

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20190094-EU

PETITION FOR VARIANCE FROM
OR WAIVER OF RULE
25-6.049(5) AND (6), FAC,
BY CALYPSO TOWER III, LLC.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 1

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, August 6, 2019

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Back to the top of
3 the agenda. Item No. 1.

4 MS. COWDERY: Commissioners, Kathryn Cowdery
5 with the Office of General Counsel. Item 1 is the
6 petition for variance from or waiver of the
7 Commission's rule requiring individual unit
8 metering for electric service by Calypso Tower III,
9 LLC. Staff recommends that the petition should be
10 granted because the developer intends Calypso to
11 operate similar to a hotel with all, or
12 substantially all units, used for transient rentals
13 thus, demonstrating that the purpose of the
14 underlying conservation statutes will be achieved
15 and the application of the master metering rule
16 would create a substantial hardship and violate
17 principles of fairness. However, the waiver should
18 be subject to the following four conditions:

19 One, within one year of the closing of sale of
20 its first residential unit, Calypso must be a
21 licensed public lodging establishment under
22 sections 501.241 and 242, Florida Statutes. Two,
23 92 percent of the residential units sold must be
24 used solely for overnight occupancy. Three,
25 Calypso must allocate the cost of electricity to

1 the individual owners using a reasonable
2 apportionment method. And, four, Calypso must file
3 a report with the Commission 12 months after the
4 date of closing of the sale of the first
5 residential unit. The report must include the
6 number of units sold and of those the number of
7 units that are used solely for overnight occupancy
8 as defined in Rule 256.0498(b). The report must
9 also include a copy of Calypso's public lodging
10 license.

11 The Commission should also put Calypso on
12 notice that should Calypso ever fail to comply with
13 these conditions, the rule waiver will cease to be
14 effective and Calypso will be responsible for all
15 costs associated with the conversion to individual
16 metering.

17 Staff is available to answer any questions.

18 CHAIRMAN GRAHAM: Thank you, staff. Quick
19 question for you, staff. After the 12 months and
20 we got nothing from Calypso, if we get nothing from
21 Calypso, so the burden's upon staff to reach back
22 out to them?

23 MS. COWDERY: If we do not receive the -- a
24 report within 12 months, they no longer have a
25 variance. And technically, you know, Gulf Power is

1 required under the rule to individually meter
2 units. Staff would likely -- I don't know. We'd
3 have to wait and see. I don't say -- I wouldn't
4 say the burden is on staff to get back to them. I
5 would say at that point, they no longer have a
6 variance from the rule and the rule needs to be
7 complied with.

8 CHAIRMAN GRAHAM: Well then I guess my
9 question, or issue with this, is something needs to
10 happen in 12 months, or something needs to happen
11 at 13 months where somebody does something and
12 we're just not all sitting here doing that.

13 MS. CRAWFORD: Correct. I agree.

14 CHAIRMAN GRAHAM: So how do we do that?

15 MS. COWDERY: I think we would probably
16 make -- communicate with Gulf. If there were no
17 problems, there may be no problem, and individually
18 metering might proceed, pursuant to Gulf's tariff.
19 In there were a problem, if there was a dispute as
20 to whether Calypso felt that it should still have
21 its variance, we would bring a recommendation back
22 to the Commission. There would be further action
23 before the Commission.

24 CHAIRMAN GRAHAM: Mr. Baez, I saw you reaching
25 for your mic.

1 MR. BAEZ: I'm sorry?

2 CHAIRMAN GRAHAM: I said I saw you reaching
3 for your mic.

4 MR. BAEZ: Oh, well, that was inadvertent, but
5 I think -- I think what Miss -- I have to watch
6 out. I think Ms. Cowdery is correct. The way that
7 you're deciding is that the variance lapses and the
8 burden really is on the company to do everything
9 that -- all the conditions that are enumerated in
10 the order, subsequently, in order to keep that
11 variance. If I heard her correctly, we're --
12 something will trigger Gulf having to individually
13 meter those units. Upon failure of those
14 conditions, they're on the hook for proceeding with
15 the metering rule.

16 CHAIRMAN GRAHAM: What triggers that?

17 MR. BAEZ: The failure of the conditions.

18 CHAIRMAN GRAHAM: But I don't know if I'm not
19 being clear. How -- what happens in 12 months,
20 what happens in 13 months, if the flag goes up
21 saying, somebody do something now? What is that
22 flag and who does it wave in front of?

