

STATE OF FLORIDA

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



OFFICE OF THE GENERAL COUNSEL  
KEITH C. HETRICK  
GENERAL COUNSEL  
(850) 413-6199

# Public Service Commission

December 17, 2020

Kenneth J. Plante, Coordinator  
Joint Administrative Procedures Committee  
Room 680, Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1400

via e-mail

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

Dear Mr. Plante:

As required by Section 120.542(8), Fla. Stat., this letter provides you with a copy of the Commission's order granting the petition for variance from or waiver of Rule 25-6.049, F.A.C., by Casa Devon Venture, LP (Casa Devon).

On September 2, 2020, the Commission issued its Order No. PSC-2020-0295-PAA-EU, Notice of Proposed Agency Action Order Denying Petition for Emergency Variance from or Waiver of Rule 25-6.049(5)-(6), F.A.C., by Casa Devon Venture, LP. A copy of this proposed agency action order is attached to this letter.

On September 17, 2020, Casa Devon timely filed a Corrected Petition for a Formal Administrative Hearing pursuant to Sections 120.569 and 120.57, Fla. Stat. Florida Power & Light Company was granted intervention. On December 8, 2020, the Commission issued its Order No. PSC-2020-0481-S-EU, Order Granting Joint Motion for Approval of a Stipulation and Settlement Agreement, Consummating, with Modifications, Order No. PSC-2020-0295-PAA-EU, and Granting Rule Waiver. A copy of Order No. PSC-2020-0481-S-EU is attached to this letter.

Please contact me at [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us) if you have any questions or concerns.

Sincerely,

/s/ Kathryn G.W. Cowdery  
Kathryn G.W. Cowdery  
Senior Attorney

KGWC

Enclosures

cc: Office of Commission Clerk (w/encs)

BEFORE THE FLORIDA 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.

DOCKET NO. 20200175-EU  
ORDER NO. PSC-2020-0481-S-EU  
ISSUED: December 8, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman  
ART GRAHAM  
JULIE I. BROWN  
DONALD J. POLMANN  
ANDREW GILES FAY

FINAL ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT,  
CONSUMMATING, WITH MODIFICATIONS, ORDER NO. PSC-2020-0295-PAA-EU, AND  
GRANTING RULE WAIVER

BY THE COMMISSION:

Case Background

On July 1, 2020, Casa Devon Venture, LP (Casa Devon) filed a Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6), Florida Administrative Code (F.A.C.). We denied Casa Devon's petition by Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued on September 2, 2020.

On September 17, 2020, Casa Devon filed a petition for a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.). Casa Devon seeks a final order granting its petition for emergency variance from or waiver of the individual metering requirement of Rule 25-6.049(5), Florida Administrative Code (F.A.C.). On October 6, 2020, Florida Power & Light Company (FPL) filed an unopposed corrected motion for leave to intervene, which was granted by Order No. PSC-2020-0346-PCO-EU, issued on October 7, 2020. Pursuant to Order No. PSC-2020-0335-PCO-EU, issued October 1, 2020 (Order Establishing Procedure), an administrative hearing was scheduled for November 19-20, 2020.

On November 9, 2020, Casa Devon and FPL filed a Joint Motion for a Continuance of the November 19-20, 2020 Hearing on the Merits (Joint Motion for Continuance). Also on November 9, 2020, they filed a Joint Motion for Approval of a Stipulation and Settlement Agreement (Joint Motion to Approve Settlement Agreement). In their Joint Motion for Continuance, Casa Devon and FPL requested that we: (1) consider their Joint Motion to Approve Settlement at the hearing scheduled for November 19, 2020; and (2) continue the hearing on the merits pending the outcome of the disposition of the Joint Motion to Approve

Settlement Agreement. The Joint Motion for Continuance was granted by Order No. PSC-2020-0432-PCO-EU, issued November 10, 2020.

We considered the Joint Motion to Approve Settlement Agreement at the hearing on November 19, 2020. A copy of the Settlement Agreement is appended as Attachment A. We have jurisdiction pursuant to Section 120.542, F.S.

### The Settlement Agreement

In their Joint Motion to Approve Settlement Agreement, Casa Devon and FPL state that after an extensive review and evaluation of Casa Devon's claims and the extensive discovery produced in this case, they entered into a Settlement Agreement. Casa Devon and FPL state that the Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." They further state that the proper standard for our approval of a settlement agreement is whether it is in the public interest. They assert that the Florida Supreme Court has explained that the determination of what is in the public interest rests exclusively with the Commission and that we have broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. They note that we are not required to resolve the merits of every issue independently and that a determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.

