

**4000 SOUTH OCEAN PROPERTY OWNER, LLLP.****315 S. Biscayne Blvd., 4<sup>th</sup> Floor,  
Miami, Florida 33019.**FILED 5/7/2018  
DOCUMENT NO. 03542-2018  
FPSC - COMMISSION CLERK

May 7, 2018

**VIA ELECTRONIC FILING**

Ms. Carlotta S. Stauffer  
Florida Public Service Commission  
Director, Division of the Commission Clerk & Adm Services  
2540 Shumard Oak Blvd  
Tallahassee, Florida, 32399-0850

RE: 4000 South Ocean Petition for Variance or Waiver from Rule 25-6.049(5)&amp;(6)

Dear Ms. Stauffer:

Attached for filing on behalf of 4000 South Ocean Property Owner, LLLP, the developer of 4010 South Ocean Condominium to be operated as Hyde Beach House located at approximately 4000 South Ocean Drive, Hollywood, FL. 33019 is a Petition for a Variance or Waiver from Rule 25-6.049(5)&(6), Florida Administrative Code with attached Prospectus and all Related Condominium Documents.

I would appreciate your establishing a new docket and filing the petition and condominium documents for consideration by the Commission. If you have any questions please do not hesitate to contact me.

Thank you for your consideration and attention in this matter.

Yours very truly,

*Marc Mazo*

MARC MAZO  
Qualified Representative  
3050 Sandpiper Ct.  
Clearwater, Fl 33762  
727-573-5787  
powck@aol.com

STATE OF FLORIDA  
BEFORE THE PUBLIC SERVICE COMMISSION

IN RE:

4000 South Ocean Property  
Owner, LLLP, a Delaware Limited  
Liability Limited Partnership

Docket No. \_\_\_\_\_

Petitioner \_\_\_\_\_/

**PETITION FOR VARIANCE OR WAIVER  
FROM RULE 25-6.049(5) & (6)  
OF THE FLORIDA ADMINISTRATIVE CODE**

COMES NOW the Petitioner, 4000 South Ocean Property Owner, LLLP, a Delaware Limited Liability Limited Partnership, ("Owner), whose address is 315 S. Biscayne Blvd, Miami, Florida, 33131, the developer of Hyde Beach House Resort and Residences, (Hyde Beach House) located at 4010 South Ocean Drive, Hollywood, Florida 33019, and hereby petitions the Florida Public Service Commission (FPSC) for a variance from or waiver of Rule 25-6.049, Florida Administrative Code (F.A.C) pursuant to section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C..

**I. Applicable Rule:** The applicable rule from which petitioner seeks a waiver is Rule 25-6.049, F.A.C., which provides that individual metering shall be required for each separate occupancy unit of a condominium, unless the condominium meets criteria set forth in Rule 25-6.049(5)(g), F.A.C. and Rule 25-6.049(6), F.A.C..

**II. Exception:** Rule 25-6.049(5)(d), F.A.C., provides that individual metering is not required:

"For lodging establishments such as hotels, motels, and similar facilities which are rented, leased, or otherwise provided to guests by an operator providing overnight occupancy as defined in paragraph (8)(b)."

Owner is the developer of an ocean front resort condominium hotel that intends to operate under a brand agreement with SBE Hotel Group. See Prospectus-Page #3-Section #4-Brand Agreement. The agreement will allow the facility to operate and be referred to as "Hyde Beach House". The property will consist of one (1) Building containing three hundred and forty two (342) units; two hundred and sixty five (265) Resort Units, seventy (77) Traditional Units, and three (3) Commercial Units. See Prospectus-Summary of Certain Aspects of the Offering-Section #1-Description of the Condominium. Ownership structure will be pursuant to Chapter 718, Florida Statutes while operation of the resort will be pursuant to Chapter 509, Florida Statutes.

