

STATE OF FLORIDA
BEFORE THE PUBLIC SERVICE COMMISSION

IN RE: Petition for Emergency Variance From
or Waiver of Rule 25-6.049(5)-(6), F.A.C., by
CASA DEVON VENTURE, LP,
Petitioner _____/

Docket No. 20200175-EU

**CORRECTED PETITION OF CASA DEVON VENTURE, LP
FOR A FORMAL ADMINISTRATIVE HEARING**

CASA DEVON VENTURE, LP (“Casa Devon”), pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, files this Petition for Formal Administrative Hearing, protesting Proposed Agency Action Order No. PSC-2020-0295-PAA-EU (“Proposed Agency Action”) of the Florida Public Service Commission (“Commission”) issued on September 2, 2020. Casa Devon’s Emergency Petition for Waiver or Variance (the “Petition”) established the necessary requirements for a waiver or variance under section 120.542, Florida Statutes, and the Proposed Agency Action improperly denied the Petition and must be reversed. Casa Devon seeks referral of this Petition to the Division of Administrative Hearings, a formal de novo administrative hearing and a final order determining that the Proposed Agency Action is not supported by competent substantial evidence and contravenes applicable law, and that Casa Devon’s Petition should have been granted. In support thereof, Casa Devon states the following:

1. Name and address of each agency affected and agency’s file or identification number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 20200175-EU

2. Name, address, and telephone number of the petitioner’s representative:

Christopher M. Horton, Esq. & S. Elysha Luken, Esq.
Smith, Currie & Hancock, LLP
101 N.E. Third Ave., Suite 1910
Fort Lauderdale, FL 33301

3. **An explanation of how the petitioner’s substantial interests will be affected by the agency determination:**

The Agency determination will cause Casa Devon to suffer an injury in fact that is of sufficient immediacy to establish entitlement to a hearing – an injury of the very nature that a section 120.57 hearing is designed to protect. *Herold v. University of South Florida*, 806 So.2d 638 (Fla. 2d DCA 2002); *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). Casa Devon’s substantial interests will be affected by the Proposed Agency Action, because the denial of Casa Devon’s Petition, results in Casa Devon being unable to achieve its energy conservation objective of offsetting 75%-85% of the energy consumption of the Casa Devon apartment building, being unable to install the Solar Energy System planned to be installed, and being unable to fulfill its obligations to HUD and its investors with respect to the Project. The Proposed Agency Action prevents Casa Devon from installing a 540.4kW photovoltaic system (“Solar Energy System”) at a 210-unit apartment complex that will provide low-income, affordable housing to senior citizens in accordance with U.S.C. § 1437f (often referred to as “Section 8”). The Solar Energy System was designed to offset 75%-85% of the electrical usage at the apartment complex, a significant energy savings for the complex and each of the 210 units. The Solar Energy System will also reduce the resident’s utility bills to \$0, providing needed cost savings to the complex’s very low-income senior citizen residents. Casa Devon will achieve a Solar Investment Tax Credit for this installation, which will be used by Casa Devon to finance and fund the overall rehabilitation and renovation of the apartment complex for the benefit of residents. Casa Devon’s Petition established these facts, and the Commission’s Staff entered a recommendation in favor of granting the waiver or variance. The Staff Recommendation is attached hereto as Exhibit “A.” The Commission’s rejection of the Staff recommendation and

the material facts presented by Casa Devon, and its failure to follow the law concerning waivers and variances, will greatly impact Casa Devon's substantial interests with respect to this affordable housing project.

4. A statement of when and how the petitioner received notice of the agency decision:

Casa Devon attended and participated in the Commission's Agenda Conference on August 18, 2020 during which time the Commission voted to deny Casa Devon's Petition by a 3-2 vote, despite the Commission's staff recommendation in favor of granting a variance or waiver. Casa Devon received a copy of the Proposed Agency Action on September 2, 2020.

5. A statement of all disputed issues of material fact:

The Proposed Agency Action is not supported by competent substantial evidence as required. *See* § 120.542, Fla. Stat. ("the agency's decision to grant or deny the petition shall be supported by competent substantial evidence . . ."). In fact, Commissioner Donald J. Polman, who voted against Casa Devon's Petition, recognized during the Agenda Conference that Casa Devon and its Petition met the legal requirements for a variance or waiver. Agenda Conference Tr. at pp. 16-19 ("The petitioner, as a practical matter, in a legal context, appears to have met the requirements in their filing, and on – on its face has met the requirements of the law. And if I understand it correctly, the staff, legal staff in particular, has indicated to us that we are essentially required under the law to issue this.") Casa Devon disputes the following material facts that the Commission relied upon in entering the Order:

(a) FPL's representations and the Commission's factual determinations based on these representations that Casa Devon could install the Solar Energy System and "employ a number of different designs," including micro-inverters or string inverters, "to allow each of the 210 residents to decide whether they want to net meter, while retaining their existing individual meter;

(b) FPL's representations and the Commission's factual determinations based on these representations that "the rationale for allowing a waiver is not present because the permanent residents have no motivation to save energy if they are not individually metered," when such factual finding ignores the 75% - 85% reduction in electricity usage inherent in the Solar Energy System;

(c) FPL's representations and the Commission's factual determinations based on these representations that Casa Devon tenants "currently have typical motivation to save energy and reduce their electric bills as individually metered customers because they can control their consumption and save energy;"

(d) the Commission's factual determination that the apartment tenants at the Casa Devon facility will not "benefit from changing to master metering;"

(e) the Commission's factual determination that Casa Devon has not demonstrated "that it will achieve the purpose of the rule's underlying statute by other means;"

(f) the Commission's factual determination that Casa Devon did not show that "changing from individually metered apartments to master metered apartments will promote energy conservation with regard to energy consumption;"

(g) FPL's representations and the Commission's factual determinations based on these representations that Casa Devon's solar panels "can be accommodated through individual metering, which would be the optimal solution from a physical, electrical, energy conservation and precedent preserving perspective;"

(h) FPL's representations and the Commission's factual determinations based on these representations that the Solar Tax Credit is based "on the cost of the solar system so that

individually metering using all the solar panels should not affect that aspect of Casa Devon's project;"

(i) FPL's representations and the Commission's factual determinations based on these representations that "HUD accepts individual metering, so it is not a HUD requirement that the apartments be master metered;"

(j) FPL's representations and the Commission's factual determinations based on these representations that the apartments cannot be master metered, and that FPL "has not received any electrical engineering plans;"

(k) The Commission's factual determination that Casa Devon's "need for a waiver and any economic or legal hardship was caused by its own actions;"

(l) FPL's representations and the Commission's factual determinations based on these representations that Casa Devon "could install its solar energy system to allow each resident to decide whether they want to net meter, while retaining their existing individual meter;"

(m) The Commission's factual determination that Casa Devon did not demonstrate that application of Rule 25-6.049(5), F.A.C. would create a substantial hardship or violate principals of fairness;

(n) The Commission's factual determination that Casa Devon's request for variance or waiver from the individual metering requirement requested an opinion as to the applicability of the provisions of Rule 25-6049(5)(c) and (d), F.A.C. to Casa Devon's particular set of circumstances, that the request was "in effect, a request for a declaratory statement," and that Casa Devon's Petition did not "meet the Rule 25-105.002, F.A.C. [sic] filing requirements;"

(o) the Commission’s factual determination that Casa Devon failed to establish that the underlying purpose of the rule – energy conservation – would be achieved with the variance or waiver in place and master metering implemented on the Project;

(p) the Commission’s factual determination that Casa Devon needed to apply for a declaratory statement in order to implement master metering; and

(q) the Commission’s factual determination that it should have been aware of the Commission rules and recognized that Casa Devon needed a waiver or variance prior to May 2020 and prior to entering into an agreement with HUD.

6. **A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action:**

Casa Devon is the owner of a 210-unit facility that will provide very low-income, affordable housing to senior citizens in accordance with Section 8. The purpose of Section 8 is to provide very low-income families with decent, safe, and sanitary rental housing through the use of a system of housing assistance payments (“HAP”). 24 C.F.R. § 881.101. Under Section 8, HUD solicits private developers to design, construct or rehabilitate, and operate specialized housing under HAP contracts. *See e.g.*, 24 C.F.R. § 881.101, *et seq.* Under a HAP contract, HUD and private developers agree upon set rental rates, with a portion of the rent paid directly from the tenant and the remainder paid for by HUD or a Public Housing Agency through subsidies or vouchers. Specifically, residents pay thirty percent (30%) of their gross income toward rent while HUD or a Public Housing Agency covers the remainder. This specialized housing arrangement allows for greater housing availability for fixed-income or lower-income individuals and families.

In June of 2019, Casa Devon purchased the apartment complex located at 11250 SW 197th Street, Miami, FL 33157. Upon purchasing the property, Casa Devon submitted to HUD a Termination of Existing Contract and request for 20-year renewal of a HAP contract for the

property to continue operating as a low-income senior living facility under Section 8. At this time, Casa Devon began negotiating with HUD concerning details of the 20-year renewal (the “Project”). As part of these negotiations, Casa Devon developed a strategic plan to implement the Solar Energy System which would result in a significant reduction of the total electrical load consumption for the facility; Casa Devon taking on residents’ electrical bills entirely (resulting in residents no longer having to pay for electricity at all); and tax incentives that would be utilized to finance the Project rehabilitation and renovations.

Following the purchase of the property, Casa Devon approached Urban Solar, a solar contractor, for the purposes of carrying out Casa Devon’s strategy of implementing solar energy on the project. Urban Solar developed a plan to install a 540.4kW photovoltaic system, which would require four master meter connections with Casa Devon taking on the utility bill. Urban Solar had determined that the project needed to be master metered to install a Solar Energy System of this magnitude, which would achieve significant energy conservation and also result in a large tax credit through the Solar Investment Tax Credit, which would in turn fund increased rehabilitation and renovation efforts by Casa Devon. Urban Solar also determined that the master metering was required based upon the condition of the apartment complex and unique circumstances presented by the current infrastructure of the facility.

On November 20, 2019, Urban Solar contacted FPL and requested to speak with an FPL engineer about its plan to install the Solar Energy System using a master meter at the apartment facility, rather than individual meters. Urban Solar followed up with multiple voicemails and additional emails on November 26, 2019 and December 3, 2019 before FPL finally responded. On December 3, 2019, Urban Solar responded to FPL’s request for electrical drawings and sent FPL a single-line drawing showing the master metering and the installation of the Solar Energy System.

FPL never responded. Meanwhile, with the intent to reduce very low-income seniors' utility costs and conserve energy, and with the understanding that the only feasible solution from a construction and engineering standpoint to achieve those goals (based on information provided by the engineers and Urban Solar) was to master meter, Casa Devon continued the negotiations with HUD for the 20-year renewal. Casa Devon had to continue these negotiations so that a closing could occur no later than January 30, 2020 so that the project, which desperately needed to be rehabilitated, could complete construction before December 31st, 2020 to both comply with HUD and to deliver tax credits to its investors in the year 2020. If a closing had not occurred in January of 2020, construction could not be completed by year end and Casa Devon would fail to deliver tax credits on time, which would have resulted in a reduction of tax credit equity used to fund said rehabilitation, (reducing the amount of work that could have been done to preserve these 210 senior apartments), as well as a breach of the agreement with HUD for failing to achieve completion on-time.

On January 1st, 2020, Casa Devon's HAP contract was renewed for a new twenty-year term, with a preservation agreement that automatically renews the HAP contract for an additional 16 years, guaranteeing affordable housing at the Facility until December 31st, 2055. As part of the HAP contract, Casa Devon committed to (1) finishing the rehabilitation and renovations of the facility by December 31, 2020, (2) installing a solar energy system that would eliminate approximately 75%-85% of the total electrical load for the facility; and (3) converting the facility to master metering so that tenants would no longer pay for electricity. A copy of HUD's Preliminary Approval Letter regarding the Casa Devon project is attached hereto as Exhibit "B." Casa Devon also entered into an agreement with Urban Solar to install the Solar Energy System

in conjunction with master metering. Documents showing the Solar Energy System to be installed are attached hereto as Exhibit “C.”¹

In moving forward with the Solar Energy System, Urban Solar followed up with FPL numerous times between the months of February 2020 and May 2020 requesting coordination with FPL in implementing the master metering. A composite of the email communications between Urban Solar and FPL (as discussed herein and above) is attached hereto as Exhibit “D.” Five months after having received plans from Urban Solar showing master metering, on April 23, 2020, FPL advised Urban Solar for the first time that master metering was “not permitted by the Florida Administrative Code.” This was despite Urban Solar specifically requesting coordination and information on master metering dating back to November 2019. Contrary to the Commission’s finding, Casa Devon’s Petition was not of its own doing and was caused directly by FPL’s lack of cooperation throughout the process.