Casa Devon and FPL represent in the Settlement Agreement that under the renewed Housing Assistance Program (HAP) Contract with the United States Department of Housing and Urban Development (HUD), Casa Devon has committed to, among other things: (1) renovate the apartment complex; (2) install a solar energy system to reduce the total combined customer load at the apartment complex by an estimated 75 percent to 85 percent; and (3) convert the apartment complex from individually metered units to master metering so that the electric usage at the apartment complex would be paid by Casa Devon and not the tenants.

They state that under the unique circumstances surrounding the issues raised in this proceeding they have stipulated to the master metering of the Casa Devon apartment complex subject to the terms and conditions set forth in the Settlement Agreement. They stipulated that: (1) Casa Devon should have filed its petition for waiver or variance pursuant to Section 120.542, F.S., prior to entering into the HAP Contract with HUD; (2) "substantial hardship" under Section 120.542(2), F.S., may not be demonstrated "by taking actions that bypass the Commission's jurisdiction and the required Commission approval to master meter a facility and then seeking permission to master meter after such actions have been taken;" and (3) on any future projects, the owner or developer will investigate the feasibility of installing micro-inverters or string inverters to be used in conjunction with individual meters. *See* Settlement Agreement, paragraphs 1-3.

They stipulated that the tenants of the Casa Devon apartment complex are and will be low-income elderly lessees, that Casa Devon has committed to pay for all costs to provide each tenant with electricity at all times, regardless of the source, and Casa Devon will not bill the

tenants or otherwise recover said costs for electricity from the tenants of the Casa Devon apartment complex for the duration of the HAP Contract with HUD. *See* Settlement Agreement, paragraph 4.

They stipulated to the unique circumstances surrounding this case, specifically, that Casa Devon's expert concluded that it would be impractical, extremely costly, or impossible to complete the work inside each Casa Devon apartment unit necessary to install individual inverters for each low-income lessee or tenant 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; and the 210 tenants of the Casa Devon apartment complex may have to be relocated during the existing COVID-19 pandemic. *See* Settlement Agreement, paragraph 5.

The Settlement Agreement states that under the unique set of circumstances surrounding the issues raised in this proceeding, FPL has no objection to Casa Devon master metering its project, subject to the terms and conditions of the Settlement Agreement. *See* Settlement Agreement, paragraph 6.

In their Joint Motion to Approve Settlement Agreement, Casa Devon and FPL state that the Settlement Agreement represents a reasonable compromise of competing positions and reflects their collaborative efforts to reach a reasonable and mutually acceptable compromise on all issues. They state that, if approved by us, the Settlement Agreement will validate a series of stipulations that eliminate all issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU. They also state that they believe that approval of the Settlement Agreement will reduce the time and expense that would be incurred to litigate this case, while at the same time conserving Commission time and resources. They further state that they believe that, considered as a whole, the Settlement Agreement fairly and reasonably balances the interests of Casa Devon and FPL and its customers and is consistent with the public interest. They submit that approving the Agreement is consistent with our long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to our regulatory jurisdiction.

Casa Devon and FPL request that we enter a Consummating Order stating that the determinations in Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020, in this docket, shall be deemed final and effective with the express exception of the denial of Casa Devon's initial petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, and that the initial petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049, F.A.C., be granted pursuant to the terms and conditions of the Settlement Agreement.

#### Decision

Based on the unique facts and circumstances of this case, as stipulated to and agreed upon by Casa Devon and FPL, we find that approval of the Settlement Agreement is in the public interest, and we grant the Joint Motion for Approval of a Stipulation and Settlement Agreement.

We further find that Casa Devon has demonstrated that the purpose of the underlying statute will be or has been achieved by other means by Casa Devon and that application of the individual metering requirement of Rule 25-6.049(5), F.A.C., would create a substantial hardship. We hold that the determinations in Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020, in this docket, are deemed final and effective with the express exception of the denial of Casa Devon's initial petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the Proposed Agency Action Order No. PSC-2020-0295-PAA-EU. Casa Devon's initial petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5), F.A.C., is granted as meeting the requirements of Section 120.542(2), F.S., and pursuant to the terms and conditions of the Settlement Agreement and this Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Joint Motion of Casa Devon Venture, LP and Florida Power & Light Company for Approval of a Stipulation and Settlement Agreement is hereby approved, as is the Settlement Agreement, attached hereto as Attachment A. It is further

ORDERED that Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020 in this docket, is final and effective, subject to the modifications set forth in the Stipulation and Settlement Agreement and in body of this Order. It is further

ORDERED that Casa Devon Venture, LP's Petition for Variance from or Waiver of the individual metering requirement of Rule 25-6.049(5), F.A.C., is granted as meeting the requirements of Section 120.542(2), F.S., and pursuant to the terms and conditions of the Stipulation and Settlement Agreement and this Order. It is further

ORDERED that this docket shall be closed upon issuance of this order.