23 MR. BAEZ: And I think we need to figure out
24 who -- you know, you asked the question of reaching
25 out. Perhaps that happens as a matter of course,

1 but, as a legal matter, and I hate to put words in
2 the general counsel's mouth, there no longer is a
3 variance and there is ostensibly a violation,
4 either by Gulf not taking steps to comply with
5 their obligation to meter individually, as well as
6 the company being in violation of the individual
7 metering rule because they no longer operate under
8 a waiver. Now then it becomes a question of when,
9 you know, when's a good time or is it a prudent
10 thing for the Commission to proceed with some kind
11 of enforcement. And I would defer to you all at
12 that point once it becomes known to you and, of
13 course, general counsel may have some thoughts on
14 it, but --

15 MS. COWDERY: Commissioner.

16 CHAIRMAN GRAHAM: Ms. Cowdery.

17 MS. COWDERY: Chairman Graham, I think -- I
18 mean, we considered having -- you know,
19 automatically we would have to come back to the
20 Commission with a recommendation saying, you know,
21 you have to officially state that such and such,
22 that you no longer have a variance. It seemed that
23 the way we had written a recommendation, the order
24 would be, in essence, self-executing and that it --
25 we would only come back if there was a problem. So

1 that meant, of course, we would be monitoring.
2 Staff would be monitoring to see if there were any
3 problems, if there was any dispute, then we would
4 come back.

5 CHAIRMAN GRAHAM: So the burden's on staff to
6 come back if they do not accomplish these four
7 things?

8 MS. COWDERY: Well, I would say if we see
9 that -- again, you know, technically, I mean, it
10 sort of remains to be seen how this proceeds.
11 Technically, Calypso should come back and say, no,
12 you've got it wrong, we still should have our
13 variance, or Gulf should say, we've got a problem.
14 We don't want to see it fall through the cracks,
15 so --

16 CHAIRMAN GRAHAM: But what happens if it does
17 go through the cracks and five years later we're
18 sitting here saying, what happened after the 13th
19 month and nobody did anything?

20 MS. COWDERY: Staff is going to monitor. We
21 are going to see if that report comes in and, I
22 think, contact Gulf and see what's going on.

23 CHAIRMAN GRAHAM: So the burden's on staff?

24 MS. COWDERY: In that respect, I will say,
25 yes.

1 CHAIRMAN GRAHAM: Okay. I just want to find
2 out who's responsible.

3 MS. COWDERY: I would -- I don't like to put
4 it that way. I just like to -- but we will be
5 monitoring and we will be watching if other parties
6 do not do what they ought to do.

7 CHAIRMAN GRAHAM: General counsel.

8 MR. HETRICK: Mr. Chairman, I think what
9 Kathryn is trying to say is that the legal burden
10 is obviously on the parties because it's
11 self-executing. However, because staff technically
12 monitors -- and we'll see if we get the report. If
13 we don't get the report, third parties -- it's like
14 any action. Legally, it is a little -- we don't
15 have a monitoring role. We don't assertively --
16 there's not a trigger at 12 months other than staff
17 technically monitoring and saying, we don't have
18 the report. We have to make a phone call. And at
19 that point if we don't have the report, we bring it
20 back to the Commission, because they're in
21 violation, but it is self-executing as a matter of
22 law.

23 If we did nothing and no parties complained,
24 it could come back to you in five years or four
25 years when Gulf or somebody does complain, that

1 they never complied with this. We just don't have
2 a ongoing compliance or monitoring section.

3 Legally, we don't have a legal burden to do
4 anything because it is self-executing. They're
5 either in compliance with the variance or they're
6 not. And if they're not, it's always up to a third
7 party to bring it to our attention, but we will, in
8 this case -- I think what staff is trying to convey
9 is that because of these unique conditions, we will
10 be monitoring this internally to see if they are in
11 compliance and we will, in 12 months, know if they
12 have a report or not. And if they don't, in this
13 particular circumstance, because of these
14 particular conditions of this variance, we will
15 come back to the Commission.

16 CHAIRMAN GRAHAM: Mr. Baez.

17 MR. BAEZ: I'd agree with General Counsel.
18 And I think that by imposing the conditions you, in
19 fact, have put the staff on the spot to follow up,
20 just by the mere function of the order.