FPL’s lack of cooperation (and its subsequent opposition to Casa Devon’s Petition) contravenes numerous Florida Statutes enacted and amended over the past decade to promote solar energy in Florida, and the state of Florida’s stated goal of making access to solar energy easier and more accessible. *See, e.g.*, § 187.201(11), Fla. Stat. (“Florida shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors, while at the same

¹ Exhibit “C” includes the following: (1) Exhibit A-B to the Contract between Casa Devon and Urban Solar describing the system that is to be installed; (2) HelioScope Annual Production Report prepared by Tony Ramudo from Urban Solar. In this document, page 1 includes the annual production (red box) detailing the amount of energy being offset by the system which amounts to 844,208 kilowat hours being saved; page 2 includes a component section (red box) describing the specific components for the system; and page 3 includes a map view of the layout of the solar system; (3) Sheet PV-1 (one-line diagram) which details the layout of the proposed electrical connection between the solar system, residential units, and master meters. Notably, Casa Devon wants to direct the Commission’s attention to the bi-directional meters (red ovals). The current layout includes 200 of these meters (individually metered) and the variance or waiver would permit Casa Devon to run the solar system through just two bidirectional meters as shown in this drawing.

time promoting an increased use of renewable energy resources... [including promoting] the development and application of solar energy technologies and passive solar design techniques...”); § 366.81, Fla. Stat. (“the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, cogeneration, and load-control systems be encouraged.”); § 366.91, Fla. Stat. (“The Legislature finds that it is in the public interest to promote the development of renewable energy resources in this state.”). FPL’s suggestions to the Commission that solar energy could be installed on this project without master metering is impractical and would in and of itself impose substantial hardship, if not being completely impossible. A Memorandum prepared by Lord & Lawrence Consulting Engineers² is attached hereto as Exhibit “E.” The Memorandum details why FPL’s assertions to the Commission are incorrect and why the Solar Energy System cannot be connected through individual metering. While Casa Devon repeatedly advised the Commission that FPL’s statements regarding the practicality of individual metering this project were wrong, the Commission unfortunately relied upon misinformation from FPL, all without any factual support other than the arguments of counsel.³ This Memorandum directly refutes FPL’s position and confirms that Casa Devon and Urban Solar were correct in seeking the Petition, because without it Casa Devon would not be able to install the Solar Energy System. Therefore, FPL’s position – relied upon by the Commission – serves to prohibit the installation and use of solar energy at the Casa Devon facility, which contravenes the intent of Florida law with respect to solar energy, and energy conservation generally. Likewise, FPL’s hypothetical and unproven technical solution is

² Lord & Lawrence Consulting Engineers is Urban Solar’s delegated engineer for this project.

³ Notably, FPL’s comments on Casa Devon’s request for waiver and variance did not mention or provide any support for the argument later forwarded by counsel for FPL at the hearing that microinverters or other methods were available to install the Solar Energy System.

not workable and demonstrates the very substantial hardship argued by Casa Devon in support of its Petition.

To receive a variance or waiver, Casa Deon was required to establish a substantial hardship and that the underlying purpose of the statutes was met. Casa Devon established in the underlying Petition that a denial of the variance or waiver would result in demonstrated economic, technological, legal, and other hardships including: (1) an inability to master meter resident's electrical usage and cover this cost, which constitutes a default under Casa Devon's HAP contract; (2) a negative change in the current operating budget projections that assumed a 75%-85% overall building electrical usage reduction as a result of a photovoltaic system that reduced full building usage (both common areas and residential units) rather than just common areas; and (3) a loss of Solar Investment Tax Credits which were a primary incentive for investors to fund the comprehensive rehabilitation of the Project. *See* § 120.542, Fla. Stat. (defining substantial hardship as a "demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.").

Casa Devon also established that the underlying purpose of the applicable statutes or rules would be met – specifically fair and reasonable rates/charges and energy conservation. Contrary to the Commission's factual determinations, no evidence was presented refuting Casa Devon's incontrovertible assertions that master metering would (1) promote fair and reasonable rates/charges for electricity for the tenants at the Casa Devon apartment and (2) promote energy conservation through the increased use of solar energy and the development of renewable energy systems. Casa Devon will be providing fair and reasonable rates by eliminating what is known as a "Utility Allowance," which is a tool used by HUD and public housing agencies to approximate the cost of reasonable energy consumption so that a credit amount for each residents' utilities may

be calculated and applied to their rental rates to reduce their overall housing costs. Because Utility Allowances are approximations, they often fail to cover the actual cost of utilities, resulting in additional costs for very low-income tenants, and in the case of Casa Devon, very low-income seniors. By eliminating the Utility Allowance, Casa Devon would cover *all* of the cost of utilities for the residents. Casa Devon's agreement to cover the costs of the utilities was premised on its plan to implement master metering and install a large solar energy system that would offset the electricity load by 75% to 85%. Without master metering, Casa Devon cannot install the solar energy system and would not be able to offer the fair and reasonable rates it is offering to the very low-income residents – \$0 for utilities. In the Proposed Agency Action, the agency acknowledges one purpose of the applicable statutes and rules is “to promote energy conservation in Florida by directly linking the amount customers pay for electricity to the amount of electricity the customer uses.” *See* Proposed Agency Action, p. 1. As clearly stated in Casa Devon's Petition, if the Project proceeds with master metering, the residents of Casa Devon will not pay *any* amounts for electricity. Thus, individual metering in this instance serves no discernable purpose - much like the temporary lodging facilities specifically exempted from individual metering by rule.

Casa Devon's master metering will also promote energy conservation because Casa Devon intends to install a large solar photovoltaic array designed to offset 75% to 85% of the total annual electric consumption for the property. The Solar Energy System cannot be installed without master metering as detailed in the Memorandum by Lord & Lawrence. In implementing the Florida Energy Efficiency and Conservation Act (FEECA) the Commission is to encourage the use of solar energy and liberally construe the FEECA to reduce electricity consumption. *See* §366.81, Fla. Stat. (providing Legislative intent that “the use of solar energy” should “be encouraged,” and that the FEECA is “to be liberally construed” to reduce and control growth rates of electricity consumption,

and “encouraging further development of demand-side renewable energy systems...”). The Proposed Agency Action provides the exact opposite result, prohibiting the use of solar energy at the Project and maintaining the electricity consumption at the Project instead of significantly reducing it. This is the very type of unreasonable, unfair and unintended result the waiver and variance process of the Administrative Procedures Act was designed to avoid. *See, e.g.*, § 120.542, Fla. Stat. (adopting procedure “to provide relief” when “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results...”).

7. **A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency’s proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes:**

Section 120.542, Florida Statutes, states that the purpose of a rule variance or waiver is to provide relief to persons subject to regulation in cases where strict application of rule requirements can lead to unreasonable, unfair, and unintended results in particular circumstances. Section 120.542(2) sets for a two-prong test for granting variances or waivers to rules: that the purpose of the underlying statute 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. As concluded by the Commission’s Staff Recommendation made prior to the Agenda Conference, Casa Devon’s Petition met the requirements of the two prong test by establishing a substantial hardship and that the purpose of the underlying statutes, sections 366.051(1), 366.81, and 366.82, Florida Statutes, and rule 25-6.049, Florida Administrative Code, would be achieved through the requested variance or waiver. *See* Ex. “A.” Since Casa Devon established the two criteria for the

granting of a waiver or variance from Rule 25-6.049(5),⁴ the Commission had no basis for denying the Petition and was instead obligated to grant a waiver or variance. *See* § 120.542, Fla. Stat. (directing that “[v]ariations and waivers *shall* be granted when the person subject to the rule demonstrates” the required criteria). Instead, the Commission’s decision to deny Casa Devon’s Petition was not supported by competent substantial evidence as required, and subverts the underlying purpose of the governing statutes which is energy conservation. *See generally Legal Envtl. Assistance Found., Inc. v. Clark*, 668 So. 2d 982, 987 (Fla. 1996) (identifying the legislative intent of FEECA - § 366.81, Florida Statutes, as seeking “to utilize the most efficient and cost-effective energy conservation systems to protect the general welfare of Florida and its citizens.”). In denying Casa Devon’s Petition, the Commission seeks to limit the purpose of the underlying statutes from energy conservation generally to specifically conservation by each individually metered customer. To support this new interpretation, the Proposed Agency Action improperly concludes, without competent substantial evidence, that Casa Devon tenants have a typical motivation to save energy and reduce their electric bills as individually metered customers. This is flatly wrong under the facts as established by Casa Devon’s Petition: Casa Devon tenants will have no such motivation as individually metered customers or master metered customers, as they will not pay any electricity bills at all. The Commission’s attempt to reframe the purpose of the

⁴ Casa Devon was entitled to a variance from the literal requirements of Rule 25-6.049(5) or for a waiver of the application of Rule 25-6.049(5) that individual metering be used for the Project because it established that the purpose of the underlying statute will be achieved by other means, and that applying the individual metering requirement to this Project will create a substantial hardship. *See* § 120.52(21), Fla. Stat. (defining “variance” as “a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule”); § 120.52(22), Fla. Stat. (defining “waiver” as “a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.”). Casa Devon was demonstrated entitlement to a variance from the literal requirements of the exemption to individual metering in Rule 25-6.049(5)(c) or (d) or a waiver from the application of the additional requirements in these exemptions.

statutes underlying Rule 25-6.049 to be limited to encouraging individual customers to control their own consumption only (rather than energy conservation generally) is not supported factually or by statutory authority,⁵ and is illogical and arbitrary when applied to the facts presented. The foregoing statutes and rules require reversal of the Proposed Agency Action.

8. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action:

In accordance with the Commission's Staff Recommendation issued on August 6, 2020, Casa Devon's Petition should have been granted. Pursuant to section 120.569, Florida Statutes, the Commission should refer this Petition for Formal Administrative Hearing to the Division of Administrative Hearings for assignment of an administrative law judge for a de novo formal administrative hearing pursuant to section 120.57(1), Florida Statutes, following which Casa Devon seeks a recommended and final order granting Casa Devon's Petition subject to reasonable conditions such as those set forth in the Staff Recommendation.

9. Casa Devon requests that this Petition for Formal Administrative Hearing be heard on an expedited basis pursuant to section 120.574, Florida Statutes:

Casa Devon's Petition was filed on an emergency basis because Casa Devon's HAP contract and agreement with HUD requires rehabilitation and renovations of the apartment facility be completed by December 31, 2020. Casa Devon duly conferred with FPL prior to agreeing to the HUD requirements and provided plans to FPL as requested. FPL did not raise any issues about master metering until six months later. As a result, Casa Devon entered into contracts and construction schedules with its general contractor and solar contractor for the project to be completed by December 31, 2020. A copy of excerpts from these contracts showing the substantial

⁵ Rule 25-6.049 identifies as its authority sections 350.127(2) and 366.05(1), Florida Statutes, and rule identifies the following statutes as being implemented: sections 366.05(1), 366.06(1), 366.81, 366.82, Florida Statutes.

completion dates is attached hereto as Exhibit “F.” The Project has now suffered a three to four-month delay caused by FPL’s failure to coordinate and the resultant inability to master meter the Facility. Casa Devon has been advised by its contractors that the project can still be completed on time if the administrative hearing is ruled upon by the middle of October 2020. If this matter is not resolved prior to the middle of October 2020, Casa Devon and its solar subcontractor do not believe there will be enough time to complete the installation of the solar energy system by December 31, 2020. Therefore, Casa Devon requests a Summary Hearing pursuant to section 120.574, Florida Statutes and requests that this matter be heard on an expedited basis.

Dated: September 17th, 2020

/s/ Christopher M. Horton
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EXHIBIT A

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Cowdery) *SMC*
Division of Economics (Coston, Guffey, Hampson) *EJD*
Division of Industry Development & Market Analysis (Hinton, Vogel) *CH*

RE: Docket No. 20200175-EU – Petition for emergency variance from or waiver of Rule 25-6.049(5)-(6), F.A.C., by Casa Devon Venture, LP.

AGENDA: 08/18/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: August 18, 2020 (30-day statutory deadline for the Commission to grant or deny the petition or determine it is not an emergency has been waived until this date)

SPECIAL INSTRUCTIONS: None

Case Background

On July 1, 2020, Casa Devon Venture, LP (Casa Devon) filed an emergency petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5) and (6), Florida Administrative Code (F.A.C.), so that it can master meter its Casa Devon apartment building. As alternative relief, Casa Devon asks that if the Commission does not grant the variance, it should find that Casa Devon does not need a rule variance or waiver because the Casa Devon apartment falls within one of the individual metering requirement exceptions described in Rule 25-6.049(5)(c) or (d), F.A.C.

Rule 25-6.049, F.A.C.

Rule 25-6.049(5), F.A.C., 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. The purpose of these provisions is to promote energy conservation in Florida by directly linking the amount customers pay for electricity to the amount of electricity the customer uses.

The rule states that the individual metering requirement does not apply to certain listed situations, including:

(c) For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under chapter 651, F.S., college dormitories, convents, sorority houses, fraternity houses, and similar facilities; and

(d) 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).

In addition, individual metering is not required for condominiums that meet certain criteria set out in sections (5)(g) and (6) of the rule. These exceptions are based on the concept that the individual metering requirement no longer achieves the Florida Energy Efficiency and Conservation Act's purpose when a customer, such as a condominium or nursing home owner, rents the unit or charges for the room on a short-term basis for a flat per-night or per-week fee. In those cases, the customer cannot control how much electricity is used in the unit or room.

The individual metering requirement in Rule 25-6.049(5), F.A.C., is based on the Commission's authority under Sections 366.05(1) and 366.06(1), Florida Statutes (F.S.), to prescribe rate classifications and service rules for investor-owned electric utilities. The rule also implements the conservation policies in the Florida Energy Efficiency and Conservation Act. Section 366.81, F.S., of that act states the Legislature's finding that it is critical to utilize the most efficient and cost-effective conservation systems in order to protect the health, prosperity, and general welfare of Florida and its citizens. The statute states that since solutions to Florida's energy problems are complex, the Legislature intends that the use of solar energy should be encouraged. Section 366.81, F.S., further states that the Legislature finds and declares that the statute should be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption, increasing the overall efficiency and cost-effectiveness of electricity, and conserving expensive resources.

Casa Devon's Petition

Casa Devon states that it is the owner and developer of the Casa Devon apartment building, an existing 210-unit apartment in Miami that provides low-income, affordable housing to senior citizens through the Federal Department of Housing and Urban Development (HUD). Casa Devon seeks a variance or waiver from the individual electric metering requirement of Rule 25-

6.049, F.A.C., so that it can convert its apartment building from individually metered apartments to being master metered. Casa Devon requests that the variance or waiver be permanent with the condition that Casa Devon continue to operate as a specialized-use HUD housing facility with a solar energy system achieving energy conservation through reduced electricity purchases from the utility.