By ORDER of the Florida Public Service Commission this 8th day of December, 2020.



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ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KGWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**BEFORE THE FLORIDA 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, L.P.	Docket No: 20200175-EU Date: November 9, 2020
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**STIPULATION AND SETTLEMENT AGREEMENT**

WHEREAS, Casa Devon Venture, LP (“Casa Devon”) and Florida Power & Light Company (“FPL”) (Casa Devon and FPL are collectively referred to as the “Parties”) have entered into this Stipulation and Settlement Agreement (the “Agreement”) to resolve the issues raised in Docket No. 20200175-EU;

WHEREAS, Casa Devon 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 a Housing Assistance Payments (“HAP”) contract with the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, on January 1, 2020, Casa Devon entered into a HAP contract renewal with HUD for a new twenty-year term, with a preservation agreement that automatically renews the HAP contract for an additional sixteen years, providing affordable housing at the Casa Devon apartment complex until December 31, 2055;

WHEREAS, under the renewed HAP contract with HUD, Casa Devon committed to, among other things; (1) renovate the apartment complex; (2) install a solar energy system to reduce the total combined customer load at the apartment complex by an estimated 75%-85%; and (3) convert the apartment complex from individually metered units to master metering so that the

electric usage at the apartment complex would be paid by Casa Devon and not the tenants (hereinafter the “Project”);

WHEREAS, Commission Rule 25-6.049, Florida Administrative Code (“F.A.C.”), requires individual electric metering by the utility for commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks unless they meet one of the exemptions set forth in subsections (5) of the Rule;

WHEREAS, the Casa Devon apartment tenants are currently individually metered customers of FPL;

WHEREAS, on July 1, 2020, Casa Devon filed a Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6) of the Florida Administrative Code (“Initial Petition”), so that it would be able to master meter its Casa Devon apartment building. As alternative relief, Casa Devon asked that if the Commission did not grant the variance or waiver, it should find that Casa Devon does not need a rule variance or waiver because the Casa Devon apartment building falls within one of the individual metering requirement exceptions described in Rule 25-6.049(5)(c) or (d), F.A.C.;

WHEREAS, on July 27, 2020, FPL submitted comments for the Florida Public Service Commission’s (the “Commission”) consideration as it reviewed and decided the merits of Casa Devon’s Initial Petition;

WHEREAS, the Commission considered Casa Devon’s Initial Petition during its August 18, 2020 Agenda Conference. At the conclusion of the Commission’s deliberations on this item, the Commission voted to deny Casa Devon’s Initial Petition;

WHEREAS, on September 2, 2020, the Commission issued a Notice of Proposed Agency Action Order No. PSC-2020-0295-PAA-EU (“PAA Order”), denying Casa Devon’s request for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5) and (6), F.A.C., as well as Casa Devon’s alternative request for relief;

WHEREAS, on September 17, 2020, Casa Devon filed a Petition and Corrected Petition for Formal Administrative Hearing (“Hearing Petition”), protesting the Commission’s PAA Order;

WHEREAS, on October 1, 2020, the Commission issued an Order Establishing Procedure, setting a procedural schedule and scheduling Casa Devon’s Hearing Petition for a hearing on November 19-20, 2020;

WHEREAS, on October 5, 2020, FPL filed a Motion to Intervene, which was granted by Commission Order issued October 7, 2020;

WHEREAS, the Parties and Commission Staff have engaged in extensive discovery regarding the Project and the claims made in Casa Devon’s Hearing Petition, resulting in the production of more than 2,500 pages of documents by the Parties;

WHEREAS, after an extensive review and evaluation of Casa Devon’s Project and claims, as well as the extensive discovery produced in this case, the Parties to this Agreement have worked collaboratively to reach a full and complete resolution and settlement of all issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU subject to the terms and conditions specified in this Agreement;