The 265 Resort Units are restricted by the City of Hollywood Zoning Ordinance to stays of no more than 150 days in any consecutive twelve (12) month period by the same occupant. See Prospectus-Section#2-Condominium Structure, Exhibit G-City of Hollywood Zoning Regulations Pg. 4 & 5. There is no permanent residency allowed in the 265 Resort Units. This restriction is stated in the Prospectus- Section #9-Restrictions on Use of Units and Common Area Alienability-Occupancy, Pg. 6 & 7. and in Exhibit A of the Prospectus-Declaration of Condominium Pg.48 Section 17.1-Occupancy.

The remaining 77 units do not carry restrictions as to use, however, all units are being sold with the intent to operate as a part of a hotel. This fact is made clear to prospective purchasers within the Purchase Agreement, Exhibit C of the Declaration of Condominium, Pg.1, #1(c), "[I]n as much as certain parts of the Condominium Property are intended for transient use, Seller reserves the right, in its sole discretion, to rent out the Unit prior to closing. As such, at the time of closing, the Unit may be delivered subject to the possessory rights of any transient guest then occupying the Unit (and Buyer agrees to accept title to the Unit subject to such possessory rights). In as much as the Seller has reserved the right to rent out the Unit prior to closing, Buyer is advised that, at the time of closing, THE UNIT MAY HAVE BEEN PREVIOUSLY OCCUPIED."

In addition, Section #9 of the Prospectus-Restrictions on Use of Units and Common Elements and Alienability-gives notice to potential purchasers that a commercial restaurant, café, bakery, catering services, and/or other food and beverage operations might be operating on the premises and can possibly create a nuisance. "Each Unit Owner by acceptance of a deed or otherwise acquiring title to a Unit, shall be deemed to understand and agree that if (without creating any obligation) restaurants, cafes, bakeries, catering services and/or other food service operations are operated from the Commercial Units, such operations may result in the creation of noise, odors, or other disturbances which may affect all portions of the Condominium Property. Accordingly, each Owner agrees (1) that such noises

and/or odors shall not be deemed a nuisance hereunder, .....”  
Declaration of Condominium, Pg. 50, Section 17.6 - Nuisances.

4010 South Ocean Condominium Hollywood Association, Inc. (the Association) has assumed all of Petitioner’s rights and responsibilities and has the power and the duty to operate the Condominium. See Declaration of Condominium, Section 11.1-Powers and Duties, Declaration Pg. 30.

The Association intends to enter into an agreement with Gemstone Hotels and Resorts to manage the Condominium and operate Hyde Beach House and Residences as a 1<sup>st</sup> Class Resort Hotel. See Prospectus, Pg. 4, Section 7-Management of the Condominium Property. Gemstone is a full-service management company specializing in luxury, urban hotels and complex resorts. Before or upon completion in 2018, Gemstone intends to register Hyde Beach House with the Department of Business Regulation as a hotel pursuant to §509.242.

§509.242(1)(a) “Hotel-A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing services generally provided by a hotel and recognized as a hotel in the community in which it is situated”.

Gemstone has managed many resort properties in South Florida such as: The Omni Colonnade (Coral Gables), The Ritz Carlton Key Biscayne, The Roney Palace, Savoy Hotel in South Beach, and most recently Beachwalk and Hyde Resort both of which received a waiver from the Commission to master meter.

As part of the requirements of the management agreement, Gemstone must provide certain hotel-type services to ALL units. These services include, but are not limited to: concierge services, day porter service, housekeeping, linen services,

marketing and advertising, laundry and dry cleaning, transportation, business service center, voice mail, and central PBX. See Prospectus-Summary of Certain Aspects of the Offering, Section 7 (a) (b) & (c) Page 4&5, and also Exhibit H of the Prospectus-Management.

The condominium documents do not require 95% of the units to be used solely for overnight occupancy as set forth in Rule 25-6.049(5)(g). However, as stated above, the condominium documents require that the 265 Resort Units to be used solely for transient occupancy. It is also anticipated that all or substantially all of the units will be used for transient rentals. The Declaration of Condominium specifically provides that all units may be used for transient and/or hotel rentals. See Page 51 of the Declaration of Condominium-Section-17.8-Leases.