Casa Devon states that it has a Housing Assistance Payment contract with HUD that sets rental rates such that tenants pay thirty percent of their gross income toward rent and the remainder is paid for by HUD or a Public Housing Agency through subsidies or vouchers. According to Casa Devon, under the current arrangement, rent amount includes a utility allowance for water, wastewater, and electricity that varies by individual unit owner, but that Casa Devon estimates to average about \$58 per unit. The petition shows that the Casa Devon apartment tenants are currently individually metered by Florida Power & Light Company (FPL).

Casa Devon states that on January 1, 2020, the Housing Assistance Payment contract was renewed by HUD for a new twenty-year term with an agreement to automatically renew for an addition 16 years, guaranteeing affordable housing at the facility until December 31, 2055. In addition to other renovation conditions, the contract renewal requires that:

The Owner [Casa Devon] will also convert the Project [Casa Devon apartment building] to be master metered, which will result in tenants no longer paying for electricity. After completing the master meter conversion, the Owner will then add a solar panel system that will offset approximately 75% of the total electrical load.

Petition, Exhibit A.

Casa Devon states that it agreed to this arrangement, whereby it covers the cost of electricity, because of the benefits of installing the planned solar energy system. Casa Devon will get a Solar Investment Tax Credit for installing the solar energy system, through which it expects to receive a tax deduction of more than \$300,000. Further, the solar energy system is predicted to offset 65 to 75 percent of the total annual electrical load to the Casa Devon apartment building. Casa Devon states that this arrangement gives the residents a significant benefit of not having to pay electric bills. Casa Devon alleges that it is required by HUD to finish the construction, installation, and approval of permitting of the solar energy system by December 31, 2020.

As an alternative request, if the Commission does not grant its request for variance or waiver, Casa Devon asks the Commission to find that it should be allowed to master meter the apartment building under either the “specialized-use housing” exception of paragraph (c) of Rule 25-6.049(5) or because it is similar to a hotel or hotel-condominium and therefore falls under the Rule 25-6.049(5)(d) exception. Casa Devon argues that the apartment building should be considered a specialized-use exception because it is not an ordinary housing arrangement, but is a specialized arrangement provided through the Federal government to provide housing for fixed-income or low-income senior citizens who will not be paying for electricity usage. Casa Devon argues that the load characteristics and usage patterns of the Casa Devon apartments will be more similar to other specialized-use housing or hotels than those of typical residential customers because the residents will not be paying for utilities.

Florida Power & Light Company's Comments

On July 27, 2020, FPL filed comments regarding Casa Devon's petition. FPL states that Casa Devon's "purported need" for a waiver and "professed economic hardship" were caused by Casa Devon's own action because it entered into the HUD agreement to master meter and install a solar energy system without first consulting the Commission's rules. FPL states that if the Commission were to grant the waiver, it would establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief.

FPL believes that, instead of master metering and installing its planned solar energy system, Casa Devon could allow its 210 residents the option to either individually net meter using solar through the use of micro-inverters or string inverters, or keep their current individually metered service with FPL. In addition, FPL states that there is no way to determine whether all 210 residents have agreed to terminate their service with FPL, or whether FPL could safely deliver electricity to the apartment building if master metering is permitted.

With regard to Casa Devon's alternative request for relief, FPL argues that the Casa Devon apartment building does not qualify for master metering as specialized-use housing or housing similar to a hotel or hotel-condominium under Rule 25-6.049(5)(c) or (d), F.A.C. FPL argues that the Casa Devon apartment residents are permanent occupants and therefore the rationale for allowing master metering for overnight or temporary occupancy is simply not present.

Procedural Matters

Under Section 120.542, F.S., and Uniform Rule of Procedure Rule 28-104.005(1), F.A.C., an agency must give notice of receipt of a petition for emergency variance or waiver on its website within 5 days of receipt. On July 1, 2020, the Commission published notice of receipt of the emergency petition on its website. Notice of the emergency petition was also published in the July 2, 2020 edition of the Florida Administrative Register (FAR), Vol. 45, No. 80, as required by Section 120.542(3), F.S., and Uniform Rule of Procedure Rule 28-104.005(1), F.A.C. Rule 28-104.005(1), F.A.C., provides that interested persons may submit comments within 5 days after publication of the notice in the FAR. Even though FPL filed its comments after this 5-day period, there was sufficient time for staff to review the comments and address them in this recommendation. In addition, this item is noticed that interested persons may participate at the Agenda Conference.

Pursuant to Rule 28-104.005(2), F.A.C., a petition for emergency variance or waiver must be granted or denied, or the request must be determined not to be an emergency, within 30 days of its receipt by the agency, or it is deemed approved, unless the time limit is waived by the petitioner. Casa Devon waived the 30-day deadline until the August 18, 2020 Commission Conference. Thus, the petition will be deemed approved if the Commission does not grant or deny the petition or determine that it is not an emergency by August 18, 2020.

This recommendation addresses whether the Commission should grant the emergency petition for variance or waiver by Casa Devon. The Commission has jurisdiction under Sections 120.542, 366.04, 366.05, and 366.81, F.S.

Discussion of Issues

Issue 1: Should the Commission grant the petition for emergency variance from or waiver of Rule 25-6.049(5), Measuring Customer Service, F.A.C., by Casa Devon Venture, LP?

Recommendation: Yes, Casa Devon’s petition for emergency variance from or waiver of Rule 25-6.049(5), F.A.C., should be granted subject to the condition that Casa Devon install the solar energy system in the apartment building substantially as described in the petition and the system remains in operation and achieves energy conservation through reduced electricity purchases from the utility. If these conditions are not met, the variance or waiver should cease to be effective. Casa Devon should be put on notice that if the variance or waiver ceases to be effective, it will be responsible for the cost of converting the Casa Devon apartment building from master metering to individual metering pursuant to Rule 25-6.049(7), F.A.C. (Cowdery, Coston, Guffey, Hampson, Hinton, Vogel)

Staff Analysis: Casa Devon is asking the Commission for an emergency variance from or waiver of Rule 25-6.049(5) and (6), F.A.C., so that it can convert the Casa Devon apartment building from individual metering to master metering. If the Commission does not grant it a variance or waiver from the rule, Casa Devon requests as alternative relief that the Commission find that the Casa Devon apartment building falls under an exception to individual metering under Rule 25-6.049(5)(c) and (d), F.A.C. Casa Devon asks the Commission to consider its petition on an emergency basis.

Legal Standard for Rule Variances and Waivers

Section 120.542(1), F.S., states that the purpose of a rule variance or waiver¹ is to provide relief to persons subject to regulation in cases where strict application of rule requirements can lead to unreasonable, unfair, and unintended results in particular circumstances. Section 120.542(2), F.S., sets forth a two-prong test for granting variances or waivers to rules. If the petitioner satisfies both prongs of the test, the agency must grant the variance or waiver.

First, the petitioner must show that “application of [the] rule would create a substantial hardship or would violate principles of fairness.” A “substantial hardship” is a “demonstrated economic, technological, legal, or other type of hardship.” 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.” Second, the petitioner must demonstrate that it will achieve the purpose of the underlying statutes by other means.

Each petitioner for rule variance or waiver has the burden of proving its entitlement to a variance or waiver under its particular circumstances. Thus, the Commission’s determination as to whether a petitioner should be granted a variance or waiver is based on whether the legal test has been met under the specific circumstances of each petitioner.²

¹ A waiver is a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Section 120.52(22), F.S. A variance is an agency decision to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Section 120.52(21), F.S.

² Compare this to declaratory statements by agencies under Section 120.565, F.S., where an agency gives its opinion as to the applicability of a statute, rule, or order of the agency to the petitioner’s particular set of circumstances.

Section 120.542(2), F.S., authorizes the filing of emergency petitions for rule variances and waivers. In order to be considered on an emergency basis, Uniform Rule of Procedure Rule 28-104.004(2), F.A.C., requires a petition for emergency variance or waiver to identify:

- (a) The specific facts that make the situation an emergency; and
- (b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

The time frame for processing an emergency petition for variance requires that the agency publish notice of the petition in the FAR within 5 days of filing, compared to 15 days for a non-emergency petition. For an emergency petition, an agency must grant, deny, or find that a petition is not an emergency within 30 days of the petition's filing, unless the 30 days is waived by the petitioner. In contrast, a non-emergency petition must be granted or denied within 90 days after receipt of the original petition, the last item of timely requested additional information, or the petitioner's written request to finish processing the petition.

Request to Consider the Petition on an Emergency Basis

Casa Devon states that in May 2020, FPL advised Casa Devon that it would not permit master metering of the apartment building. Casa Devon states that since that time, the apartment renovation project has been on hold because Casa Devon cannot move forward with master metering the apartment or installing the solar energy system. Casa Devon is requesting that its petition be considered on an emergency basis because rehabilitation and renovation to the Casa Devon apartments must be completed by December 31, 2020 under HUD requirements, and those renovations cannot be completed without the variance or waiver of the individual metering requirement. Casa Devon states that if its petition is heard on an emergency basis, Casa Devon and the solar subcontractor believe that the two-month delay caused by Casa Devon's inability to master meter can be made up and the project finished on time. However, Casa Devon states that it does not believe there will be enough time to complete the installation of the solar energy system by December 31, 2020, if its petition is not heard on an emergency basis.

Staff believes that Casa Devon has demonstrated that an emergency situation exists. The petition alleges that rehabilitation and renovation to Casa Devon apartments must be completed by December 31, 2020 under HUD requirements and that there will not be enough time to complete the installation of the solar energy system by that date if the petition is not heard on an emergency basis. The Commission has recognized that a contract deadline can be a factor forming the basis for considering a petition for waiver on an emergency basis. E.g. In re Petition for emergency temporary waiver by BellSouth Telecommunications, Inc., Docket No. 20040659-TL, Order No. PSC-04-0793-PAA-TL, issued August 12, 2004 (granting emergency consideration of a rule waiver petition where an upcoming contract termination date and potential work stoppage would impact BellSouth's ability to comply with certain Commission rules).

Unlike a proceeding on a petition for variance or waiver, substantially affected persons may intervene in a declaratory action proceeding. This is because the agency's interpretation of the applicability of its statute, rule, or order has precedential effect and may determine the substantial interests of other persons in similar circumstances.

Casa Devon states that it would suffer an immediate adverse effect if the petition is not heard expeditiously because by failing to meet the December 31, 2020 completion date, it would be in default of its agreement with HUD, causing HUD to potentially terminate the contract or seek other relief such as rescinding or reducing its monthly rental payments to the property. Further, Casa Devon alleges that it would also fail to meet the energy savings requirements it agreed to in order to receive the tax incentives, which could result in a financial loss of in excess of \$200,000. Casa Devon states that failure to finish the project by December 31, 2020, would also impact senior citizens in Miami-Dade County who need the 210 affordable housing-units that the Casa Devon apartments provide. Staff agrees that these facts demonstrate that Casa Devon will suffer an immediate adverse effect unless the variance or waiver is issued expeditiously.

Based on the specific facts provided, staff recommends that the Commission consider the petition for rule variance or waiver on an emergency basis. Staff notes that even if Casa Devon had not requested emergency treatment of its petition, staff would have brought this petition to the August 18, 2020 Commission Conference.³ The petition contains the information required by Rule 28-104.002, F.A.C., and staff did not need any additional written information to complete its review. Further, given the nature of the apartment building at issue, low income housing for senior citizens in Miami that Casa Devon is restoring and renovating to include an extensive solar energy system, staff believes it is in the public interest to consider the petition in a timely manner.

The Purpose of the Underlying Statutes

Casa Devon states that the purpose of the underlying statutes implementing Rule 25-6.049, F.A.C., is to give the conditions under which individual metering and master metering must be used to ensure fair and reasonable rates/charges and energy conservation. Casa Devon states that it believes the underlying purpose of this law, promotion of energy conservation, will be achieved through its requested variance or waiver because master metering the apartment building and installation of the solar photovoltaic system will offset 65 to 75 percent of the apartment building's total annual electric load, therefore reducing electricity purchases from the utility.

Casa Devon further states that “[without] master metering, Casa Devon cannot install the solar energy system and would not be able to offer the fair and reasonable rates it is offering to these residents - \$0 for utilities.” FPL disagrees with this statement, arguing that Casa Devon could install solar panels without master metering, possibly using micro-inverters or string inverters, to allow each of the 210 residents to make their own choice to net meter, or to keep their current service with FPL through their existing individual meter.

FPL's suggested alternative does not show that Casa Devon's petition does not meet the purposes of the rule's underlying statutes. Instead, FPL's argument seems to take issue with whether the installation of solar is technically feasible without master metering. But whether or not the installation of solar is technically feasible without master metering is not relevant to deciding whether Casa Devon's proposed master metering project meets the purpose of the underlying statutes. Further, the HUD project is dependent on master metering, the primary

³ If Casa Devon's petition for variance was not considered on an emergency basis, the Commission would need to grant or deny the petition within 90 days of the filing of the petition, which would be September 29, 2020.

energy source of which is solar, which is dependent on receiving the Solar Investment Tax Credit for the solar energy system installation. The Solar Investment Tax Credit and estimated energy cost savings are the basis for Casa Devon's agreement to pay all the apartment building's electric utility costs, instead of apartment renters paying for their individually metered electricity. In the absence of master metering, it appears that Casa Devon would not be able to economically undertake the restoration project as designed or economically offer solar energy.

Casa Devon has demonstrated that it will achieve the conservation purpose of the Florida Energy Efficiency and Conservation Act by means other than the individual metering requirement of Rule 25-6.049(5), F.A.C. Under Section 366.81, F.S., of the Florida Energy Efficiency and Conservation Act, the Legislature finds that it is critical to utilize the most efficient and cost-effective conservation systems in order to protect the health, prosperity, and general welfare of Florida and its citizens. The statute states that the Legislature intends that the use of solar energy should be encouraged and that the statute should be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption, increasing the overall efficiency and cost-effectiveness of electricity, and conserving expensive resources. Staff believes the underlying purpose of the Florida Energy Efficiency and Conservation Act will be achieved through master metering because installation of the solar photovoltaic array is projected to offset 65 to 75 percent of the apartment building's load resulting in lower electricity purchases from the utility.