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366, and 120, Florida Statutes (“F.S.”),

as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission, without modification, as to all matters addressed herein with respect to all Parties, upon acceptance of the Agreement as provided herein and upon approval as in the public interest; and

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

**TERMS OF AGREEMENT**

1. The Parties stipulate that the appropriate course of action for Casa Devon in this case was to file a petition with the Commission pursuant to Section 120.542, F.S., requesting a waiver or variance of the individual metering requirements of Rule 25-6.049, F.A.C., to master meter the Casa Devon facility prior to entering into the HAP Contract with HUD.
2. The Parties further stipulate that a party may not demonstrate “substantial hardship” from the application of a duly promulgated rule, as defined by Section 120.542(2), F. S., which is required in order for the Commission to grant a rule waiver or variance, by taking actions that bypass the Commission’s jurisdiction and the required Commission approval to master meter a facility and then seeking permission to master meter after such actions have been taken.
3. The Parties further stipulate that on any future projects, to the extent feasible for new or existing multi-tenant buildings intending to install solar panels, the owner or developer of the multi-tenant building shall take all necessary steps and due diligence to investigate the

feasibility of installing micro-inverters or string inverters to be used in conjunction with the individual meters.

4. The Parties further stipulate that the tenants of the Casa Devon apartment complex are and will be low-income elderly lessees, and that Casa Devon has committed to pay for all costs to provide each tenant with electricity at all times, regardless of the source, and Casa Devon will not bill the tenants or otherwise recover said costs for electricity from the tenants of the Casa Devon apartment complex for the duration of the HAP Contract with HUD.
5. The Parties further stipulate that Casa Devon's expert concluded that it would be impractical, extremely costly, or impossible to complete the work inside each Casa Devon apartment unit necessary to install individual inverters for each low-income lessee or tenant 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; and the 210 tenants of the Casa Devon apartment complex may have to be relocated during the existing COVID-19 pandemic.
6. Under the unique circumstances surrounding the issues raised in this proceeding, including the stipulated terms in paragraphs 4 and 5 above, and subject to the terms and conditions below in paragraph 7, FPL takes the position that it has no objection under this unique set of circumstances to the master metering of the Casa Devon apartment complex.
7. FPL's position that it has no objection to the master metering is predicated and conditioned on the following:
  - a. That the stipulations set forth in paragraphs 1-3 above shall reflect Commission precedent.

- b. That the Commission will, based upon the unique circumstances described in paragraphs 4, 5, and 6, grant Casa Devon a waiver or variance from Rule 25-6.049, F.A.C., in accordance with the terms of this Agreement, permitting Casa Devon to master meter the apartment building to install the solar energy system it intends to install.
- c. That Casa Devon shall file a notice of voluntary dismissal with prejudice of its Hearing Petition within five (5) days after a Commission vote approving the Agreement, and the Commission shall issue a Consummating Order within twenty (20) days after the vote approving this Agreement stating that the determinations in the PAA Order shall be deemed final and effective with the express exception of the denial of Casa Devon's Initial Petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the PAA Order, which Initial Petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049, F.A.C., shall be granted pursuant to the terms and conditions of the Agreement.
- d. That the determinations concerning "substantial hardship" in the PAA Order shall reflect Commission precedent as applied to any future substantially or materially similar set of facts.
- e. That Casa Devon will pay FPL for costs of work that must be carried out by FPL to implement the master metering at the Casa Devon apartment complex, including, if applicable, the removal of the individual meters, the costs of installation of the master meter, and, if applicable, the costs for associated sub-meters, infrastructure, improvements, or equipment necessary on the Casa Devon apartment complex site.

- f. Casa Devon will make a \$25,000 tax-deductible, charitable contribution to FPL's Care to Share program for distribution to local agencies to assist customers in need of financial assistance to pay their electric bills.
- 8. It is understood and agreed that this Agreement is a compromise between the Parties regarding a disputed petition for a variance or waiver, and that the stipulations made by the Parties are in furtherance of this Agreement and not an admission by either party of any disputed issues.

**OTHER PROVISIONS**

- 9. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification.
- 10. Except as expressly set out herein, no Party agrees, concedes, or waives any position with respect to any of the issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU, and this Agreement does not expressly address any specific issue or any position taken thereon.
- 11. The Parties will support approval of the Agreement and will not request or support any order, relief, outcome, or result in conflict with it. No Party to the Agreement will request, support, or seek to impose a change to any provision of the Agreement.
- 12. Approval of the Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final and the Consummating Order has been issued. No Party to the Agreement will seek appellate review of any order issued in this docket.

