

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

CASA DEVON VENTURE, LP’s PREHEARING STATEMENT

Pursuant to the Florida Public Service Commission’s (the “Commission”) Order Establishing Procedure, Order No. PSC-2020-0335-PCO-EU dated October 1, 2020 (the “Procedural Order”), Casa Devon Venture, LP (“Casa Devon”) hereby submits its Prehearing Statement.

1. All Known Witnesses:

All witnesses known at this time, who may be called by Casa Devon,¹ along with the subject matter and issue numbers which will be covered by the witness’ testimony, are as follows:

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
Kyle Hudson, MRK Partners, Project Coordinator	Testimony will support Casa Devon’s Petition, including, but not limited to Casa Devon’s mission and purpose for the Project, Casa Devon’s dealings with HUD, Casa Devon’s HAP Contract, Casa Devon’s agreement with Urban Solar, the planned Solar Array System, the intended solar tax credits, the financial and scheduling aspects of the Project that concern the Petition, Casa Devon’s substantial hardship, the principles of fairness, how Casa Devon’s master metering the Project will	1-6

¹ Casa Devon does not intend to call each and every one of these witnesses. They are being disclosed as potential witnesses since discovery remains ongoing.

	achieve the underlying purpose of the applicable laws, and how Casa Devon has proven that it is entitled to a waiver or variance.	
Sydne Garchik, MRK Partners, Principal	Testimony will support Casa Devon's Petition, including, but not limited to Casa Devon's mission and purpose for the Project, Casa Devon's dealings with HUD, Casa Devon's HAP Contract, the solar tax credits (ITC), and the financial and scheduling aspects of the Project.	1-6
Cathy Coler, MRK Partners, Director of Operations	Testimony will support Casa Devon's Petition, including, but not limited to Casa Devon's mission and purpose for the Project, Casa Devon's dealings with HUD, Casa Devon's HAP Contract, the solar tax credits (ITC), and the financial and scheduling aspects of the Project.	1-6
Ben Kurzius, MRK Partners, Associate	Testimony will support Casa Devon's Petition, including but not limited the planned Solar Array System, the intended solar tax credits, and the financial and scheduling aspects of the Project that concern the Petition.	1-6
Matthew Solomon, Project Management Consultants, Project Consultant	Testimony will support Casa Devon's Petition, including but not limited to Casa Devon's mission and purpose for the Project and the planned Solar Array System.	1-6
Jeffrey Graef, Project Management Consultants, Project Consultant	Testimony will support Casa Devon's Petition, including but not limited to Casa Devon's mission and purpose for the Project and the planned Solar Array System.	1-6

Denise Kowalske, Sol-Sun, Principal	Testimony will support Casa Devon's Petition, including but not limited to the planned Solar Array System and Project due diligence.	1-6
Adam Brewer, Fun in the Sun Solar, Installations Manager	Testimony will support Casa Devon's Petition, including but not limited to the planned Solar Array System and Project due diligence.	1-6
Stephen Pariseau, Shelter Design Studio, LLC, Principal	Testimony will support Casa Devon's Petition, including but not limited to the planned Solar Array System and Project due diligence.	1-6
Richard Trudelle, EAM Engineers, Inc., Principal	Testimony will support Casa Devon's Petition, including but not limited to the planned Solar Array System and Project due diligence.	1-6
Dave Chasar, FSEC, Professional Engineer	Testimony will support Casa Devon's Petition, including, but not limited to Casa Devon's mission and purpose for the Project, the planned Solar Array System, Utility analysis, and Project due diligence.	1-6
Misty Ponce, Partner Energy, Principal	Testimony will support Casa Devon's Petition, including, but not limited to Casa Devon's mission and purpose for the Project, the planned Solar Array System, Utility analysis, and Project due diligence.	1-6
Matthew D. Smith, Partner Energy, Sustainability Consultant	Testimony will support Casa Devon's Petition, including, but not limited to Casa Devon's mission and purpose for the Project, the planned Solar Array System, Utility analysis, and Project due diligence.	1-6
Antonio Ramudo, Urban Solar, Vice President	Testimony will support Casa Devon's Petition, including,	1-6