Substantial Hardship

Casa Devon alleges that it will incur a substantial hardship if Rule 25-6.049, F.A.C., is applied to require individual metering because that would cause Casa Devon to violate its agreement with HUD, in which Casa Devon agreed to pay for the apartment building's electricity through master metering. Casa Devon states that the inability to master meter will constitute a default under the Housing Assistance Payment contract that would cause HUD to potentially terminate the contract or seek other relief such as rescinding or reducing its monthly rental payments to the apartment building.

Additionally, Casa Devon states that the decision to pay for the apartment building's electricity was predicated on Casa Devon's ability to master meter the project so that it could install a solar energy system that would offset 65 to 75 percent of the total electrical load. Casa Devon states that, by installing the solar energy system, it would receive a Solar Investment Tax Credit which would offset the cost of it paying for the residents' electricity. Casa Devon states that if the apartment building is required to keep the existing individual metering, the solar energy system planned to be installed – for which engineering fees have been paid and panels already procured – will not offset the tenant electrical loads. Casa Devon alleges that the solar energy system cannot be installed without master metering because the planned size of the solar energy system is necessary to achieve the 65 to 75 percent reduction in electric load.

If master metering is not allowed, Casa Devon states that it will need to develop a new solar energy approach to include individual systems for each apartment's meter to ensure that the peak monthly generation of each system does not exceed the consumption of its corresponding meter. Casa Devon alleges that this would also require additional costs for electrical cable management, smaller inverters to be installed at the individual meters, and a multitude of other considerations

and components that will offset any cost savings realized through the system. Casa Devon alleges that if it were to operate the solar energy system on individual meters, there would be decreased energy conservation and increased operation reporting requirements. Casa Devon alleges that individual metering would result in a loss of roughly 60 to 70 percent of the planned energy load reduction because the only financially viable solar energy system to use with individual metering would offset only the electricity load in common areas instead of the entire apartment building.

Casa Devon states that individual metering would result in the loss of the Solar Investment Tax Credit that was a huge factor in incentivizing investors to fund the comprehensive rehabilitation of the Casa Devon apartment building. Casa Devon states that if this much smaller solar energy system were installed, the tax credit deduction would be reduced to around \$24,000, which would be completely nullified by the significant financial commitments Casa Devon has made for the restoration and rehabilitation of the Casa Devon apartment building. Additionally, there would be a negative financial impact on the current operating budget projections that currently assume a 65 to 75 percent load reduction.

FPL states that Casa Devon's alleged economic hardship was caused by its own actions of entering into the HUD agreement without first consulting the Commission's rules to determine whether it could master meter. FPL states that if the Commission were to grant the waiver, it would establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief. FPL states that the Florida Supreme Court addressed this very situation in affirming the Commission's denial of a rule waiver in Panda Energy International v. Jacobs, 813 So. 2d 46 (Fla. 2002).

The Commission proceeding giving rise to the Panda Energy appeal was a need determination case.⁴ On the day after the prehearing conference, Panda filed a petition to intervene in the proceeding. After being granted intervention, and two days before the hearing, Panda filed a motion for a continuance of the hearing. As part of its motion, Panda addressed Rule 25-22.080, F.A.C., which requires that the hearing be conducted within 90 days of the filing of the need petition. Panda argued that because Rule 25-22.080, F.A.C., was a procedural rule, the Commission could waive its requirements for good cause.

Florida Power Corporation (FPC) filed a Response in Opposition to Panda's Motion for Continuance. As part of FPC's response, it argued that granting the continuance would violate Rule 25-22.080, F.A.C., and that the requirements of Rule 25-22.080, F.A.C., could be waived only through a variance procedure of Section 120.542, F.S., and Rule 28-104.002, F.A.C., which, it stated, Panda did not address in its motion.

The motion for continuance was heard by the Commission at the beginning of the need determination hearing. The Commission denied Panda's motion for continuance on the ground that Panda did not show good cause for a continuance as required by Rule 28-106.210, F.A.C. In denying Panda's motion for continuance, the Commission did not address FPC's argument about the need for a Rule 25-22.080, F.S., rule waiver under Section 120.542, F.S.

⁴ Petition for determination of need for Hines Unit 2 Power Plant by Florida Power Corporation, Docket No. 20001064-EI.

On appeal, the Court held that the Commission did not abuse its discretion in denying Panda's motion for continuance. In addition, the Court stated that in order to obtain a continuance, Panda would need a waiver from the Commission's rule implementing the statutory deadlines for need proceedings. The Court found that because the limited amount of time for preparing for hearing was a direct result of Panda's decision to delay intervening, Panda did not demonstrate either a substantial hardship or a violation of principles of fairness. Panda Energy, 813 So. 2d at 51.

Staff disagrees with FPL's statement that "the Supreme Court addressed this very situation in affirming the Commission's denial of a rule waiver" in Panda Energy. As explained above, the Florida Supreme Court in Panda Energy affirmed the Commission's denial of Panda's motion for continuance on the basis that Panda had not shown good cause as required by Rule 28-106.210, F.A.C. The Court's additional finding that Panda did not meet the requirements of a rule waiver was based on the fact that Panda chose to delay intervening in the case, which was why Panda had a limited amount of time to prepare for the hearing. The fact pattern in Panda Energy concerning a motion for continuance of a hearing is very different from Casa Devon's facts showing substantial hardship if a rule variance is not granted to allow master metering.

Staff also disagrees with FPL's statement that if the Commission were to grant the waiver, it would establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief. To begin with, there is no indication that Casa Devon engaged in any prohibited activity. Further, as explained above, petitions for rule waivers are decided based upon whether a petitioner meets the statutory requirements of Section 120.542, F.S. If Casa Devon demonstrates that application of the individual metering requirement of Rule 25-6.049(5), F.A.C., would create a demonstrated economic, technological, legal, or other type of hardship and that it will achieve the purpose of the underlying statutes by other means, then a waiver or variance must be granted. See Section 120.542(2), F.S. Each petitioner for rule variance or waiver has the burden of proving its entitlement to a variance or waiver under its particular circumstances.

Further, FPL appears to conflate Casa Devon's request that the Commission consider the petition on an emergency basis with Casa Devon's showing of substantial hardship to obtain a rule waiver or variance. The determination of substantial hardship in this case is not based upon the emergency nature of the filing or when the filing of the petition occurred. It does not matter whether Casa Devon filed a petition for waiver or variance before it entered into the HUD contract or afterwards. What matters is whether the facts presented by Casa Devon meet the requirements for a rule waiver or variance, including a showing of substantial hardship or violation of principles of fairness and that the underlying purpose of the statutes will be met.

In addition to its other comments, FPL states that based upon the materials filed with the Commission, along with information provided by Casa Devon to FPL during the past few months, FPL cannot say with any degree of certainty that the apartment building can be master metered, noting that FPL has not received any electrical engineering plans and that the local building official would need to sign off on the delivery system beyond FPL's point of delivery. These issues are not relevant to the Commission's decision as to whether the petition meets the statutory requirements for a rule waiver, that is, whether Casa Devon has shown that application

of the rule would create a substantial hardship or would violate principles of fairness and that the purpose of the underlying statutes will be achieved by other means.

Staff believes that Casa Devon has demonstrated that it will incur substantial hardship if it is not granted a variance from or waiver of the individual metering requirement of Rule 25-6.049(5), F.A.C. If Casa Devon is not granted a variance and is not allowed to master meter its apartment building, it will not be feasible to install the solar energy system it has contracted for, the estimated 65 to 75 percent load reduction will not occur, and it will not qualify for the Solar Investment Tax Credit that was intended to offset Casa Devon's agreement to cover the cost of tenant utilities through master metering. This argument for substantial hardship would have been essentially the same if the petition for variance had been filed before Casa Devon entered into the HUD contract. In addition, under the facts of this case, the inability to master meter will constitute a default under the Housing Assistance Payment contract, which requires master metering and the installation of a solar panel system that will offset approximately 75% of the total electrical load, that would cause HUD to potentially terminate the contract or seek other relief such as rescinding or reducing its monthly rental payments to the property.

Conclusion

Staff recommends that Casa Devon's petition for emergency variance from or waiver of Rule 25-6.049(5), F.A.C., should be granted subject to the condition that Casa Devon install the solar energy system in the apartment building substantially as described in the petition and the system remains in operation and achieves energy conservation through reduced electricity purchases from the utility. If these conditions are not met, the variance or waiver should cease to be effective. Casa Devon should be put on notice that if the variance or waiver ceases to be effective, it will be responsible for the cost of converting the Casa Devon apartment building from master metering to individual metering pursuant to Rule 25-6.049(7), F.A.C.

However, by granting the rule waiver, it does not mean that FPL is required to master meter the Casa Devon apartment building if it is not technically feasible and safe to do so. It is up to Casa Devon and FPL to work together to determine the technical feasibility of master metering the apartment building based upon electrical engineering plans and other relevant information.

Casa Devon also requested a variance of or waiver from Subsection (6) of Rule 25-6.049, F.A.C. However, Subsection (6) applies only to master-metered condominiums, so it does not apply to Casa Devon's apartment building.

Further, Casa Devon requested, alternatively, that if the Commission does not grant a variance or waiver from the individual metering requirement, it should interpret the exemptions from individual metering in paragraphs (c) and (d) of Rule 25-6.049(5), F.A.C., as applying to Casa Devon's apartment building so that it can master meter. If the Commission grants Casa Devon's petition for variance/waiver, this request for alternative relief is moot and should not be considered. Moreover, Casa Devon's alternative request for the Commission to give its opinion as to the applicability of the provisions of Rule 25-6.049(5)(c) and (d), F.A.C., to Casa Devon's particular set of circumstances is, in effect, a request for a declaratory statement. See Section 120.565, F.S. Casa Devon's petition for variance or waiver did not request a declaratory statement and does not meet the Rule 25-105.002, F.A.C., filing requirements for a petition for

declaratory statement. For this additional reason, the Commission should not consider Casa Devon's alternative relief request.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed. (Cowdery)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed.

EXHIBIT B



U. S. Department of Housing and Urban Development
Jacksonville Field Office
Charles Bennett Federal Building
400 West Bay Street
Suite 1015
Jacksonville, Florida 32202-4439

December 16, 2019

Ms. Monica Sussman
Nixon Peabody LLP
799 9th Street NW, Suite 500
Washington, DC 20001-5327

SUBJECT: Preliminary Approval of Chapter 15/Option 1B Mark-Up-To Market
Renewal Request
Casa Devon (Project)
Miami, Florida
Contract Number: FL290053013

Dear Ms. Sussman:

Please be advised that the June 19, 2019 submission for HUD approval of Termination of Existing Contract and a new 20-year Renewal under Chapter 15/Option 1B is hereby granted approval based on the terms and conditions specified in this letter.

[REDACTED]

The Owner intends to perform approximately \$11,970,000 (approximately \$57,000 per unit) in rehabilitation work to improve the Project. The estimated completion date is December 31, 2020. The rehabilitation is anticipated to include both interior and exterior work. The interior rehabilitation is anticipated to include replacement of the following: appliances, cabinets and countertops, bathroom accessories and fixtures, flooring, and paint. The exterior rehabilitation is anticipated to include the following: repair of the parking lot pavement, new windows and sliding doors, new paint, and upgrades to the landscaping and roofing, and new signage. Additionally, the Owner will install new storage areas and above the ground pool and will upgrade the community lounge, leasing office, and laundry rooms. The Owner will also convert the Project to be master metered, which will result in tenants no longer paying for electricity. After completing the master meter conversion, the Owner will then add a solar panel system that will offset approximately 75% of the total electrical load.

[REDACTED]

EXHIBIT C

Exhibit A

Description of System

Contractor will construct a System at the Site with the following characteristics. Owner and Lender must provide written approval of any changes made to the System design preceding or during construction as set forth herein.

System Specification

System Size 540 kW-DC

Panel Count 1,351

Panel Make/Model Jinko Eagle HC 72M G2 400W

Racking and Attachments DCE Solar

Inverter Make and Model SolarEdge SE 66.6k-US
P850 DC-power Optimizers

Inverter Count 7 - SE 66.6k-US
1,088 P850 Optimizers

Scope:

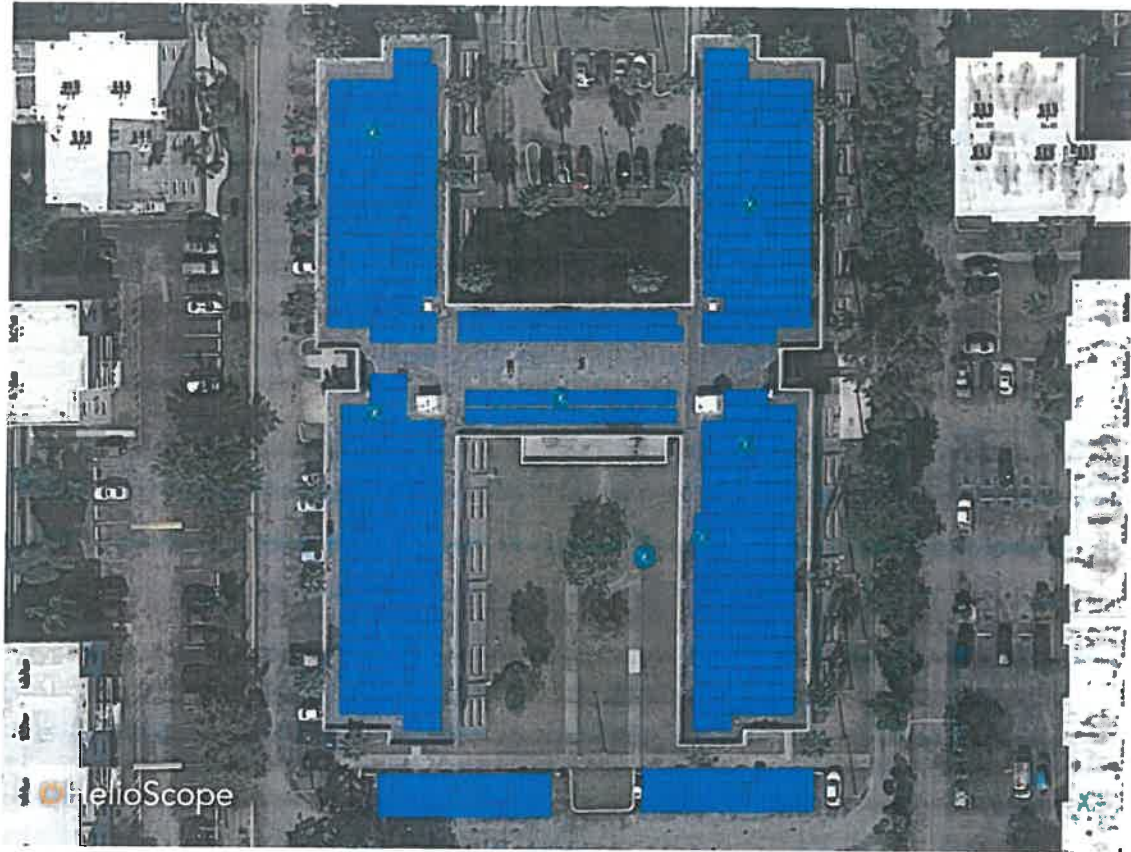
Turnkey installation of above system description across entire roof surface including electrical interconnection.