Gemstone is required under the Management Agreement with 4010 Condominium Association, Exhibit "H" of the Prospectus, to maintain a lobby, registration desk for check-in and check-out, and central telephone switchboard. These are also requirements for master metering found in Rule 25-6.049(5)(g)(2). Purchasers are made aware of the requirements of a central telephone system in the Prospectus-Summary of Certain Aspects of the Offering, Page 12, Section 10-Utilities and Certain Services. "[A]ll telephone service within the units is intended to operate through a central switchboard controlled by the Association.

Gemstone will maintain records for each unit showing check-in and check-out dates and the name of the individual registered

to occupy the unit between each check-in and check-out date as set forth in Rule 25-6.049(5)(g)(3). In addition, pursuant to Rule 25-6.049(9)(a), F.A.C., the Association will utilize a reasonable apportionment method to allocate electricity costs authorized by the utility's tariff, plus any applicable taxes and fees, to each unit owner. These costs will be apportioned as common expenses in the same manner as other common expenses not consumed by and metered to individual units. The method used for common expenses is a pro-rata share based on the square footage of the unit as compared to the total square footage of all units. Prospectus-Summary of Certain Aspects of the Offering, Page 13 Section 11-Apportionment of Common Expenses and Ownership of Common Elements, and also Page 23 of the Declaration of Condominium, Section-5.1-Percentage Ownership and Shares in Common Elements.

**III. Underlying Statutes §366.05(1), §366.06(1), §366.81:**

Pursuant to §366.05(1), Fla. Stat. the FPSC has authority to prescribe fair and reasonable rates and charges, classifications, standards of quality measurements, and service rules and regulations to be observed by each public utility. §366.81 and §366.82 are collectively known as the Florida Efficiency and Conservation Act, or FEECA, and direct the Commission to adopt goals and approve plans regarding energy conservation. Rule 25-6.049, F.A.C., implements the statutes by setting forth the conditions under which individual metering and master metering shall be used by the utility. Petitioner believes both the underlying statute requiring fair and reasonable rates and the

purpose of energy conservation are both better served through master metering of the property.

**IV. Type of Action Requested:** Petitioner requests the Commission grant a variance or waiver from the literal requirement of Rule 25-6.049, F.A.C., wherein condominiums must be individually metered or meet certain specific criteria before they can be master metered, and allow SOPO to utilize master metering in construction of the facility.

**V. Facts Which Demonstrate Substantial Hardship or Violation of Principles of Fairness:**

Basic tenants of fairness are violated when similarly situated persons are affected in a significantly different manner due to the literal application of a rule. In this case, if SOPO is not allowed to master meter Hyde Beach House and receive service on a commercial rate, it will incur approximately 20%-30% in additional electric costs over and above what other similar resort hotels experience.

The disparity between what Hyde Beach House will pay on the residential rate if it is individually metered, and what other similarly situated competitors pay on the commercial rate, creates a substantial hardship on the resort in its effort to compete in the room rental business and pay all the associated costs of operating a public lodging establishment. (See Pg. 17 of this Petition - Exhibit "A" - Electric Rate Comparison).

Requiring the Owners to individually meter each condominium unit also violates principles of fairness and places the resort at a competitive disadvantage, in that other hotels and resorts



in the area will spend less on electricity and be able to spend more on advertising, staffing, and amenities, making them more attractive to resort vacationers.

As a condo-hotel, Hyde Beach House must meet the requirements found in Chapter 509, Florida Statutes. In Chapter 509 establishes a higher degree of care for public lodging establishments not found in typical residential condominiums. Some of these requirements relate to general safety, fire safety sanitation, health and welfare of guests, and pool safety. See §509.211, §509.215 §509.221, §509.221(4), §509.222(6). For each of these items Hyde Beach House must spend more money for compliance than if it was a typical residential condominium. Also, licensing requirements are more burdensome and costly for a hotel than a residential condominium. (See §509.241)