	but not limited to, Urban Solar’s agreement with Casa Devon to provide solar energy to this Project, the specifications of the Solar Array System, the amount of electricity that will be conserved and offset by the Solar Array System, the need for master metering on this specific Project, rebuttal to FPL’s statements that this Project could be individually metered, and FPL’s lack of cooperation throughout the entirety of this Project.	
Kimandy Lawrence, PE, Lord & Lawrence, Principal	Testimony will support Casa Devon’s Petition, including, but not limited to, the electrical/engineering specifications of the Solar Array System, the amount of electricity that will be conserved and offset by the Solar Array System, the need for master metering on this specific Project, and rebuttal to FPL’s statements that this Project could be individually metered.	2-5
Rhiannon Vergona, Director of Operations, Urban Solar	Testimony will relate to efforts to communicate and coordinate with FPL concerning the Project, FPL’s communications, the need for such information and information obtained.	3-4
Danielle Beavers, Urban Solar	Testimony will relate to efforts to communicate and coordinate with FPL concerning the Project, FPL’s communications, the need for such information and information obtained.	3-4

Roger Messenger, Professor Emeritus, Florida Atlantic University	Potential expert testimony supporting Casa Devon's petition.	2-5
Thornton Tomasetti – various potential witnesses whom may provide expert testimony, including Jeffrey Jones, Jonathan Devito, and Michael Dowdall	Potential expert testimony supporting Casa Devon's petition.	2-5
The Vertex Companies – various potential witnesses whom may provide expert testimony, including Vince Harriman	Potential expert testimony supporting Casa Devon's petition.	2-5
Barry Jacobson, Solar Impact	Potential expert testimony supporting Casa Devon's petition.	2-5

Casa Devon reserves its right to disclose additional witnesses in accordance with the Commission's Procedural Order, including, but not limited to, any witnesses listed or presented by any other party or intervenor, any impeachment or rebuttal witnesses, as needed, and any additional witnesses revealed through continuing discovery or further investigation.

2. All Known Exhibits:

All pre-filed exhibits that Casa Devon may utilize at the hearing are as follows:

<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
Kyle Hudson	Casa Devon	CD-1	HUD Letter re: Preliminary Approval of Chapter 15/Option 1B Mark-Up-To Market Renewal Request
Kyle Hudson, Antonio Ramudo	Casa Devon	CD-2	Exhibit A-B to the Contract between Casa Devon and Urban Solar
Antonio Ramudo	Casa Devon	CD-3	HelioScope Annual Production Report prepared by Urban Solar

Antonio Ramudo	Casa Devon	CD-4	Sheet PV-1 (One-Line Diagram)
Antonio Ramudo	Casa Devon	CD-5	Email Chain between Urban Solar and FPL
Kimandy Lawrence	Casa Devon	CD-6	Memorandum prepared by Lord & Lawrence Consulting Engineers
Kyle Hudson	Casa Devon	CD-7	Excerpts of the AIA Agreement between Casa Devon and the Contractor and excerpts of the Contract between Casa Devon and Urban Solar showing the deadline for completion of construction.

Casa Devon reserves its right to disclose and utilize additional exhibits in accordance with the Commission’s Procedural Order, including, but not limited to, additional exhibits obtained in discovery or deemed necessary as a result of discovery, any exhibits necessary for rebuttal, cross-examination, or impeachment, or additional exhibits revealed through continuing discovery or further investigation, or necessary to respond to issues or positions presented by other parties.