58 kW of the array will be located on a shade structure within the S parking lot. Structure and racking for the 58 kW to be provided by others.

See site image below:

Exhibit B

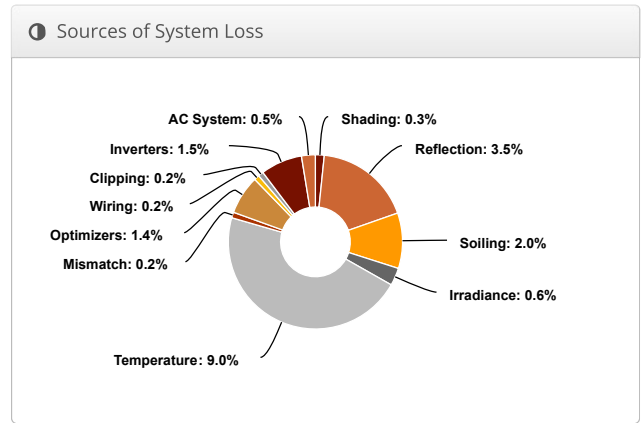
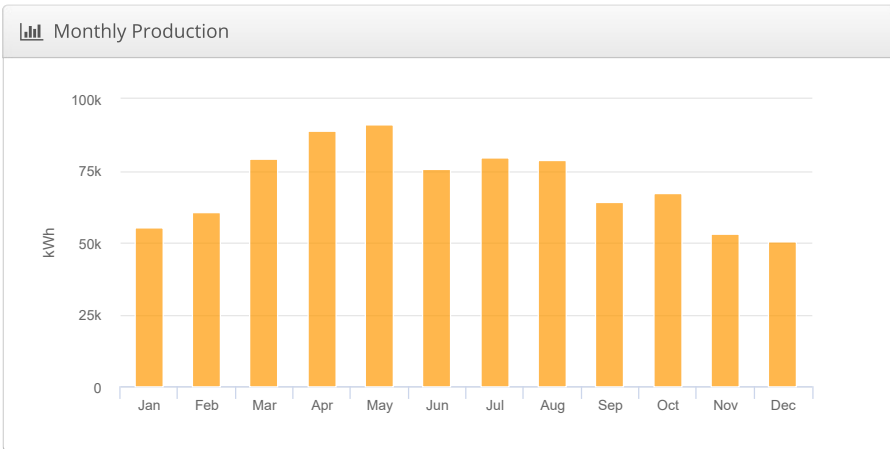
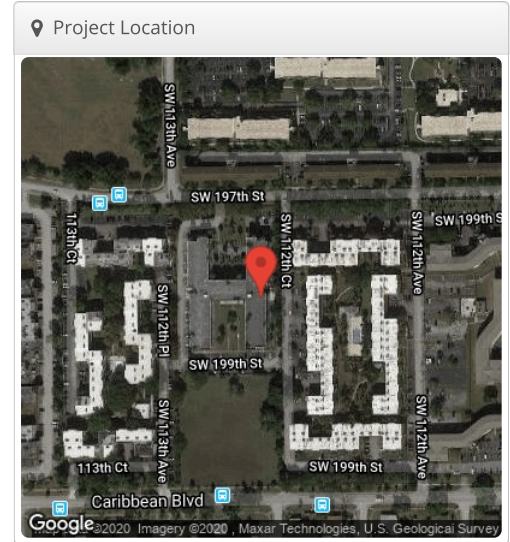
Description of Site and Site Use and Access



520 kW with Awning Casa Devon, 11250 SW 197th St, Miami, FL 33157

Report	
Project Name	Casa Devon
Project Address	11250 SW 197th St, Miami, FL 33157
Prepared By	Tony Ramudo tony@urbansolar.com

System Metrics	
Design	520 kW with Awning
Module DC Nameplate	540.4 kW
Inverter AC Nameplate	466.2 kW Load Ratio: 1.16
Annual Production	844.2 MWh
Performance Ratio	81.9%
kWh/kWp	1,562.2
Weather Dataset	TMY, 10km Grid (25.55,-80.35), NREL (prospector)
Simulator Version	52a80ff061-ddb408471b-b410765f13-2dc56c59f6



Annual Production			
	Description	Output	% Delta
Irradiance (kWh/m ²)	Annual Global Horizontal Irradiance	1,896.9	
	POA Irradiance	1,906.6	0.5%
	Shaded Irradiance	1,900.5	-0.3%
	Irradiance after Reflection	1,834.0	-3.5%
	Irradiance after Soiling	1,797.4	-2.0%
	Total Collector Irradiance	1,797.3	0.0%
Energy (kWh)	Nameplate	971,718.1	
	Output at Irradiance Levels	965,535.3	-0.6%
	Output at Cell Temperature Derate	878,754.3	-9.0%
	Output After Mismatch	876,952.6	-0.2%
	Optimizer Output	864,662.7	-1.4%
	Optimal DC Output	863,005.8	-0.2%
	Constrained DC Output	861,372.5	-0.2%
	Inverter Output	848,450.0	-1.5%
	Energy to Grid	844,208.0	-0.5%
Temperature Metrics			
	Avg. Operating Ambient Temp		25.6 °C
	Avg. Operating Cell Temp		39.3 °C
Simulation Metrics			
	Operating Hours	4668	
	Solved Hours	4668	

Condition Set													
Description	Condition Set 1												
Weather Dataset	TMY, 10km Grid (25.55,-80.35), NREL (prospector)												
Solar Angle Location	Meteo Lat/Lng												
Transposition Model	Perez Model												
Temperature Model	Sandia Model												
Temperature Model Parameters	Rack Type	a		b		Temperature Delta							
	Fixed Tilt	-3.56		-0.075		3°C							
	Flush Mount	-2.81		-0.0455		0°C							
Soiling (%)	J	F	M	A	M	J	J	A	S	O	N	D	
	2	2	2	2	2	2	2	2	2	2	2	2	
Irradiation Variance	5%												
Cell Temperature Spread	4° C												
Module Binning Range	-2.5% to 2.5%												
AC System Derate	0.50%												
Module Characterizations	Module		Uploaded By		Characterization								
	JKM 400M-72H-BDVP (Jinkosolar)		Folsom Labs		Jinko_JKM_400M_72H_BDVP (G2.5_F40),PAN, PAN								
	JKM400M-72HL-V (2019) (Jinko Solar)		Folsom Labs		Spec Sheet Characterization, PAN								
Component Characterizations	Device			Uploaded By		Characterization							
	SE66.6KUS (SolarEdge)			Folsom Labs		Spec Sheet							
	P850 (SolarEdge)			Folsom Labs		Mfg Spec Sheet							

Components		
Component	Name	Count
Inverters	SE66.6KUS (SolarEdge)	7 (466.2 kW)
Strings	10 AWG (Copper)	36 (6,223.7 ft)
Optimizers	P850 (SolarEdge)	684 (581.4 kW)
Module	Jinkosolar, JKM 400M-72H-BDVP (400W)	1,088 (435.2 kW)
Module	Jinko Solar, JKM400M-72HL-V (2019) (400W)	263 (105.2 kW)

Wiring Zones			
Description	Combiner Poles	String Size	Stringing Strategy
Wiring Zone	12	13-38	Along Racking

Field Segments									
Description	Racking	Orientation	Tilt	Azimuth	Intrarow Spacing	Frame Size	Frames	Modules	Power
Field Segment 1	Flush Mount	Portrait (Vertical)	0°	179.5°	0.5 ft	1x1	548	548	219.2 kW
Field Segment 2	Fixed Tilt	Portrait (Vertical)	0°	179.5°	0.5 ft	1x1	540	540	216.0 kW
Field Segment 4	Fixed Tilt	Portrait (Vertical)	10°	179.5°	1.9 ft	1x1	58	58	23.2 kW
Field Segment 4	Flush Mount	Portrait (Vertical)	0°	179.5°	0.5 ft	1x1	61	61	24.4 kW
Field Segment 5	Carport	Portrait (Vertical)	5°	179.5°	0.0 ft	1x1	72	72	28.8 kW
Field Segment 6	Carport	Portrait (Vertical)	5°	179.5°	0.0 ft	1x1	72	72	28.8 kW

Detailed Layout



EXHIBIT D



Tony Ramudo <tony@urbansolar.com>

Potential Project - 11265 SW 197th St

2 messages

Tony Ramudo <tony@urbansolar.com>

Wed, Nov 20, 2019 at 1:38 PM

To: Rey.cabriaes@fpl.com

Good afternoon Rey,

I was given your contact by the local FPL service station as the engineer to speak to. The above address is a multi-tenant building where we are looking to add a solar system. We'd like to add one main meter ahead of the individual tenant meters and interconnect to that one meter leaving the customer with one main bill. How do we go about doing this in regards to coordinating with FPL?

Thank you and look forward to hearing from you.

**Tony Ramudo**

Vice-President / Co-founder

mobile: 561.451.7734**toll:** 1.888.38.SOLAR**urbansolar.com**990 S Rogers Cir, #4
Boca Raton, FL 33487

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Tony Ramudo <tony@urbansolar.com>

Urban Solar - Casa Devon

2 messages

Ortiz, Evelyn <Evelyn.Ortiz@fpl.com>

Fri, May 8, 2020 at 2:24 PM

To: Tony Ramudo <tony@urbansolar.com>

Cc: Danielle Beavers <dbeavers@urbansolar.com>, "Melians, Kaz" <Kaz.Melians@fpl.com>, Michael Vergona Sr <Mikesr@urbansolar.com>, "Murphy, Laura" <LAURA.MURPHY@fpl.com>, Rhiannon Eslahi <rhiannon@urbansolar.com>

Hi Tony,

I left a message on your cell phone earlier today and I thought I would follow up with a note. As I mentioned on my voicemail, FPL has received a Courtesy Inquiry from the Florida Public Service Commission regarding your recent call to the PSC on the Casa Devon project.

As I explained on the note below, on your application for Net Metering at 11250 SW 197TH ST # HL EAST the amount of solar you are requesting to install far exceeds the permissible amount outlined in the FPL Net Metering Guidelines. Additionally, FPL will not be able to provide an exemption to the F.A.C. Each premise must be individually metered.

Your options to proceed with Net Metering are to reduce the size of your system to meet the guidelines outlined at FPL.com for the #HL EAST account or to split the solar among all the accounts at this address with individual interconnection points.

Please let me know if you have any additional questions.

Thank you,

Evelyn Ortiz

Office: 305-442-5783

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From: Ortiz, Evelyn**Sent:** Thursday, April 23, 2020 9:57 PM**To:** 'Rhiannon Eslahi' <rhiannon@urbansolar.com>**Cc:** Danielle Beavers <dbeavers@urbansolar.com>; Melians, Kaz <Kaz.Melians@fpl.com>; Michael Vergona Sr <Mikesr@urbansolar.com>; Murphy, Laura <LAURA.MURPHY@fpl.com>; Tony Ramudo <tony@urbansolar.com>**Subject:** RE: Urban Solar - Informa on Request Casa Devon

Tony/Rhiannon,

We have discussed your questions with our team and determined that your proposed installation of a master meter at Casa Devon is not permitted by the Florida Administrative Code (FAC). The application you have submitted in the Net Metering Portal for 11250 SW 197TH ST # HL EAST far exceeds the allowable production/consumption ratio of 115%. You do have the option of dividing the solar generation behind each existing meter and submitting a net metering application for each account.

If you have any additional questions on the Casa Devon project, or any other Tier 3 Net Metering project, please feel free to reach out to me directly.

Thank you,

Evelyn Ortiz

Office: 305-442-5783

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From: Rhiannon Eslahi <rhiannon@urbansolar.com>

Sent: Wednesday, April 22, 2020 7:13 PM

To: Ortiz, Evelyn <Evelyn.Ortiz@fpl.com>

Cc: Cabriaes, Rey <Rey.Cabriaes@fpl.com>; Danielle Beavers <dbeavers@urbansolar.com>; Melians, Kaz <Kaz.Melians@fpl.com>; Michael Vergona Sr <MikeSr@urbansolar.com>; Murphy, Laura <LAURA.MURPHY@fpl.com>; Tony Ramudo <tony@urbansolar.com>

Subject: Re: Urban Solar - Information Request

Caution - External Email (rhiannon@urbansolar.com)

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Great, thank you.