13. The Parties agree that approval of the Agreement is in the public interest.
14. This Agreement may be executed in counterpart originals, and a scanned pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

*FLORIDA POWER & LIGHT COMPANY*

By: \_\_\_\_\_  
R. Wade Litchfield  
Vice President and General Counsel  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

*CASA DEVON VENTURE LP*

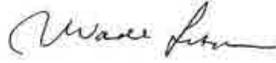
By: Sydne Garchik  
Sydne Garchik  
Principal  
Casa Devon Venture LP  
c/o MRK Partners, Inc.  
5230 Pacific Concourse Dr., Ste. 350  
Los Angeles, CA 90045

13. The Parties agree that approval of the Agreement is in the public interest.
14. This Agreement may be executed in counterpart originals, and a scanned pdf copy of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

*FLORIDA POWER & LIGHT COMPANY*

*CASA DEVON VENTURE, LP*

By:   
\_\_\_\_\_  
R. Wade Litchfield  
Vice President and General Counsel  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

By: \_\_\_\_\_  
Sydne Garchik  
Manager  
Casa Devon Venture, L.P.  
5230 Pacific Concourse Dr., Ste. 350  
Los Angeles, CA 90045

BEFORE THE FLORIDA 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.

DOCKET NO. 20200175-EU  
ORDER NO. PSC-2020-0295-PAA-EU  
ISSUED: September 2, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman  
ART GRAHAM  
JULIE I. BROWN  
DONALD J. POLMANN  
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DENYING PETITION FOR EMERGENCY VARIANCE FROM OR WAIVER OF  
RULE 25-6.049(5)-(6), F.A.C., BY CASA DEVON VENTURE, LP

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

I. 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 we do not grant the variance, we 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.

A. 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 individual metering requirement in Rule 25-6.049(5), F.A.C., is based on our 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 (FEECA). 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. 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.

Rule 25-6.049(5), F.A.C., 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 purpose of FEECA 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.

#### B. 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 additional 16 years, guaranteeing affordable housing at the facility until December 31, 2055. Exhibit A to the Petition shows that, 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.

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 we do not grant its request for variance or waiver, Casa Devon asks us 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.

### C. 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, we published notice of receipt of the

emergency petition on our 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. On July 27, 2020, FPL filed comments opposing Casa Devon's waiver request. Even though FPL filed its comments after this 5-day period, there was sufficient time for the comments to be reviewed and addressed. In addition, both FPL and Casa Devon representatives participated at the Agenda Conference. We have jurisdiction pursuant to Sections 120.542, 366.04, 366.05, and 366.81, F.S.

## II. Discussion

### A. Legal Standard for Rule Waivers or Variances

Section 120.542(1), F.S., states that the purpose of a rule variance or waiver<sup>1</sup> 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, our 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.

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

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<sup>1</sup> 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.

(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.

#### B. Request to Consider the Petition on an Emergency Basis

Casa Devon requests that its petition be considered on an emergency basis. Casa Devon states that in May 2020, it was advised by FPL that FPL 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 states that 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.

Casa Devon has the burden of demonstrating specific facts that make the situation an emergency and show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided for non-emergency requests. We find that the situation that Casa Devon finds itself in was of its own making. Casa Devon should have become aware of the Commission rules and known that it needed a rule waiver prior to May 2020, and should have come to the Commission requesting a waiver prior to entering into the HUD contract. For this reason, we deny Casa Devon's request to consider the petition on an emergency basis.

#### C. 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 the Casa Devon apartment tenants are individually metered today, and that Casa Devon could install solar panels and employ a number of different designs, the most common of which would involve the use of 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.

FPL argues that the fundamental deficiency in Casa Devon’s request for a waiver or variance of Rule 25-6.049, F.A.C., lies in the consideration of the purpose of the rule. FPL states that the Commission has been clear for decades that the purpose of the individual metering requirement, consistent with Section 366.81, F.S., of FEECA, lies in the desire to promote energy conservation with regard to energy consumption, and this energy conservation cannot be achieved in temporarily occupied units. FPL states that the Casa Devon apartment does not have temporarily occupied units, and thus 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. FPL states that the Casa Devon tenants currently have the typical motivation to save energy and reduce their electric bills as individually metered customers because they can control their consumption and save energy.