3. Statement of Basic Position:

The Florida legislature has long included a policy of promoting the development and application of solar energy technologies and passive solar design techniques for achieving its long-standing goals of reducing energy requirements and efficiency. *See* § 187.201(11), Fla. Stat. (2017). As part of these goals and policies, the Florida legislature enacted the Florida Energy Efficiency and Conservation Act (“FEECA”), which tasks the Commission with developing and adopting goals, plans and programs to meet Florida’s energy conservation goals. The Florida legislature declared that the statutory framework set forth within FEECA was to 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, encouraging further development of demand-side renewable energy systems. *See* § 366.81, Fla. Stat. (2014). Based on this framework, the Commission must review and consider Casa Devon's Petition under the auspices of whether Casa Devon's Petition for a Variance or Waiver promotes energy conservation and furthers the Florida legislature's goals and directives assigned to the Commission of promoting solar energy in Florida.

Casa Devon seeks a variance or waiver from rule 25-6.049, Fla. Admin. Code, which ordinarily requires individual electric metering for each separate occupancy unit of residential buildings. The Commission is to grant waivers or variances to such administrative rules so long as the petitioner seeking the waiver or variance satisfies the two-prong test under section 120.542(2), Florida Statutes. If the petitioner satisfies both prongs, the Commission *must* grant the waiver or variance. In Casa Devon's Emergency Petition for Variance or Waiver, Casa Devon satisfied both prongs under section 120.542(2), Florida Statutes. The Commission was misled by FPL's unsupported position that individual metering was feasible to implement the intended Solar Energy System and the irrelevant and unsupported argument that any hardship was Casa Devon's fault, neither of which are correct. These baseless arguments improperly gave the impression that Casa Devon failed to satisfy the prongs under section 120.542(2), Florida Statutes, when in fact Casa Devon met both requirements. Accordingly, Casa Devon has requested this *de novo* proceeding to further set forth the competent, substantial evidence that it has supporting a variance or waiver under section 120.542(2), Florida Statutes.

For the first prong, Casa Devon will establish through substantial, competent evidence that it will incur a substantial hardship or the application of the rule will violate principles of fairness

if the variance or waiver is not granted. Casa Devon will demonstrate that an economic, technological, legal, and other hardship exists and would have existed regardless of the timing of Casa Devon's request for waiver or variance and the timing of Casa Devon's contractual arrangements with HUD. Individual metering would always have prevented Casa Devon from implementing the Solar Energy System, allowing Casa Devon to cover the low-income senior residents' cost of utilities, and permitting Casa Devon to receive the benefit of a Solar Investment Tax Credit tied to the size of the photovoltaic system. Implementation of the Solar Energy System and the associated Solar Investment Tax Credit was an incentive for investors to fund the rehabilitation of the Project, which in turn inures to the benefit of low-income seniors living in Miami-Dade County. In short, individual metering presents a technological, legal, and other hardship to implementing the Solar Energy System regardless of the timing of the requested waiver or variance or other events.

Casa Devon will also set forth evidence that principles of fairness would be violated if a waiver or variance is not granted. The rationale for individual metering simply does not exist under the planned Solar Energy System and accompanying plans whereby residents will not be paying anything for electricity. Denying the benefits of renewable energy for this Project, the residents, and the state as a whole on the basis of a requirement that is rendered meaningless due to the accompanying circumstances is an unfair and unjust result. Principles of fairness are also implicated due to FPL's own actions and inactions concerning this Project. Casa Devon, through its solar contractor Urban Solar, attempted to coordinate this Project with FPL prior to entering into the agreement for the solar system and prior to beginning construction. FPL delayed in its responses. Six months after initial communications, however, FPL finally advised that "FPL will not be able to provide an exemption to the F.A.C." Principles of fairness would be violated here

because denying the variance or waiver would be supporting the apparent efforts by FPL to deny solar energy by end users on this Project and elsewhere.