On Wed, Apr 22, 2020 at 6:48 PM Ortiz, Evelyn <Evelyn.Ortiz@fpl.com> wrote:

Rhiannon,

I have received your note. I am working with Kaz and our team to answer the questions Tony asked below. I hope to have additional information in the next couple of days.

Please let me know if you have any questions.

Thank you,

Evelyn Ortiz

Office: 305-442-5783

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From: Rhiannon Eslahi <rhiannon@urbansolar.com>

Sent: Wednesday, April 22, 2020 3:17 PM

To: Ortiz, Evelyn <Evelyn.Ortiz@fpl.com>

Cc: Cabriaes, Rey <Rey.Cabriaes@fpl.com>; Danielle Beavers <dbeavers@urbansolar.com>; Michael Vergona Sr <Mikesr@urbansolar.com>; Tony Ramudo <tony@urbansolar.com>; Melians, Kaz <Kaz.Melians@fpl.com>

Subject: Re: Urban Solar - Information Request

Caution - External Email (rhiannon@urbansolar.com)

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Hi Evelyn,

Please provide me with an update on Tony Ramudos questions. I have copied Kaz on this email so he can be aware of the manner in which our question is being routed. We have been in contact with someone from FPL (net metering or service planning) since November 2019.

Thank you,

On Fri, Apr 17, 2020 at 12:41 PM Tony Ramudo <tony@urbansolar.com> wrote:

Thank you. I believe our team has already begun that process. Danielle and Rhiannon will respond with any additional questions, should they have any.

On Fri, Apr 17, 2020 at 11:25 AM Cabriaes, Rey <Rey.Cabriaes@fpl.com> wrote:

Tony,

I've been informed that your request needs to be submitted to the email address below, they will be able to assist you with any of your solar projects .

If you have any questions please email Ms. Evelyn Ortiz , copied on this email .

Kind regards

Rey

www.fpl.com/netmetering

From: Tony Ramudo <tony@urbansolar.com>

Sent: Friday, April 17, 2020 9:58 AM

To: Cabriales, Rey <Rey.Cabriales@fpl.com>

Cc: Danielle Beavers <dbeavers@urbansolar.com>; Michael Vergona Sr <Mikesr@urbansolar.com>; Rhiannon Eslahi <rhiannon@urbansolar.com>

Subject: Re: Urban Solar - Informa on Request

Caution - External Email (tony@urbansolar.com)

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Yes, that is correct.

On Fri, Apr 17, 2020 at 6:57 AM Cabriales, Rey <Rey.Cabriales@fpl.com> wrote:

Good Morning Tony,

If I understand you correctly , you want to know how we can install a master meter (CT) in front of all these other meters to combine the usage into one correct ?

Your plans do not call for the removal of the existing meter stacks , those will remain as they are , correct ?

Rey

From: Tony Ramudo <tony@urbansolar.com>

Sent: Wednesday, February 5, 2020 1:11 PM
To: Cabriales, Rey <Rey.Cabriales@fpl.com>
Cc: Michael Vergona Sr <Mikesr@urbansolar.com>
Subject: Re: Urban Solar - Informa on Request

Good afternoon Rey,

I'm following up with you in my previous email.

Tony Ramudo

Vice President
Urban Solar
cell: 561-451-7734
office: 1.888.38.SOLAR
urbansolar.com
[990 S Rogers Cir, #4](#)
[Boca Raton, FL 33487](#)

On Thu, Dec 5, 2019 at 4:03 PM Tony Ramudo <tony@urbansolar.com> wrote:

Rey,

Attached is a simple SLD explaining what we're trying to achieve. It's not shown, but we're trying to understand how you will CT or add a master meter ahead of these meter banks so that the building will be a single meter with solar connected. Please let me know you thoughts or if you have any additional questions.

Tony Ramudo

Vice-President / Co-founder

mobile: 561.451.7734

toll: 1.888.38.SOLAR

urbansolar.com

990 S Rogers Cir, #4
Boca Raton, FL 33487

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On Tue, Dec 3, 2019 at 6:52 PM Cabriales, Rey <Rey.Cabriales@fpl.com> wrote:

Tony,

Can you send me your electrical plans for your proposed work ?

Thanks

Rey

From: Tony Ramudo <tony@urbansolar.com>
Sent: Tuesday, December 3, 2019 2:15 PM
To: Cabriales, Rey <Rey.Cabriales@fpl.com>
Subject: Re: Urban Solar - Informa on Request

CAUTION - EXTERNAL EMAIL

Good afternoon Rey,

This is my third attempt to contact you. Can you please respond to my requests? Thank you.



Tony Ramudo

Vice-President / Co-founder

mobile: 561.451.7734

toll: 1.888.38.SOLAR

urbansolar.com

[990 S Rogers Cir, #4](#)
[Boca Raton, FL 33487](#)

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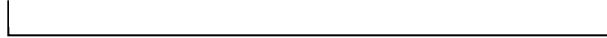
On Tue, Nov 26, 2019 at 4:12 PM Tony Ramudo <tony@urbansolar.com> wrote:

Good afternoon Rey,

I've left a couple voicemails and haven't heard back. Can we schedule a time to have a call and discuss this solar project?

Thank you,

--



Tony Ramudo

Vice-President / Co-founder

mobile: 561.451.7734

toll: 1.888.38.SOLAR

urbansolar.com

[990 S Rogers Cir, #4](#)
[Boca Raton, FL 33487](#)

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--

Tony Ramudo

Vice President
Urban Solar
cell: 561-451-7734
office: 1.888.38.SOLAR
urbansolar.com
[990 S Rogers Cir, #4](#)
[Boca Raton, FL 33487](#)

--

Tony Ramudo

Vice President
Urban Solar
cell: 561-451-7734
office: 1.888.38.SOLAR
urbansolar.com
[990 S Rogers Cir, #4](#)
[Boca Raton, FL 33487](#)

--

Rhiannon Eslahi

Operations Director
Urban Solar

direct: 561.931.2215
office: 1.888.38.SOLAR
urbansolar.com

[990 S Rogers Circle, Ste 4](#)
[Boca Raton, FL 33487](#)

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--

Rhiannon Eslahi

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[Boca Raton, FL 33487](#)

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Tony Ramudo <tony@urbansolar.com>

CASA DEVON- 11250 SW 197th Street

9 messages

Danielle Beavers <dbeavers@urbansolar.com>

Mon, Mar 2, 2020 at 9:02 AM

To: rey.cabriales@fpl.com, Jose.L.Solares@fpl.com, daniel.altman@fpl.com, South-Dade-Service-Planning@fpl.com

Cc: Rhiannon Eslahi <rhiannon@urbansolar.com>, Tony Ramudo <tony@urbansolar.com>

Good Morning,

We are installing a 540,400kw solar system the Casa Devon Assisted Living located at [11250 SW 197th Street](#) in Miami. We want to combine all the meters on site to 1 or 2 main meters. I realize this will need a shut down, but is there anything else we need to do or be aware of? We also need to know if we will need to upgrade the transformer for this project.

Thank you

--

Danielle BeaversUrban Solar
Project Manager**direct:** 561.717.4725**toll:** 1.888.38.SOLAR**urbansolar.com**[990 S Rogers Circle, #4](#)
Boca Raton, FL 33487

Danielle Beavers <dbeavers@urbansolar.com>

Thu, Mar 5, 2020 at 11:57 AM

To: rey.cabriales@fpl.com, Jose.L.Solares@fpl.com, daniel.altman@fpl.com, South-Dade-Service-Planning@fpl.com

Cc: Rhiannon Eslahi <rhiannon@urbansolar.com>, Tony Ramudo <tony@urbansolar.com>

Good Morning,

We are installing a 540,400kw solar system the Casa Devon Assisted Living located at [11250 SW 197th Street](#) in Miami. We want to combine all the meters on site to 1 or 2 main meters. I realize this will need a shut down, but is there anything else we need to do or be aware of? We also need to know if we will need to upgrade the transformer for this project.

Thank you

Danielle Beavers

[Quoted text hidden]

Danielle Beavers <dbeavers@urbansolar.com>

Wed, Mar 11, 2020 at 4:26 PM

To: rey.cabriales@fpl.com, Jose.L.Solares@fpl.com, daniel.altman@fpl.com, South-Dade-Service-Planning@fpl.com

Cc: Rhiannon Eslahi <rhiannon@urbansolar.com>, Tony Ramudo <tony@urbansolar.com>

Good Afternoon,

We are installing a 540,400kw solar system the Casa Devon Assisted Living located at [11250 SW 197th Street](#) in Miami. We want to combine all the meters on site to 1 or 2 main meters. I realize this will need a shut down, but is there anything else we need to do or be aware of? We also need to know if we will need to upgrade the transformer for this project.

Thank you

Danielle Beavers

[Quoted text hidden]

Altman, Daniel <Daniel.Altman@fpl.com>

Wed, Mar 11, 2020 at 4:32 PM

To: Danielle Beavers <dbeavers@urbansolar.com>, "Cabriaes, Rey" <Rey.Cabriaes@fpl.com>, "Jose.L.Solares@fpl.com" <Jose.L.Solares@fpl.com>, "SharedMailbox, SOUTH-DADE-SERVICE-PLANNING" <SOUTH-DADE-SERVICE-PLANNING.SharedMailbox@nexteraenergy.com>
Cc: Rhiannon Eslahi <rhiannon@urbansolar.com>, Tony Ramudo <tony@urbansolar.com>

Good A. ernoon,

This is in the area of Rey Cabriaes. Please remove Jose Solares and Myself from the chain.

Thanks,



FPL | Daniel Altman | Associate Engineer – Richmond Service Center | 14250 SW 112 ST | O: (305) 387-6668

Visit the new [FPL Project Portal](https://www.fpl.com/construction) at [FPL.com/construction](https://www.fpl.com/construction) to manage your FPL Residential and Commercial construction projects. Get information on construction services and project types, apply for your construction project, track project milestones, manage your project team and more.

From: Danielle Beavers <dbeavers@urbansolar.com>
Sent: Wednesday, March 11, 2020 4:27 PM
To: Cabriaes, Rey <Rey.Cabriaes@fpl.com>; Jose.L.Solares@fpl.com; Altman, Daniel <Daniel.Altman@fpl.com>; SharedMailbox, SOUTH-DADE-SERVICE-PLANNING <SOUTH-DADE-SERVICE-PLANNING.SharedMailbox@nexteraenergy.com>
Cc: Rhiannon Eslahi <rhiannon@urbansolar.com>; Tony Ramudo <tony@urbansolar.com>
Subject: Re: CASA DEVON- 11250 SW 197th Street

Caution - External Email (dbeavers@urbansolar.com)

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[Quoted text hidden]

Tony Ramudo <tony@urbansolar.com>
To: Danielle Beavers <dbeavers@urbansolar.com>, Rhiannon Eslahi <rhiannon@urbansolar.com>

Wed, Mar 11, 2020 at 4:34 PM

Keep in mind that I've tried to contact this Rey character for some time and he hasn't responded once. Please let Daniel know that.

Tony Ramudo
Vice President
Urban Solar
cell: 561-451-7734
office: 1.888.38.SOLAR
urbansolar.com
990 S Rogers Cir, #4
Boca Raton, FL 33487

[Quoted text hidden]

Danielle Beavers <dbeavers@urbansolar.com> Wed, Mar 11, 2020 at 4:47 PM
To: "Altman, Daniel" <Daniel.Altman@fpl.com>
Cc: "Cabriaes, Rey" <Rey.Cabriaes@fpl.com>, "Jose.L.Solares@fpl.com" <Jose.L.Solares@fpl.com>, "SharedMailbox, SOUTH-DADE-SERVICE-PLANNING" <SOUTH-DADE-SERVICE-PLANNING.SharedMailbox@nexteraenergy.com>, Rhiannon Eslahi <rhiannon@urbansolar.com>, Tony Ramudo <tony@urbansolar.com>

Hello Daniel,

We have attempted to reach out to Rey multiple times and he is not responding. This is a large project and we need an answer now on how to proceed with merging the meters and if this will require a transformer upgrade. Is there any one else that can assist us with this?

Thank you
Danielle Beavers
[Quoted text hidden]

Cabriaes, Rey <Rey.Cabriaes@fpl.com> Thu, Mar 12, 2020 at 9:11 AM
To: Danielle Beavers <dbeavers@urbansolar.com>
Cc: "SharedMailbox, SOUTH-DADE-SERVICE-PLANNING" <SOUTH-DADE-SERVICE-PLANNING.SharedMailbox@nexteraenergy.com>, Rhiannon Eslahi <rhiannon@urbansolar.com>, Tony Ramudo <tony@urbansolar.com>

Good Morning ,

Best way to reach me is via a phone call to 305-387-6661 , I can usually return phone calls and discuss you job within 24 hours .

Please send electrical plans for review to determine the scope of work involved.

Thank you

Rey

EXHIBIT E

Urban Solar
Antonio Ramudo, Vice President
990 South Rogers Circle
Suite #4
Boca Raton, FL 33497

Re: Photovoltaic System Interconnection at Casa Devon
11250 Southwest 197th Street
Miami, FL 33157

Dear Mr. Ramudo:

Per your request, we went to the Casa Devon site on August 26th, 2020 to investigate the possibility of interconnecting a 540.4kW photovoltaic system. Per your instructions, the output of the system must be evenly distributed across the 210 dwelling units at the facility.

Our investigation began in the meter room. We explored the possibility of performing interconnections at the conductors on the load side of the meter for each unit. We measured the cross-sectional area available for interconnect and performed calculations in compliance with the 2014 National Electrical Code. The results show that the wiring area underneath the existing meter banks is not sufficient for performing the interconnections since area is not large enough to dissipate the heat generated during normal conditions. Photos of the existing equipment and wiring area can be found on the following pages.