21 CHAIRMAN GRAHAM: Commissioner Polmann.

22 COMMISSIONER POLMANN: Thank you, Mr.
23 Chairman. Just an observation on the -- to
24 follow-up on your point. As written, and I don't
25 know that it could be written any other way, in the

1 recommendation, I'm looking at page three in the
2 item, the conditions of granting the waiver, the
3 first condition is that within one year of the
4 closing date of the first residential unit, and
5 that's where the 12 months come from. So even
6 though this is self-executing, it's time
7 indeterminate. So it's not 12 months from our
8 action. It's 12 months from something that the
9 owner has control over. So we don't have a date.

10 So it's difficult for staff or anyone to
11 monitor this. It will happen when it happens. So
12 I appreciate your point that, in effect, staff will
13 be watching for something, but we don't know when
14 it's going to occur, because it depends on when the
15 first unit is sold. So there -- should they be
16 watching for the first unit to be sold and then 12
17 months later? But we can't do it any other way.
18 So we're granting, if this is approved, a waiver.
19 And I suspect that we do many things of this type,
20 because that's the way they're constructed. And
21 then the issue is, do we want to become a police
22 agency? And I think not. That's just this
23 Commissioner speaking. But that's the only comment
24 I have there.

25 I have a different question, if I may. Within

1 this list of four items, number three indicates
2 that Calypso must allocate the costs using a
3 reasonable apportionment method. And the report
4 identifies that it will include the number of units
5 sold, which relates back to the 92 percent that
6 will confirm that. And -- I'm sorry -- that the
7 number of units sold and used for overnight
8 occupancy and the public lodging license. So among
9 the four items, I believe that the report, as
10 described here, clearly identifies a number among
11 the four, but number three, the criterion there for
12 reasonable apportionment method, I'd like to
13 question staff on how that will be identified,
14 specifically that we're satisfied that they've
15 apportioned in a reasonable manner, what's the
16 criterion for that?

17 MS. COWDERY: Yes, Commissioner. In Calypso's
18 petition, they stated that the costs would be
19 apportioned as common expenses in the same manner
20 as other common expenses not consumed by and
21 metered to individual units. The method used for
22 common expenses is a pro rata share, based on the
23 square footage of the unit, as compared to the
24 total square footage of all units, and staff
25 believes that would be reasonable as an

1 apportionment method.

2 COMMISSIONER POLMANN: So that we're taking,
3 from what they've provided and the judgment, is
4 that they'll comply with what they've already
5 provided to us?

6 MS. COWDERY: That is what we believe.

7 COMMISSIONER POLMANN: Okay. Very good. I
8 just wanted to confirm that we have a basis on
9 which to make that judgment when they come back
10 later. Very good. Thank you very much.

11 CHAIRMAN GRAHAM: Commissioner Brown.

12 COMMISSIONER BROWN: So I think maybe the
13 solution is to leave the docket open under issue
14 two until the report is filed, that way it would
15 trigger staff's review and it would achieve -- put
16 the onus on staff before they close the docket. Do
17 you think that would be appropriate? Mary Ann.

18 MS. HELTON: I was just going to ask if staff
19 could have administrative authority to close the
20 docket if the report is filed and staff is
21 satisfied that they have met the conditions that
22 you would have laid out in the order?

23 COMMISSIONER BROWN: Sound good, Mr. Chairman?

24 CHAIRMAN GRAHAM: Was that your motion?

25 COMMISSIONER BROWN: Yes.

1 CHAIRMAN GRAHAM: It's been moved and
2 seconded.

3 COMMISSIONER POLMANN: Does that include
4 moving issue one?

5 CHAIRMAN GRAHAM: Yes.

6 COMMISSIONER POLMANN: I'll second that.

7 CHAIRMAN GRAHAM: All right. There's a motion
8 on the floor, duly seconded. Any further
9 discussion?

10 (No comments made.)

11 CHAIRMAN GRAHAM: Seeing none, all in favor
12 say, aye.

13 (Chorus of ayes.)

14 CHAIRMAN GRAHAM: Any opposed?

15 (No comments made.)

16 CHAIRMAN GRAHAM: By your action, you've
17 approve the Brown motion.

18 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court
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I FURTHER CERTIFY that I am not a relative,
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financially interested in the action.

DATED THIS 12th day of August, 2019.



DANA W. REEVES
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