

STATE OF FLORIDA
BEFORE THE PUBLIC SERVICE COMMISSION

ORIGINAL

THE COLONY BEACH & TENNIS
CLUB, LTD.

Complainant

FLORIDA POWER & LIGHT
Respondant

Docket No. 991680-EL

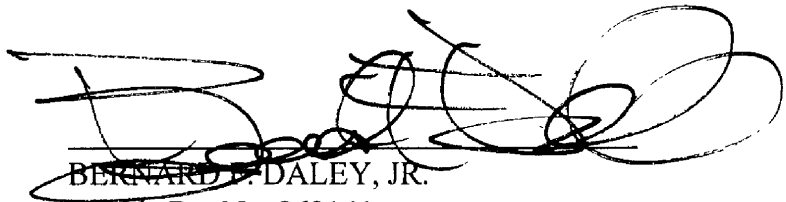
FLORIDA PUBLIC SERVICE
COMMISSION,
Intervenor

RECEIVED FPSC
01 MAY 17 PM 3:25
RECORDS AND
REPORTING

NOTICE OF CORRECTED FILING

THE PETITIONERS HEREBY request the Court to accept the enclosed exhibit as the corrected "Exhibit A" as an attachment to the Exceptions To Recommended Order filed May 7, 2001. The final Order had been attached rather than the Notice of Proposed Agency Action.

Respectfully submitted,



BERNARD F. DALEY, JR.
Florida Bar No. 263141
**THE LAW OFFICE OF
BERNARD F. DALEY, JR.**
901 North Gadsden Street
Tallahassee, Florida 32303
Telephone: (850) 224-5823

cc: J. Stephen Menton, Esq.
P.O. Box 551
Tallahassee, Florida 32301

Katrina Walker, Esq
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd. Rm. 370
Tallahassee, Florida 32399

Blanca S. Bayo, Director
Division of Records & Reporting
2540 Shumard Oak Boulevard
Betty Easley Center Room 110
Tallahassee, Florida 32399-0850

Ms. Elizabeth Draper
Division of Electric & Gas
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120

DOCUMENT NUMBER-DATE

06225 MAY 17 05

FPSC-RECORDS/REPORTING

"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-01-0626-PAA-EU
ISSUED: March 14, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVERS

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.

On October 9, 2000, the petitioners, Sundestin International Homeowners Association (SI) and Dunes of Panama Owners Association, Inc. (DP) filed requests for waiver of the requirements of Rule 25-6.049(5)(a), Florida Administrative Code. The rule sets forth the conditions under which individual occupancy units in residential and commercial buildings must be metered by the utility. The rule specifically states that all occupancy units in condominiums, for which construction was commenced after January 1, 1981, must be individually metered by the utility. The petitioners both seek

SI now seeks a waiver which would allow the condominium to convert to a small number of master meters which would serve all of the occupancy units. This conversion would allow SI to switch from 280 separate residential accounts to a few commercial accounts, which would likely result in lower electricity costs.

I. REQUIREMENTS OF SECTION 120.542, FLORIDA STATUTES

Section 120.542(2), 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 SI, as a condominium, to be served through individual meters placed on each occupancy unit:

(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

If the individual metering rule requirement is waived for SI, the individual occupancy units will no longer be metered and billed by Gulf. 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 if, as a condition of the waiver, SI is required to allocate Gulf's billed cost of electricity to the unit owners using a reasonable apportionment method, the purpose of the statute will be fulfilled.

B. SUBSTANTIAL HARDSHIP/PRINCIPLES OF FAIRNESS

Substantial hardship is defined in Section 120.542(2), Florida Statutes, as a "demonstrated economic, technological, 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." Section 120.542(2), Florida Statutes.

SI 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. SI requests a waiver from the individual metering requirement for as long as they are licensed and operated as a transient occupancy facility. In response to interrogatories, SI indicates that it intends to allocate costs to the individual unit owners using a reasonable apportionment method, which may include sub-metering or a formula based on square footage weighted for occupancy.

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. SI contends that it 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 SI, constitutes a substantial hardship within the meaning of Section 120.542(2), Florida Statutes. We believe that the similarities of the facilities are sufficient to grant SI's request for a waiver of Rule 25-6.049(5)(a), Florida Administrative Code.

and check out, and a central telephone switchboard. The condominium is in direct competition with hotels and motels in the area.

DP now seeks a waiver which would allow the condominium to convert to a small number of master meters which would serve all of the occupancy units. The petitioner contends that this conversion would allow DP to switch from 274 separate residential accounts to a few commercial accounts, which would likely result in lower electricity costs.

I. REQUIREMENTS OF SECTION 120.542(2), FLORIDA STATUTES

Section 120.542(2), 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 DP, as a condominium, to be served through individual meters placed on each occupancy unit:

because its facility is operated in a manner similar to timeshare plans, hotels and motels. According to DP, most unit owners do not occupy their units. The transient occupants of the units pay a bundled rate for the unit, and are not billed based on the amount of electricity they consume.

If the individual metering rule requirement is waived for DP, the individual occupancy units will no longer be metered and billed by Gulf. 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 if, as a condition of the waiver, DP is required to allocate Gulf's billed cost of electricity to the unit owners using a reasonable apportionment method, the purpose of the statute will be fulfilled.

B. SUBSTANTIAL HARDSHIP/PRINCIPLES OF FAIRNESS

Substantial hardship is defined in Section 120.542(2), Florida Statutes, as a "demonstrated economic, technological, 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." Section 120.542(2), Florida Statutes.

DP contends 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. DP requests a waiver from the individual metering requirement for as long as they are licensed and operated as a transient occupancy facility. In response to interrogatories, DP indicates that it intends to allocate costs to the individual unit owners using a reasonable apportionment method, which may include sub-metering or a formula based on square footage weighted for occupancy.

We agree that the application of Rule 25-6.049, Florida Administrative Code, in this particular instance results in different treatment to similarly situated facilities. DP operates in a manner similar to timeshare plans, hotels, and motels, which

ORDER NO. PSC-01-0626-PAA-EU
DOCKETS NOS. 001543-EU, 001544-EU
PAGE 11

ORDERED that this waiver is effective only so long as Sundestin International Homeowners Association, Inc. is operated and licensed as a transient occupancy facility. At such time the condominium is no longer so operated and licensed, Sundestin International Homeowners Association, Inc. 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 Petition for Variance from or Waiver of Rule 25-6.049(5)(a), Florida Administrative Code, by Dunes of Panama Owners Association, Inc. is approved. It is further

ORDERED that Dunes of Panama Owners Association, Inc. shall allocate the cost of electricity to the individual unit owners using a reasonable apportionment method, as required by Rule 25-6.049(6)(a), Florida Administrative Code. It is further

ORDERED that this waiver is effective only so long as Dunes of Panama Owners Association, Inc. is operated and licensed as a transient occupancy facility. At such time the condominium is no longer so operated and licensed, Dunes of Panama Owners Association, Inc. 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 upon the issuance of a Consummating Order 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" attached hereto. It is further

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

ORDER NO. PSC-01-0626-PAA-EU
DOCKETS NOS. 001543-EU, 001544-EU
PAGE 13

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.