We also explored the possibility of performing the interconnection in each dwelling unit. Our investigation showed that this method would be impractical and extremely costly since wiring and conduit would have to be run from the roof to each dwelling unit. The concrete walls, ceilings, and some floors would have to be cut open in each unit which would result in a disruption of the lives of the 210 tenants of the building. Tenants would likely have to relocate during this work if it is performed during COVID--19. This type of work is generally performed in new construction, but is impractical as a retrofit and could result in unforeseen conditions being exposed that require additional engineering, additional costs, and may even render the project infeasible.

From our analysis, we have concluded that the interconnection of the 540.4kW photovoltaic system into 210 dwelling units at this site is impractical or impossible. Our recommendation for interconnection is a supply side connection based on NEC 705.12(A). This method would require a single meter at each of the four service disconnects and the meters for the individual dwelling units must be either bypassed or replaced. The photovoltaic system would be connected between the meter and the service disconnect to protect the exiting service conductors.

A recommended solution was posed to use microinverters versus string inverters. The inverter selection does not change the recommendation because the same code violations and physical obstacles would prevail. The master-metered interconnection method is recommended regardless of the inverter technology used.

If you or any parties in this matter have any questions concerning our analysis and the results, please feel free to contact us.

Sincerely,

Kimandy Lawrence, PE
Principal In Charge



Kimandy
Lawrence
2020.09.1
6 16:09:05
-04'00'

TYPICAL METER BANK

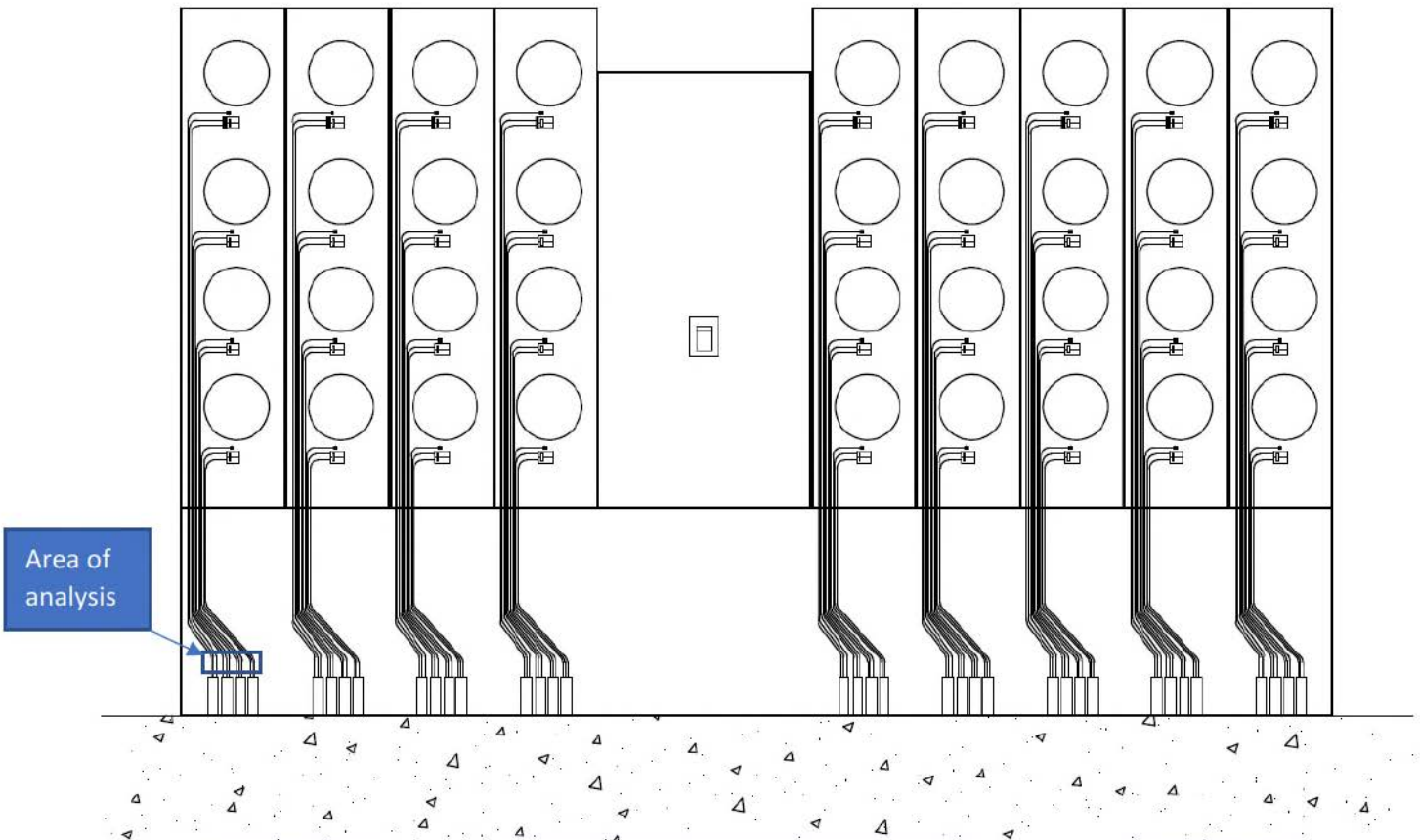


Figure 1: Typical meter bank and area of analysis

WIRE AREA CALCULATIONS

Area of analysis: 8" deep x 8" wide = 64 sq in

Existing conductors: (12) 2 AWG THW AL, (4) 6 AWG THHN CU

Area of (12) 2 AWG THW AL conductors = 0.1333 sq in x 12 = 1.5996 sq in

Area of (4) 6 AWG THHN CU conductors = 0.0507 sq in x 4 = 0.2028 sq in

New Equipment and Wiring: (12) 3 AWG THWN-2 CU, (4) 6 AWG THWN-2 CU, (12) Polaris IPL1/0-3 connectors
(4) Polaris IPL4-3 connectors

Area of (12) 3 AWG THWN-2 CU = 0.0973 sq in x 12 = 1.1676 sq in

Area of (4) 6 AWG THWN-2 CU = 0.0507 sq in x 4 = 0.2028 sq in

Area of (12) Polaris IPL1/0-3 connectors = 2.24 in x 1.5 in x 12 = 40.32 sq in

Area of (4) Polaris IPL4-3 connectors = 1.188 sq in x 1.375 sq in x 4 = 6.534 sq in

Total area of wiring and connectors = 50.03 sq in

Allowable fill area = 64 sq in x 0.75 = 48 sq in per 2014 NEC 312.7 & 312.8

Since the sum of the total area of existing wiring, new wiring, and taps (50.03 sq in) exceeds the allowable fillable cross-sectional area (48 sq in), connections made in this area would violate the requirements of NEC 312.7 and NEC 312.8.

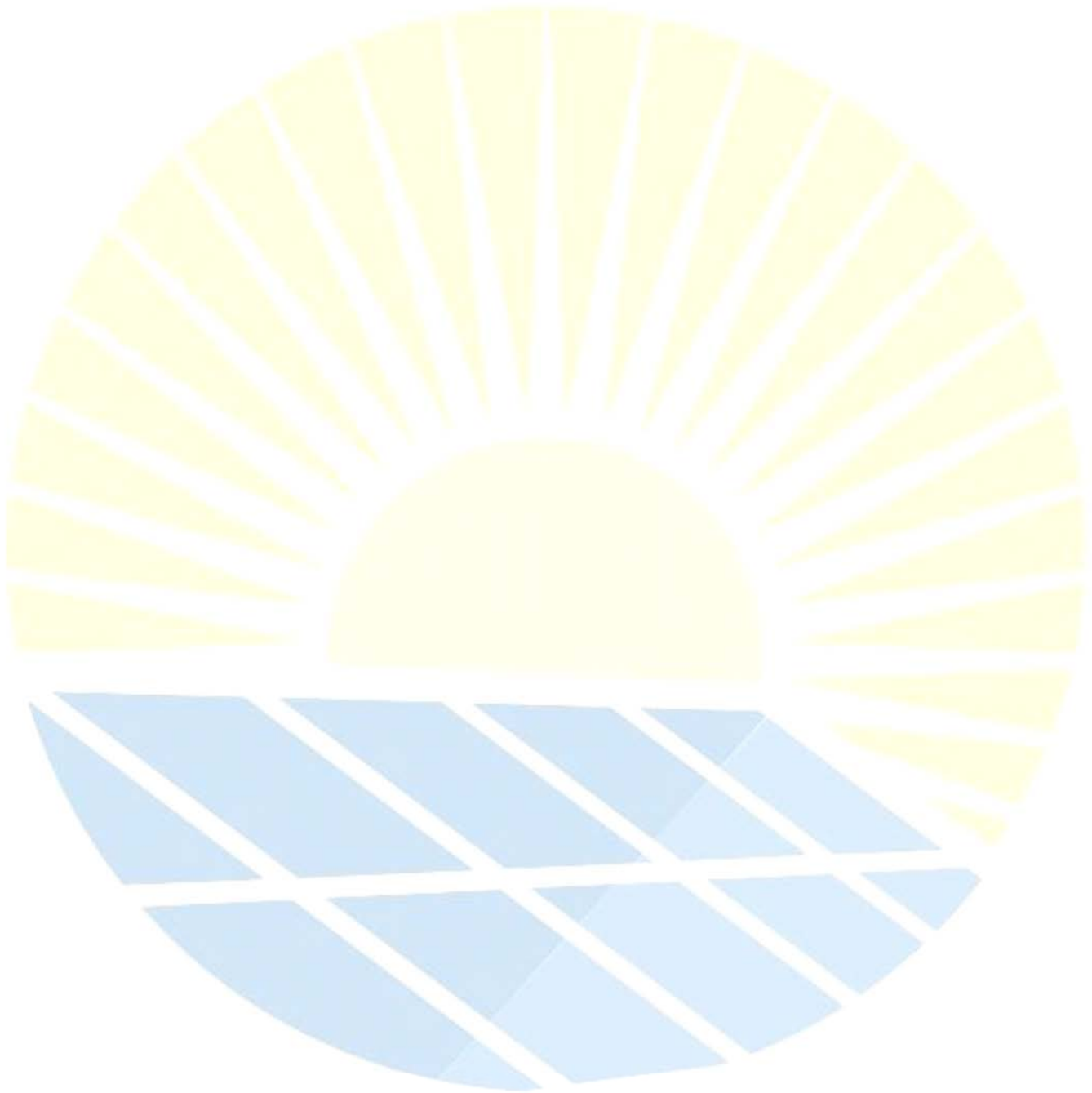




Photo 1: Meter Bank containing 24 meters



Photo 2: Existing inside wire enclosure

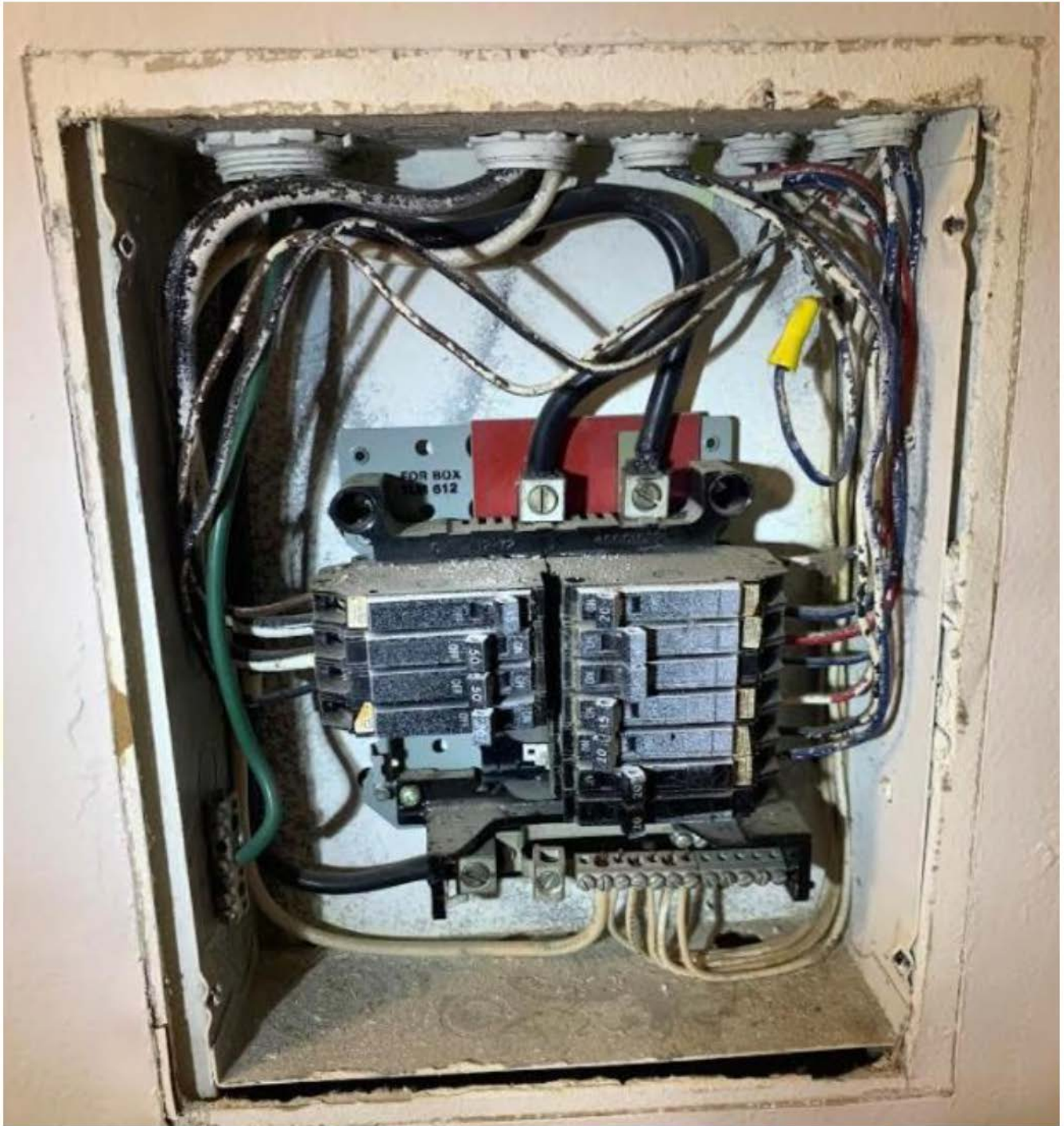


Photo 3: Typical electrical panel in each dwelling unit

EXHIBIT F

 **AIA**® Document A102™ – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the seventeenth day of December in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Casa Devon Venture LP
c/o MRK Partners, Inc.
108 Standard Street
El Segundo, CA 90245

and the Contractor:
(Name, legal status, address and other information)

[Redacted Contractor Information]

for the following Project:
(Name, location and detailed description)

Interior rehabilitation of existing 210-unit senior apartment building located at 11250 SW 197th Street, Miami, FL.

