



# Public Service Commission

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RECORDS AND REPORTING

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**DATE:** August 6, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF ELECTRIC AND GAS (WHEELER) *plw*  
DIVISION OF LEGAL SERVICES (JAYE) *RVL*

**RE:** DOCKET NO. 980667-EU - PETITION BY HOLIDAY VILLAS II CONDOMINIUM ASSOCIATION, INC. FOR VARIANCE FROM OR WAIVER OF RULE 25-6.049(5)(A), F.A.C., REGARDING ELECTRIC METERING.

**AGENDA:** 8/18/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980667.RCM

### CASE BACKGROUND

The petitioner, Holiday Villas II Condominium Association, Inc. (HVIICA), is requesting a waiver of the requirements of Rule 25-6.049(5)(a), Florida Administrative Code. This rule sets forth the conditions under which individual occupancy units must be metered by the utility. It states that all occupancy units in condominiums are required to be individually metered. The petitioner seeks a waiver from this requirement. The waiver would allow HVIICA to convert its existing individual meters to a single master meter which would measure usage for all of its units.

**ISSUE 1:** Should the Commission grant Holiday Villas II Condominium Association's request for waiver of the requirements of Rule 25-6.049(5)(a), Florida Administrative Code?

**RECOMMENDATION:** Yes. [WHEELER]

**STAFF ANALYSIS:** The petitioner, HVIICA, is a not-for-profit corporation which operates Holiday Villas II Condominium (the condominium), a 72-unit condominium located in Indian Shores, Florida. Florida Power Corporation (FPC) serves the condominium. Currently, the occupancy units of the condominium are individually metered, and bills for electric service are sent to and paid by the individual unit owners. The units are billed on FPC's residential rate.

HVIICA asserts that its condominium is operated and licensed as a "resort condominium" as defined in Section 509.242(1), Florida Statutes. In response to staff discovery, HVIICA indicates that only two of the 72 units are used for permanent occupancy. They assert that the remaining unit owners do not occupy their units on a year-round basis, but treat their units as investments which are let on a daily or weekly basis to vacationers. HVIICA maintains a registration desk and lobby where guests are required to check in and check out, and a central telephone switchboard. The condominium is in direct competition with hotels and motels in the area for business.

Recently, HVIICA asked FPC to convert their individual meters to a single master meter which would serve the entire condominium. FPC declined to do so, citing Rule 25-6.049(5)(a), Florida Administrative Code, which requires the utility to individually meter the condominium units. The relevant portion of the rule reads as follows:

(5)(a) Individual electric metering by the utility shall be required for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction is commenced after January 1, 1981. (Emphasis added.)

HVIICA now seeks a waiver which would allow the condominium to convert to a single master meter which would serve all of the occupancy units. This conversion would allow HVIICA to switch from

separate residential accounts to a single commercial account, which would likely result in lower electricity costs.

I. REQUIREMENTS OF SECTION 120.542(5), FLORIDA STATUTES

Section 120.542(1), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules shall be granted:

. . . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship . . . . For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

A. THE PURPOSES OF THE UNDERLYING STATUTE

Section 366.05(1), Florida Statutes, states in pertinent part:

In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility . . . .

Rule 25-6.049(5)(a), Florida Administrative Code requires HVIICA, as a condominium constructed after January 1, 1981, to have individual meters.

In Docket No. 960020-EU, the Commission amended rule 25-6.049, Florida Administrative Code, to exempt timeshare plans from the individual metering requirement. In a timeshare plan, owners purchase the right to use a unit for a specified period of time, typically one week. The units are not utilized for permanent occupancy, and operate in a manner similar to hotels and motels. As such, the electricity usage patterns of timeshare plans are more similar to motels and hotels than those of facilities which are used for year-round residential occupancy. Therefore, allowing timeshare plans to take service under a single commercial account in lieu of individual residential accounts does not result in a rate inequity. Based on the representations of the petitioner, the

same reasoning would apply to HVIICA, because its facility is operated in a manner similar to timeshare plans, hotels and motels.

If the individual metering rule requirement is waived for HVIICA, the individual occupancy units will no longer be metered and billed by FPC. However, HVIICA has indicated that it will install submetering devices which will measure the usage of the individual units, and allow the member unit owners to be billed for their usage. Pursuant to Section 120.542, Florida Statutes, the petitioner must demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the person. Staff believes that if, as a condition of the waiver, HVIICA is required to submeter the individual units and apportion FPC's billed cost of electricity to the unit owners, the purpose of the statute will be fulfilled. Staff recognizes that HVIICA is a self-governing corporation whose members are unit owners in the condominium. The unit owners control HVIICA through the election of its board of directors, and thus can insure that electricity costs are billed based upon actual usage.

#### B. SUBSTANTIAL HARDSHIP/PRINCIPLES OF FAIRNESS

Substantial hardship is defined as a demonstrated economic, technologic, legal or other type of hardship to the person requesting the waiver. 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.

HVIICA believes that it is at a competitive disadvantage because it is not allowed to convert to master metering. Rule 25-6.049, Florida Administrative Code, specifically exempts hotels and motels from the individual metering requirement. HVIICA requests a waiver from the individual metering requirement for as long as they are licensed and operated as a "resort condominium." In response to interrogatories, HVIICA indicates that it intends to install its own submetering equipment on the units to measure electricity use and allocate costs to the individual unit owners.

Staff believes that the application of Rule 25-6.049, Florida Administrative Code, in this particular instance results in different treatment to similarly situated facilities. HVIICA operates in a manner similar to timeshare plans, hotels, and motels, which are exempted from the master metering requirement. Staff believes that this disparity, and the higher cost paid by HVIICA constitutes a substantial hardship within the meaning of Section 120.542, Florida Statutes. Staff believes that the

similarities of the facilities are sufficient to grant HVIICA's request for a waiver of Rule 25-6.049(5)(a), Florida Administrative Code.

## II. CONCLUSION

Staff believes that the requested rule waiver should be granted, provided that:

1. HVIICA installs individual meters for each unit to measure usage and bills each unit owner based on their unit's electricity usage.
2. The waiver is effective only so long as the condominium is operated and licensed pursuant to Section 509.242(1), Florida Statutes. At such time the condominium is no longer so operated and licensed, HVIICA must immediately inform the utility, at which time the utility will install individual meters on all the occupancy units.

DOCKET NO. 980667-EU  
DATE: August 6, 1998

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no protest is filed within 21 days of the issuance of this order. [JAYE]

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the order to file a protest. If no timely protest is filed, the docket should be closed.