Meanwhile, most importantly, Casa Devon will set forth irrefutable evidence supporting the second prong – that the underlying purpose of rule 25-6.049, Fla. Admin. Code, will be met through means other than individual metering. The underlying purpose for rule 25-6.049 is two-fold: (1) to prescribe rate classifications and service rules for investor-owned electric utilities under sections 366.05(1) and 366.06(1), Florida Statutes; and (2) to implement conservation policies under FEECA – sections 366.81 and 366.82, Florida Statutes. Here, Casa Devon will establish that approving master metering on this Project will promote (1) fair and reasonable rates/charges for electricity for the tenants at the Casa Devon apartment building and (2) energy conservation, in an amount not possible without master metering, through the increased use of solar energy and the development of renewable energy systems.

Casa Devon will be furthering fair and reasonable rates for the low income senior residents by eliminating what is known as a “Utility Allowance,” 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 is calculated and applied to their rental rates, reducing their overall housing costs. Because Utility Allowances are approximations, they often fail to cover the actual cost of utilities, resulting in additional costs for low-income tenants, and in the case of Casa Devon, low-income seniors. As part of its implementation of the Solar Energy System and the overall development of the Project, Casa Devon is eliminating the Utility Allowance and instead covering all of the cost of utilities for these low income senior citizen residents.

Casa Devon’s master metering will also promote energy conservation and renewable energy because Casa Devon’s Solar Energy System is a large solar photovoltaic array designed to

offset 75% to 85% of the total annual electric consumption for the property over the next twenty-years, with a potential for an additional 16-year extension.² This significant reduction in electricity consumption and the implementation of renewable energy in its place greatly outweighs any potential reductions achievable through individual metering of traditional electricity service. More importantly, individual metering in this instance serves no purpose due to Casa Devon's covering all of the utility bills for these low income residents, and therefore the motivation to reduce consumption simply does not exist when viewed in conjunction with the additional benefits Casa Devon is providing to residents at this low income project. The significant offsetting of electricity usage cannot be achieved if master metering is not permitted, thwarting the twin goals of reducing energy consumption and promotion of renewable energy. 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,

² Casa Devon's Emergency Petition noted energy conservation of 65%-75% but this was a conservative analysis based on the pre-rehabilitated apartment building. Casa Devon's rehabilitation includes other "green" efforts meant to make the building as a whole more energy efficient. Casa Devon expects that its rehabilitation efforts in conjunction with the installation of the Solar Energy System will offset 75%-85% of the current annual electric consumption.

Fla. Stat. (adopting procedure “to provide relief” when “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results...”).

4. Statement of Issues and Positions:

Issue 1:³

Whether the purpose of the statute underlying Rule 25-6.049, F.A.C., the Florida Energy Efficiency and Conservation Act, is to promote energy conservation and reduce electricity consumption?

Casa Devon’s Position:

Yes. The underlying authority giving rise to rule 25-6.049, F.A.C., is FEECA. The Florida legislature enacted FEECA to promote energy conservation and reduce electricity consumption in Florida, furthering Florida’s long-term goals of reducing and controlling the growth rates of electric consumption, increasing the overall efficiency and cost-effectiveness of electricity and, encouraging further development of demand-side renewable energy systems.

Issue 2:

Has Casa Devon demonstrated that the purpose of the statutes underlying Rule 25-6.049(5), F.A.C., will be or has been achieved by other means by Casa Devon?

Casa Devon’s Position:

Yes. Casa Devon will set forth competent, substantial evidence demonstrating that the purposes of FEECA – energy conservation – have been met because master metering the Project will permit Casa Devon to conserve 75%-85% of the current electricity output at the Project. Casa Devon will also establish that the alternative purpose of the underlying statutes giving rise to the rule – rate classification to promote fair and reasonable rates/charges for electricity – will be met through Casa Devon’s plans to fully cover the Casa Devon residents’ electricity bills.

Issue 3:

Has Casa Devon demonstrated that application of Rule 25-6.049(5), F.A.C., would create a “substantial hardship,” as defined by Section 120.542(2) Fla. Stat., to Casa Devon?