[Redacted Project Description]

The Architect:
(Name, legal status, address and other information)

[Redacted Architect Information]

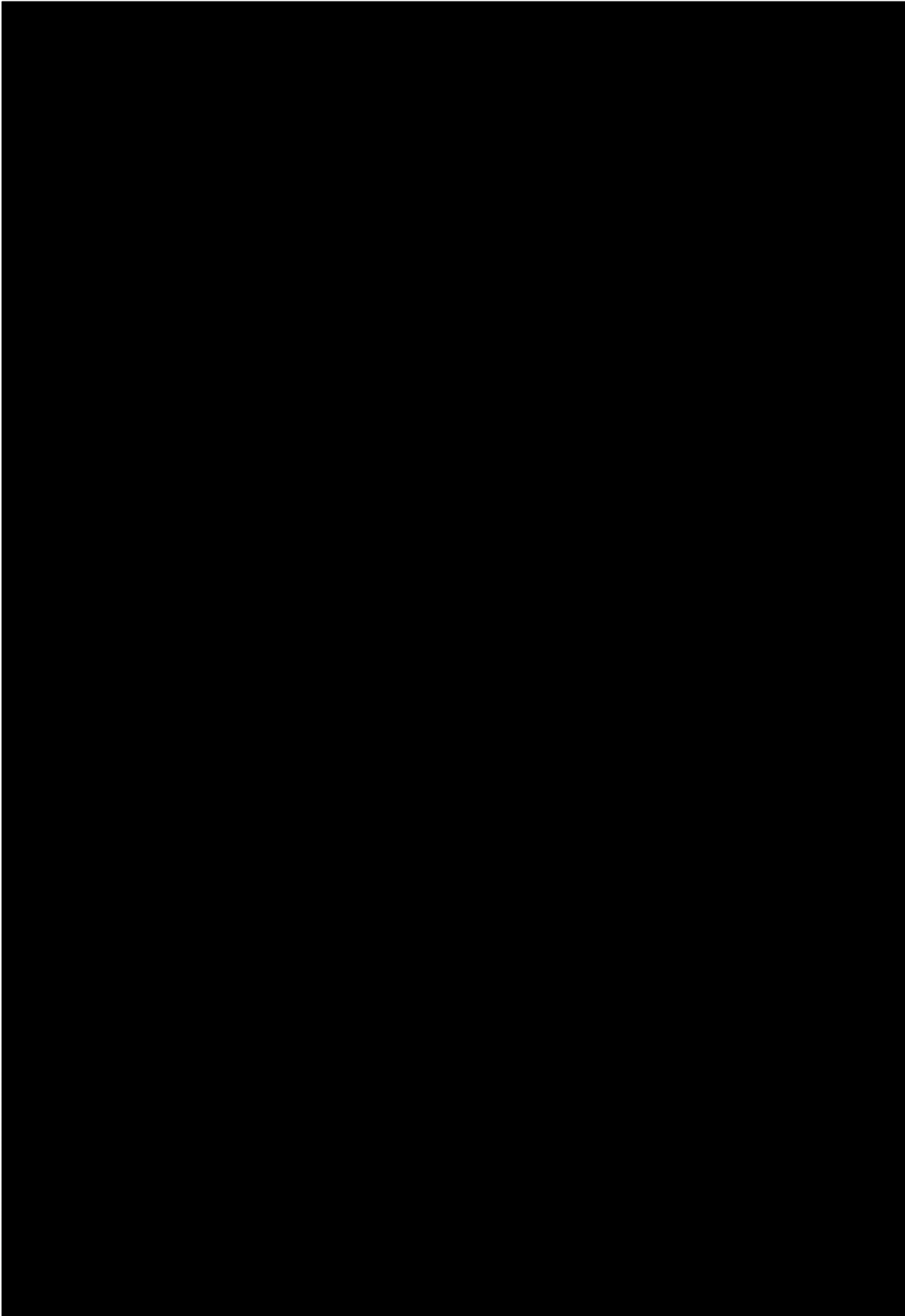
The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

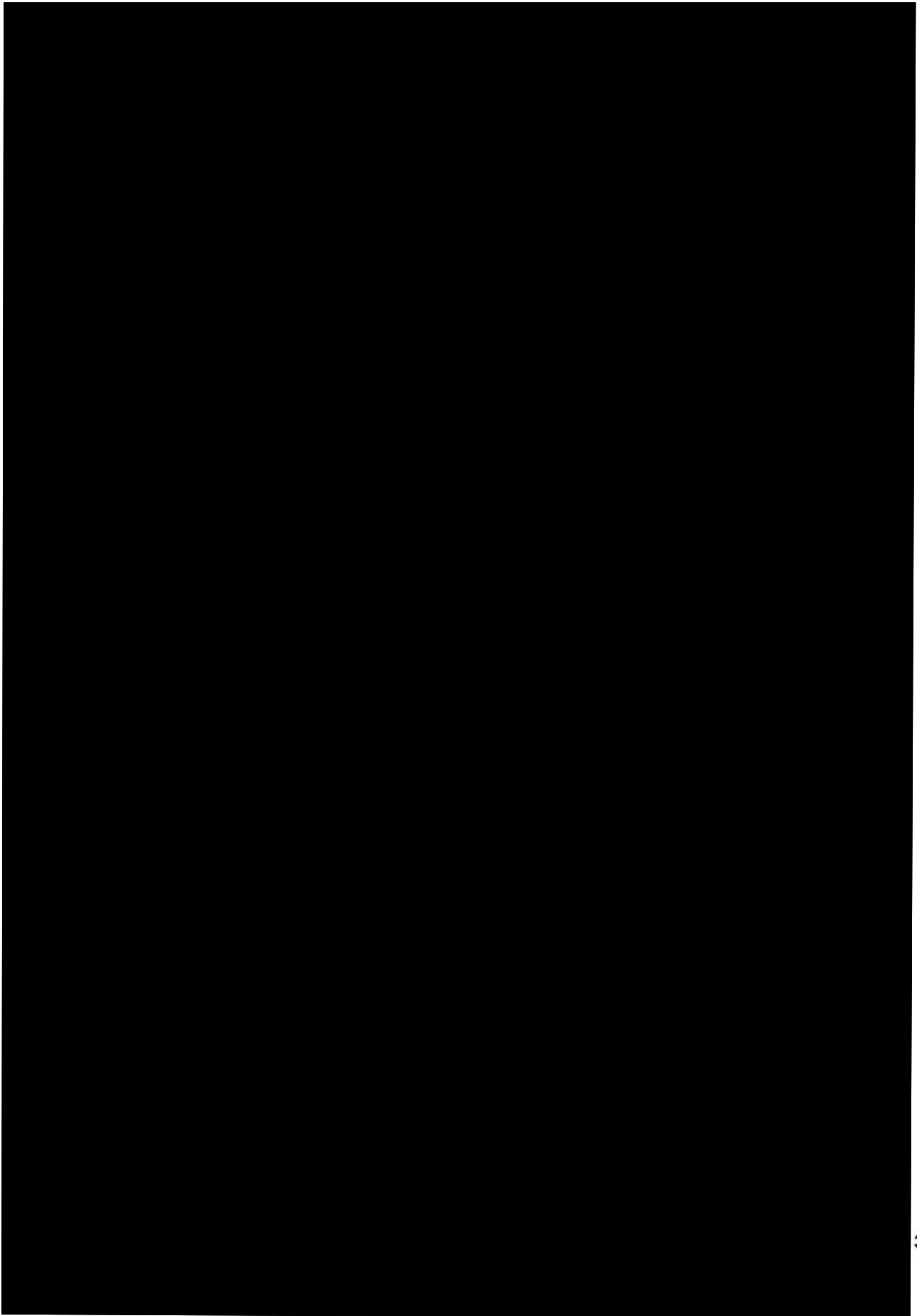
The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

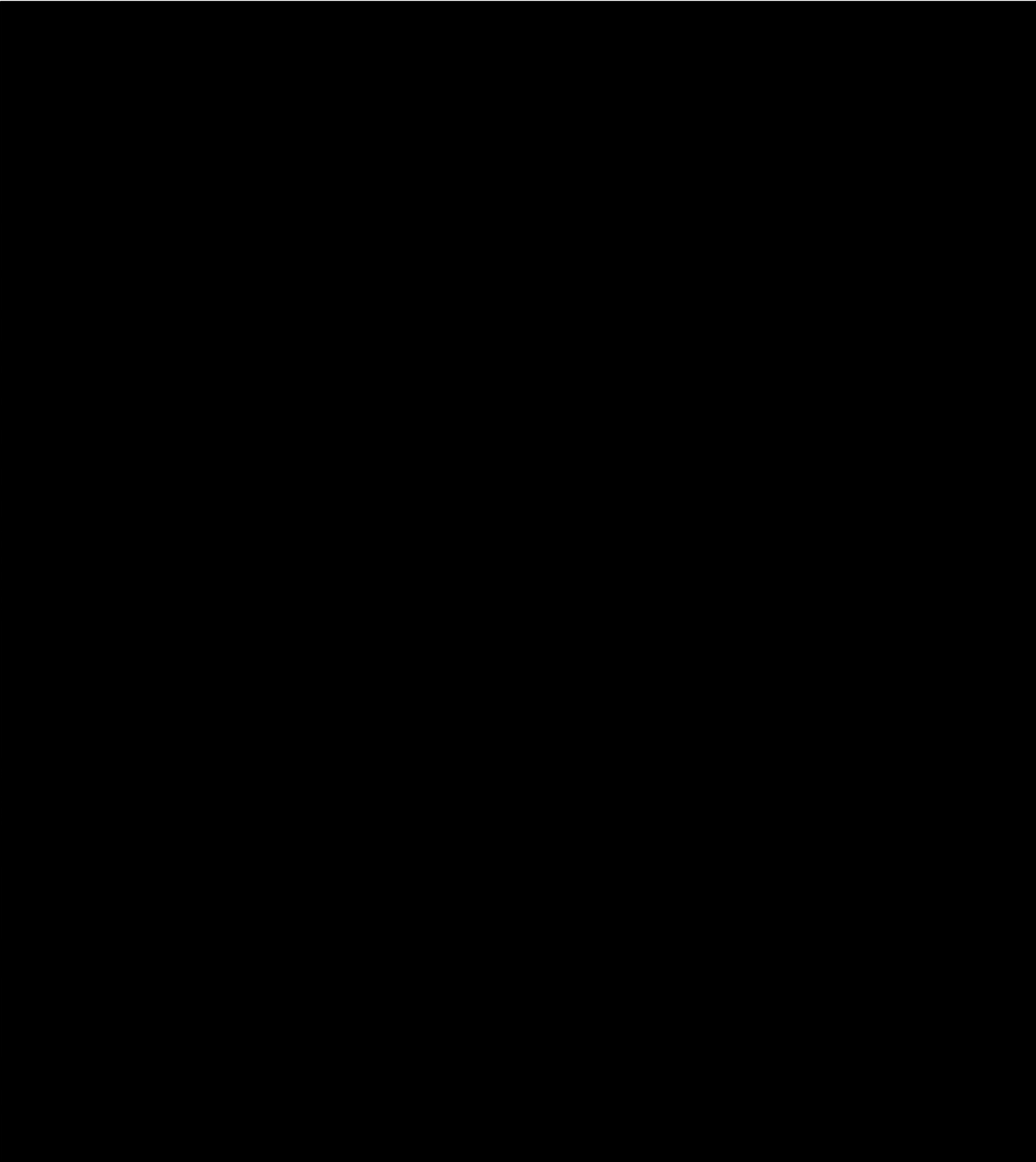
§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date: December 31, 2020



2.2. Contract Schedule

A. The following table outlines the expected dates upon which the listed Contract Times are expected to have occurred (the "Contract Schedule"). The listed Contract Times may occur on or before the listed target date. In the event that an Excusable Event (as defined in Schedule 1) occurs and causes a delay to the Contract Schedule set forth hereunder, Contractor shall be entitled to an equitable extension of time for all affected Contract Times. The Contract Times listed hereunder shall have the definitions set forth in Schedule 1.

Contract Time	Date	Description
Effective Date	<u> 2/21/2020 </u>	This Agreement shall be fully executed
Structural Assessment	<u> 03/05/2020 </u>	Structural assessment shall be complete
Equipment Invoice Receipt Date	<u> 04/06/2020 </u>	Contractor shall deliver copies of Equipment Invoices to Owner and Lender
1st 2 nd Payment Date	<u> 4/24/2020 </u>	The Procurement Payment shall be remitted
Construction Start	<u> TBD </u>	First permanent fixtures shall be installed at Site
Substantial Completion	<u> 12/8/2020 </u>	System shall be functionally complete
Commercial Operation	<u> 12/15/2020 </u>	System shall be interconnected and operational
Project Debrief	<u> 12/18/2020 </u>	Parties shall meet to exchange documentation