Hyde Beach House will compete directly for room night business with hotels, motels, and resorts from Miami Beach to West Palm Beach and all across Florida, including Beachwalk Resort Condominiums located in Hallandale Beach. Importantly, Beachwalk recently received a waiver from the FPSC to utilize master metering. Beachwalk had just over 75% of its condominium units permanently dedicated to use for transient rentals while Hyde Beach House has 77% of its units permanently dedicated to transient rentals. Based on a recent electric bill, Beachwalk will pay 30% less in electric expenses than Hyde Beach House would pay if they are individually metered. XXXXXXXXXXXXXXXXXXXX

Gemstone will regularly advertise and promote Hyde Beach House just as Beachwalk does with travel agents and in trade shows in this country and abroad. In addition, to keep the units

occupied, Gemstone, on behalf of Hyde Beach House will expend advertising dollars to design, create, and maintain a 1<sup>st</sup> Class web site with online reservation system. These are costs not incurred by typical residential condominiums.

Management personnel will be that generally found in a 1<sup>st</sup> Class resort including; a General Manager, Assistant Manager, Front Desk Manager and Night Manager, who will have oversight and supervision of sales and marketing, housekeeping, maintenance, registration, accounting, licensing and taxes, security, valet services, and the general safety and well being of guests.

Gemstone will utilize a nationally known reservation software program to help keep the guest rooms at Hyde Beach House filled. To maintain the reservation system requires manpower and capital investment. This is an added expense for the resort that is significantly different than residential condominiums.

Hyde Beach House will have a positive financial impact on the State of Florida and the local area economy as a result of the creation of additional jobs due to the operation of as a hotel, which otherwise would not exist if the property was strictly residential. Hyde Beach House will also generate revenue for the state and local area through sales tax and local occupancy or bed tax charged on all room rentals. This economic impact is significantly different than that of a residential condominium that generates no additional tax revenue for the state or local government, and a minimum amount of additional jobs.

Cable television service will be provided through the Condominium Association. Each owner will contribute a pro rata

share of the cable expenses on a monthly basis. Pursuant to Ch. 202.125, F.S., because Hyde Beach House will be registered as a hotel to offer transient rentals at the resort, it must pay the communications service tax (CST) on all cable services purchased. In contrast, residential condominiums do not pay the CST on cable services. The CST represents an expense Hyde Beach House will be obligated to pay because of its method of operation.

Petitioner at all times intends for Hyde Beach House to operate in a manner similar to a hotel as defined in Rule 25-6.049(5)(d), F.A.C.. It is anticipated that all or substantially all of the unit owners will make their units available for transient rentals either through the rental agreement with Gemstone, outside real estate entities, or through use of individual web sites like VRBO (Vacation Rental By Owner).

265 Resort Units are intended to be delivered to each purchaser in "Standard Finish Condition". (See Exhibit G to the Prospectus-Purchase Agreement-Page 11-Section 15(a)(ii) - Certain Items and Materials-Conditions of the Unit at Closing-With Respect to Resort Units Only). Purchasers of these units will not be given any option for individualized furnishing of their prospective unit. All furnishings, finishes, and fixtures will be designed similarly for each of the Resort Units depending on size and location within the tower, and installed to conform to the standards applied to the entire facility. Of the remaining 77 units, purchasers of these units will be allowed to choose their own furnishings. It is anticipated that less than 10% of the 77 non-standard units will be used for permanent occupancy, with the

balance available for transient occupancy through the hotel rental program or other private rental programs.

As a result of its intent to operate a resort hotel, Hyde Beach house has been designed to incorporate the American Disabilities Act Guidelines (ADA), required for all hotels. Compliance with these rules is more stringent and costly than compliance with the Florida Fair Housing Act which is the standard used for a typical residential condominium project.

There will be 12 mobility ADA units, and 20 communication ADA units located on various floors throughout the resort. Furniture in the ADA units must be compliant for the handicapped; grab bars must be installed for toilet areas and showers, sight impaired rooms must meet sound requirements for fire safety, and telephones must be installed to meet hearing impaired criteria. These are additional costs that would not be incurred for a typical residential condominium.