Casa Devon’s Position:

Yes. Casa Devon will set forth competent, substantial evidence proving that it would incur a substantial hardship if rule 25-6.049, F.A.C., is applied to this Project because Casa Devon will be unable to (1) install the Solar Energy System designed to offset 75%-85% of the electricity output for the apartment complex; (2) cover the costs of the residents’ electricity bills; (3) receive the Solar Tax Incentive tied to the installation of the Solar Energy System; and (4) comply with its HAP Contract with HUD.

³ This issue is contested by FPL and is being proposed by Casa Devon.

Issue 4: Has Casa Devon demonstrated that application of Rule 25-6.049(5), F.A.C., would violate “principles of fairness,” as defined by Section 120.542(2) Fla. Stat., for Casa Devon?

Casa Devon’s Position: Yes. Casa Devon will set forth competent, substantial evidence establishing that application of rule 25-6.049, F.A.C., would violate principles of fairness because of the manner in which FPL refused to cooperate with Casa Devon during the procurement stages of this Project. Further, application of the rule will impact Casa Devon differently than other similarly situated persons who are subject to the rule because of the nature and mission of this Project, which includes energy conservation and rehabilitation of low-income senior living facilities through the tax incentives associated with the energy conservation goals and implementation.

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

Casa Devon’s Position: Yes. The Commission must grant the variance or waiver if Casa Devon demonstrates substantial, competent evidence supporting issue 2 and issues 3 or 4, which Casa Devon will do.

Issue 6:⁴ Does Casa Devon constitute a “specialized-use housing accommodation” or “similar facilit[y]”, as set forth in Rule 25-6.049(5)(c), F.A.C., such that Casa Devon should be exempt from the individual metering requirement?

Casa Devon’s Position: Yes. Casa Devon will be serving the public welfare by offering low-income housing to senior citizens. This is not any ordinary residential building. It is a specialized building providing residences to fixed-income or low-income senior citizens through the Federal government and HUD. Like the facilities listed in the “specialized-use exemption”, none of the residents of Casa Devon will be paying for utilities and the residence is providing specialized living for a small demographic of the population. As such, the Facility will be serving a “specialized-use” similar to those facilities listed in rule 25-6.049(5)(c). The Commission has granted similar variances or waivers to condo-hotels and specialized living facilities before then determining to make changes and amendments to the rule to address these situations. Application of the exemption will also serve the Commission and FPL’s interests by ensuring that master metering continues to be the exception that is limited to very specialized housing arrangements.

⁴ This issue is contested by FPL and is being proposed by Casa Devon.

Issue 7: Should this docket be closed?

Casa Devon's Position: Yes, following the issuance of an order granting Casa Devon's Corrected Petition.

5. Stipulated Issues:

Casa Devon has not stipulated to any issues at this time.

6. Pending Motions:

Casa Devon has no pending motions at this time.

7. Pending Confidentiality Request:

Casa Devon has no pending confidentiality request at this time. However, Casa Devon does foresee raising confidentiality issues based upon the discovery requests by FPL. Casa Devon anticipates working with FPL first to resolve any such issues but will bring the matter before the Commission if those efforts are unsuccessful.

8. Objections to Witness Qualifications as an Expert:

Casa Devon does not know the identity of any experts other than its own at this time and therefore has no objections at this time. However, all objections to witness qualifications as an expert are reserved.

9. Request for Sequestration:

Casa Devon is not currently waiving its right to request sequestration and will raise this issue at the prehearing conference.

10. Statement of Compliance with Order Establishing Procedure:

There are no requirements of the Order Establishing Procedure with which FPL cannot comply.

11. Other Matters:

Casa Devon does object to one of FPL's proposed issues for determination and if that issue is allowed Casa Devon requests the opportunity to present a counter-issue to it. If other issues are raised for determination at the hearing, Casa Devon respectfully requests an opportunity to submit additional statements of position and, if necessary, file additional testimony.

Dated: October 21st, 2020

/s/ Christopher M. Horton

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