for their use of electricity, but rather pay a bundled rate for the use of a room for a limited time."

17) In practical application this appears to be true. Rule 25-6.049(5)(a), Florida Administrative Code, requires individual metering for each separate occupancy unit of new commercial establishments, among other facilities, including condominiums and cooperatives. However, when a new commercial establishment is built as a hotel or motel, it is not required to file for a waiver or variance to master meter its facility. The exceptions (operating as a hotel or motel), under a liberal construction of the rule take precedence over the requirement that a new commercial establishment is required to be individually metered.

18) As a registered and licensed motel, Colony falls under the exception to the Commission's metering rule and should have been allowed to master meter its facility when its Chief Engineer, Mr. Jerry Sanger initially made the

request of FP&L in late 1988 or early 1989.

19) In the above mentioned Dockets No., 001543EU, 001544 EU, and in a previous Docket No. 980667-EU, Holiday Villas, Dunes of Panama and Sundestin, filed for and were granted waivers from the individual metering rule. While FP&L argues that the Colony fits into the same mold and therefore should have been required to file for a waiver, the facts are clearly distinguishable.

Holiday Villas, Dunes, and Sundestin were all registered and licensed as resort condominiums with the Department of Business and Professional Regulation, Division of Hotels and Restaurants, and therefore subject to lower fees and less stringent regulations.

Holiday Villas, Dunes and Sundestin's Declaration of Condominiums did not include any reference whatsoever, like the Colony, that they were Condominium Resort Hotels. Nor did their documents preclude permanent residency by the owners of the units, as did the Colony's.

Colony's offering prospectus clearly stated that the units at the Colony were not suitable for permanent residence and that they were to be dedicated to the operation of the property as a luxury resort hotel.

These differences place Holiday Villas, Dunes and Sundestin in a different category than Colony who was registered and licensed as a hotel or motel.

21. Although Colony has a Declaration of Condominium filed with Sarasota County, it clearly states that it is a Resort Condominium Hotel. Under a consistent interpretation of Rule 25-6.049(5)(a), Florida Administrative Code, even though the Colony when built had its ownership structure as a condominium that is required to be individual metered for each separate occupancy unit, because it was registered, licensed and operated as a hotel, it would fall within the stated exceptions and not be required to file for a waiver or variance.

22. Following Rule 25-6.093, Florida Administrative Code that in relevant part states, "Upon request of any customer, the utility is required to provide to the customer a copy and/or explanation of the utility's rates and provisions applicable to the type or types of service furnished or to be furnished such customer, and to assist the customer in obtaining the rate schedule which is most advantageous to the customer's requirements." It follows that FP&L violated the spirit and intent of this rule when it denied Mr. Sanger's request in 1988 or 1989 to consolidate meters for the purpose of cost savings.

23. Since the Colony should have been allowed to master meter its facility when it first requested this of FP&L, it has been subject to over-billing by FP&L on the higher

residential rate since that time. Colony has also been subject to discrimination or unfair prejudice, a violation of Chapter 366.03 Florida Statutes, as a result of its area hotel and motel competitors receiving the lower master metered commercial rate, while Colony was paying the higher residential rate.

24) Overbillings are addressed in the Commission rules and in pertinent part state, "[I]n the event of other overbillings not provided for in Rule 25-6.103, the utility shall refund the overcharge to the customer for the period during which the overcharge occurred based on available records. If commencement of the overcharging cannot be fixed, then a reasonable estimate of the overcharge shall be made and refunded to the customer. The amount and period of the adjustment shall be based on the available records. The refund shall not include any part of a minimum charge.

25. In Richter v Florida Power Corporation, 366 So. 2d 798, (Fla. 2d DCA 1979), the Supreme Court stated, "[S]ection 366.03 requires that all rates charged by regulated utilities be fair and reasonable." The court further said that, "[W]e perceive that the requirement of fairness which compels adjustment in rates to compensate utilities for escalating fuel costs also compels retrospective reconciliation to exclude charges identifiably resulting from unreasonable computations or inclusions." Therefore, it must follow where




a rate inequity exists due to an overcharge, that also results in an unfair disadvantage or undue prejudice, a refund can and should be granted.

25) It is therefore concluded that Colony was overcharged For electric by FPL. The appropriate rate for Colony should have been the master metered commercial rate, not FPL's residential rate.

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Public Service Commission, enter a final order granting a refund to Colony based on Rule 25-6.106(2), Florida Administrative Code for the period of time Colony has been overcharged for electricity.

WHEREFORE, the COLONY respectfully requests the Public Service Commission accept its Exceptions to the Recommended Order and enter a final order including the same.

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the following this 9th day of May, 2001.

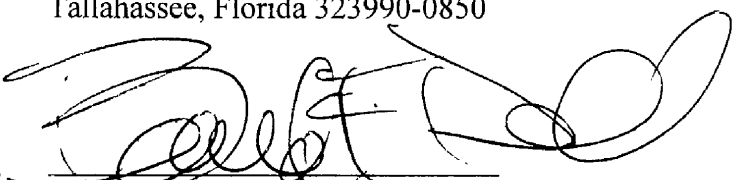
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MARC D. MAZO

  
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BERNARD F. DALEY, JR.

'EXHIBIT A'

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for variance  
from or waiver of Rule 25-  
6.049(5)(a), F.A.C., by  
Sundestin International  
Homeowners Association, Inc.

DOCKET NO. 001543-EU

In re: Petition for variance  
from or waiver of Rule 25-  
6.049(5)(a), F.A.C., by Dunes of  
Panama Owners Association, Inc.

DOCKET NO. 001544-EU  
ORDER NO. PSC-01-0888-CO-EU  
ISSUED: April 9, 2001

CONSUMMATING ORDER

BY THE COMMISSION:

By Order No. PSC-01-0626-PAA-EU, issued March 14, 2001, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-01-0626-PAA-EU has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 9th day of April, 2001.

/s/ Blanca S. Bayó  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

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ORDER NO. PSC-01-0888-CO-EU  
DOCKETS NOS. 001543-EU, 001544-EU  
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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 judicial review of Commission orders that is available pursuant to Section 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 judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance 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.