In order to be granted a variance to the individual metering requirement of Rule 25-6.049(5), F.A.C., Casa Devon has the burden of demonstrating that it will achieve the purpose of the rule’s underlying statutes by other means. The purpose the individual metering requirement of Rule 25-6.049(5), F.A.C., comes from the direction of Section 366.081, F.S., which is part of FEECA. Casa Devon tenants currently have the typical motivation to save energy and reduce their electric bills as individually metered customers because they can control their consumption and save energy. Casa Devon has not shown that the Casa Devon apartment tenants will benefit from changing to master metering.

We find that Casa Devon has not met its burden of demonstrating that it will achieve the purpose of the rule’s underlying statute by other means. Casa Devon has not shown that changing from individually metered apartments to master metered apartments will promote energy conservation with regard to energy consumption.

#### D. 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 would 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 very large 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 approximately \$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. At the Agenda Conference, Casa Devon specified that individual metering of customers was not a feasible alternative with the solar energy system it planned to install.

FPL argues that Casa Devon's purported need for a waiver, professed economic hardship, and need to rely on principles of fairness have been caused by its own actions. FPL states that Casa Devon's petition reflects that Casa Devon negotiated its agreement with HUD, including an agreement to master meter, without first consulting our rules to determine whether it could in fact do so. FPL argues that a party who enters into an agreement first, makes financial commitments, and then comes to us to request a waiver inappropriately places us in the unenviable position of deciding whether to grant the requested relief knowing that the petitioner has already made financial commitments.

As previously stated, FPL argues that as an alternative to master metering, Casa Devon could install its solar panels and employ a number of different designs, the most common of which would involve the use of 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. At the Agenda Conference, FPL stated 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. With regard to the \$300,000 Solar Tax Credit, FPL stated that the 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. FPL also stated that based on a review of HUD's website, HUD accepts individual metering, so it is not a HUD requirement that the apartments be master metered.

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

In addition to its other comments, FPL states that based upon the materials filed with us, 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. FPL notes 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.

Casa Devon has the burden of demonstrating that application of the individual metering requirement of Rule 25-6.049(5), F.A.C., would create a substantial hardship or violate principles of fairness. Based on the facts before us, we find that Casa Devon's need for a waiver and any economic or legal hardship was caused by its own actions. In particular we note that Casa Devon negotiated its agreement with HUD, including an agreement to master meter, without first consulting the Commission's rules and requesting a waiver or variance. Moreover, FPL states 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. Thus, we find that Casa Devon has not met its burden of demonstrating that application of Rule 25-6.049(5), F.A.C., to its situation would create a substantial hardship or violate principles of fairness.

### III. Conclusion

For the reasons stated above, we deny Casa Devon's petition for emergency variance from or waiver of Rule 25-6.049(5), F.A.C. 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, and that request is therefore denied.

Further, Casa Devon requested, alternatively, that if we do not grant a variance or waiver from the individual metering requirement, we 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. Casa Devon's alternative request for us to give our 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 reason, we are not considering Casa Devon's alternative relief request.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Casa Devon Venture, LP's emergency petition for variance from or waiver of Rule 25-6.049(5)-(6), F.A.C., is denied for the reasons set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is received to the proposed agency action, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of September, 2020.

  
\_\_\_\_\_  
ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

DISSENTS

Commissioners Julie I. Brown and Andrew Giles Faye dissent from the Commission's decision.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 23, 2020.

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

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**From:** [Kathryn Cowdery](#)  
**To:** [japc@leg.state.fl.us](mailto:japc@leg.state.fl.us)  
**Cc:** [Julie Phillips](#)  
**Subject:** FW: Disposition of Petition for Waiver or Vaiance - PSC Dkt 20200175-EU  
**Date:** Thursday, December 17, 2020 2:44:49 PM  
**Attachments:** [20200175-EU.JAPC disposition letter.pdf](#)

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Here is the attachment.

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**From:** Kathryn Cowdery  
**Sent:** Thursday, December 17, 2020 2:30 PM  
**To:** [japc@leg.state.fl.us](mailto:japc@leg.state.fl.us)  
**Cc:** Julie Phillips  
**Subject:** Disposition of Petition for Waiver or Vaiance - PSC Dkt 20200175-EU

Good afternoon: Attached is a letter containing the information required by Section 120.542(8), Fla. Stat., concerning a petition for variance or waiver in PSC Docket 20200175-EU.

Please confirm receipt of this e-mail by Reply All. Please let me know if you have any questions.

Thank you.

Kathryn Cowdery  
Senior Attorney  
Florida Public Service Commission