**VI. Violation of §366.05(1) and §366.06(1):** Rule 25-6.049, F.A.C., implements §366.05(1) and §366.06(1), which give the Commission authority to prescribe rate classifications and rules and regulations to be observed by IOU's. In fixing fair, just, and reasonable rates the Commission takes into consideration load characteristics and usage patterns. Rule 25-6.049 requires individually metering for residential condominiums. However, based on Hyde Beach House method of operation, there can be no doubt its load characteristics and usage patterns will be more similar to hotels and motels than those of typical residential customers. It will be impractical to attribute energy usage to

individual transient occupants. All transient guests will pay a bundled rate for the use of a condominium unit for a limited time. As such, the Commission should look to the method of operation of the resort as opposed to the ownership structure to determine the appropriate rate structure.

The Florida Department of Revenue and the Department of Business Regulation, who use a much lower threshold than 95% to determine whether a facility operates on a commercial basis, will treat Hyde Beach House like a commercial hotel based on its method of operation. Petitioner believes it should also be treated similar to a hotel and motel by the Commission, and allowed to master meter and take service from FP&L on a commercial rate schedule. It is unfair, unjust, and unreasonable to require Hyde Beach House to receive service from FP&L on the higher residential rates when it operates like a commercial hotel.

**VII. Conservation Issue:** Rule 25-6.049, F.A.C., also implements §366.81 and §366.82, collectively known as the Florida Efficiency and Conservation Act, or FEECA. These statutes direct the Commission to adopt goals and approve plans regarding energy conservation. The rule specifies the requirements for measuring electric service of customers. Paragraph (5) of the rule requires condominium units to be individually metered by the utility. The rule was adopted to promote conservation. The premise was that condominiums are residential in nature, and therefore, by requiring individual metering the owner occupant receives a price signal for electric usage and will be more inclined to conserve

energy. However, individual metering only promotes energy conservation when the occupants of the unit are directly responsible for the energy they consume. When individuals don't see a direct financial impact for the energy they consume individual metering actually defeats the purpose of energy conservation. It was for this reason the Commission provided certain exceptions to the individual metering requirement.

Even though Hyde beach House does not meet the literal requirement that 95% of the units be dedicated to the operation as a transient facility, its manner of operation, which will be similar to hotels and motels, dictates that conservation is better served through master metering. Hyde Beach House will operate as a transient rental facility catering to the traveling public. The owner/investors of substantially all of the units will not be responsible for energy conservation at the resort. The General Manager, Assistant Manager, Chief Engineer, and Director of Housekeeping will have full responsibility for energy management and conservation. If Hyde Beach House is not able to receive a price signal through a master meter as other hotels and motels receive, the resort staff will not be made aware of the electric costs, and accordingly will not be as diligent in their efforts to conserve.

In hotels and motels the GM has the overall responsibility for cost control. By working closely with staff and monitoring monthly electric expenses the GM can implement many policies to keep electric costs down by conserving electricity. Here are a few that the management at Hyde Beach House will implement; regular maintenance schedules for all HVAC equipment so that it

continues to operate at peak efficiency, regularly scheduled condominium unit maintenance and inspections to insure all energy star appliances are functioning properly, daily efforts by housekeeping to draw curtains or shades after cleaning an unoccupied room to prevent heat gain unnecessarily, thermostat turn down within unoccupied units to prevent unnecessary energy consumption, and measures to reduce heat island effects. Housekeeping will use environmentally friendly products that also require less energy to ventilate after cleaning. These efforts will aid in the reduction of weather-sensitive peak demand which is a goal set forth by the Legislature in §366.81. These are efforts that would unlikely be made if Hyde Beach House was individually metered.

The design for the HVAC system is centralized. The condominium units contain individual air handlers only, and operate through a direct return roof mounted water cooling tower and heat exchanger for the cooling and heating of the units.

A central natural gas fired water heater system, that is directly piped through a looped system, services the hot water system to each unit. High efficiency, manually switched bathroom fans are being incorporated to help remove humidity and prevent prolonged operation that removes conditioned air from the unit. As a result of its operation as a hotel, Hyde Beach House intends to register for certification with the Florida Department of Environmental Protection (FDEP), as a "Florida Green Lodging". This designation is for lodging establishments and not typical residential condominiums. The FDEP has established criteria that must be met for a number of environmentally friendly issues,

including, but not limited to energy efficiency. The above energy conservation measures will be taken as part of Hyde Beach House's's certification as a "Florida Green Lodging". Incentive to focus on conservation as a regular course of business is lost if the resort is individually metered and hotel management never receives a price signal for the consumption of electricity at the hotel.

Finally, Florida Power & Light has energy conservation and incentive programs that will be available to Hyde Beach House as a hotel that would not otherwise be available to a typical residential condominium. FP&L offers business evaluations, help in payment for high efficiency cooling and/or energy recovery ventilation, business lighting programs, building envelope improvements, and business custom incentives. These on-going programs will be available to Hyde Beach House as a hotel to help with energy conservation.

**VIII. Conclusion** If the units at Hyde Beach House are individually metered the monthly electric bills will be forwarded by FP&L to approximately 342 owners whose condominiums are used by others for temporary occupancy. These owners will be located in all parts of the country and abroad with no ability to implement energy conservation except through the management of the resort. There will be little conservation incentive achieved by requiring individual metering. The purpose of Rule 25-6.049, F.A.C., in serving the goal of conservation is more effectively accomplished if Hyde Beach House is granted a waiver or variance and the resort is allowed to receive service from FP&L via master



meter. In addition, the principles of fairness would be met in that Hyde Beach House will not experience any hardship if it pays the same rate for electricity as other hotels, motels, and resorts in the area.

**IX. Duration of Variance or Waiver** - Petitioner requests the waiver be permanent with the condition that Hyde Beach House continues to operate a transient rental facility and maintain registration with the DBPR as a public lodging establishment in accordance with Chapter 509.242, Florida Statutes.

WHEREFORE, Petitioner respectfully requests the Commission grant its request for a variance or waiver.

***Marc Mazo***

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MARC MAZO  
3050 Sandpiper Ct  
Clearwater, Florida 33762  
Telephone (727)573-5787  
powck@aol.com  
Authorized Representative  
4111 South Ocean Drive, LLC.

I HEREBY CERTIFY that the foregoing Petition for Variance or Waiver and the Condominium Documents have been furnished by Electronic Mail this 7th day of May, 2018, to the Florida Public Service Commission, Attn: Ms. Carlotta S. Stauffer, Director, Division of the Commission Clerk and Administrative Services.

***Marc Mazo***

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MARC MAZO

Exhibit "A"

**HYDE BEACH HOUSE  
ELECTRIC BILLING COMPARISON  
RESIDENTIAL RATE COMPARED TO GSD-1  
ESTIMATED ANNUAL SAVINGS**

**GENERAL SERVICE DEMAND**

**RESIDENTIAL**

**CUSTOMER CHARGE**                      \$300  
(Based on 1 bill)

**CUSTOMER CHARGE**                      \$20,520.00  
(Based on 342 bills)

**ENERGY CHARGE**

**ENERGY CHARGE**

4,924,800 X \$0.02475              \$121,888.80  
(342 X 1200 X 12)

1<sup>ST</sup> 750 PER UNIT  
2,700,000 KWH X \$0.04116              \$111,132.00

KWH OVER 750  
2,224,800 KWH X \$0.05460              \$121,474.08

**FUEL CHARGE**

**FUEL CHARGE**

4,924,800 X \$0.02820              \$138,879.36

4,924,800 KWH X \$0.02820              \$138,879.36

**DEMAND CHARGE**

**DEMAND CHARGE**

10800 KW X \$8.16                      \$ 88,128.00

NA

**TOTAL ELECTRIC COST**              \$349,196.16

**TOTAL ELECTRIC COST**              \$392,005.44

**ESTIMATED SAVINGS ON COMMERCIAL RATE** **\$42,809.28**  
**BASWED ON MASETR METERING VS INDIVIDUAL METERS**

**(Savings Claculated on Electic Costs Prior to Other Misc Charges)**  
**(Savings Calculated for Occupnacy Units Only-Not Common Areas)**