

Florida Public Service Commission

May, 11, 2015

Attn: Clerk's Office

SUBJECT: Petition for Waiver

I have attached a [Petition for Waiver of Rule 25-6.049\(5\), F.A.C.](#). I hereby ask the Clerk's Office to open a docket for the processing of this petition.

Sincerely,

s/ [\(Ken Wegner May 11,2015\)](#)

A. [Petition for Waiver of Rule 25-6.049\(5\), F.A.C.](#) Before Florida Department of Public Services

B. Petitioner: WISCAN, LLC address: 1745 Chatham ST Racine, WI 53402 email: wiscan@aol.com  
phone: 262-488-3470 Ken Wegner

C. Petitioner's Attorney: None at this time

D. Rule 25-6.049(5) and DEF Tariff, Third revised Sheet No. 4.032, #3.02

E. The citation to the statute the rule is implementing are sections of 366.81 and 366.82 F.S.

F. Waiver of Rule 25-6049(5) section pertaining to "service continuously since January 1, 1981"

G. These rules interfere with my plans to reopen a Store that was intentionally put out of business by the discriminatory actions of a Condominium Board. I was not the owner of the Store at that time, but the fact is that the power was disconnected from the Store by Duke Energy (or Duke Energy's predecessor Progressive Energy) at the direction of the Condominium Manager not due to non-payment of electric charges but rather in retaliation for the Store owner's other business practices as Developer of the Condominium. This interruption of power according to the FPSC staff understanding of the FPSC rules prevents Duke Energy from reconnecting the Store.

Duke Energy states that due to these regulations the only way power could be provided to the landlocked Store is with a separate electric service which requires running new power supply lines below ground at considerable expense to my company. This approach would also require easements from the very same Condominium Board that presently refuses to grant the Store connection to the existing electric services which Duke energy could reconnect in less than 1 hour. These buried power cables would pass beneath a campground, a storage lot, several roadways and terrain with many private underground utilities not clearly located on existing condominium utility plan drawings. In my opinion as a condominium owner, a newly elected member of the Condominium Board, and a Professional Engineer; the addition of the new buried power cables is bad for the condominium (adds unnecessary risk and complicates future development) and is a waste of capital.

I have consulted attorneys on this matter and they feel that the Store would prevail in court, but my concern is that the Judge could make a ruling that would end the discriminatory practices of the Condominium Board by ending the Condominium's Primary Service Agreement with Duke Energy. If all of the other 750 users of electricity in the park were forced to have individual meters there would be at least \$300,000 in infrastructure improvements required to meet Duke Energy standards and every user would see an increase in their monthly charges of at least 20% as the Primary Service Agreement provides electricity at a lower rate per kw-hr than individual meters (this comparison was made with a nearby community that has individual meters). This result

would be devastating to the community, but good for Duke Energy (more revenue for same demand), and a relatively inexpensive option for the Store.

As a newly elected Condominium Board member I can see why the Condominium Association would prefer not to provide power to the Store for billing, collection and maintenance reasons and that is why I decided to pursue all options before starting a lawsuit that has no guarantee of success or quick resolution. When I made my first request to the FPSC for assistance, I was told it was a matter for Duke Energy, but then Duke Energy stated that it was a matter for the FPSC due to the rules, and as FPSC staff member Ms. Elisabeth Draper indicates it is the FPSC rules that are stopping an otherwise workable solution.

This is why I need a waiver from the rules cited to allow Duke Energy to provide a separate meter at the Store connected to the existing supply line and to bill the Store separately and then deduct the amount billed to the Store from the amount billed to the Condominium Association. You might be thinking that if we allow this here then we would have to allow it everywhere and I would agree, but I highly doubt that there are any other landlocked electric users that received service for over 30 years only to be denied service due to discriminatory practices. As it stands today this FPSC staff ruling prevents me from obtaining a building occupancy permit which is a basic requirement for reopening an enterprise which closed when the power was illegally disconnected, causing the Community to lose a valuable asset (according to most members that live there) and also caused a number of people to lose their jobs.

I have attached my email correspondence on this matter for your review. Thank-you for your consideration in this matter:

1. FPSC Filing History.pdf
2. Duke Attorney.pdf

1. FPSC Filing History.pdf

Elisabeth,

Thanks for the response just a couple of comments shown in text. I will be filing for a "formal finding of fact" as you mentioned

and I will be forwarding this email to DEF with my additional comments and additional requests.

Thanks, Ken Wegner

-----Original Message-----

From: Elisabeth Draper <EDraper@PSC.STATE.FL.US>

To: 'wiscan@aol.com' <wiscan@aol.com>

Cc: Patti Daniel <PDaniel@PSC.STATE.FL.US>; Jim Dean <jdean@PSC.STATE.FL.US>; Rick Moses <RMoses@PSC.STATE.FL.US>; matthew.bernier <matthew.bernier@duke-energy.com>

Sent: Mon, Feb 23, 2015 3:28 pm

Subject: store

Dear Mr. Wegner:

Pursuant to your request, Florida Public Service Commission (Commission) staff has prepared a preliminary assessment regarding the provision of electric service by Duke Energy Florida (DEF) to your property in Apopka, Florida.

Staff's understanding of the relevant facts is as follows:

The Sun Resorts Trading Post (Store) built in 1970 and currently owned by Wiscan LLC,[1] is "landlocked" by property that is owned or controlled by the Clarcona Resort Condominium Association (Association).

There is no electric service to the Store at this time.

The Association will not agree to reinstate an historical master-metered arrangement for electric service to the Store. (Association's position is that it would be illegal to provide service because they are a not-for-profit and the Store is a for-profit enterprise)

DEF states in its February 2, 2015 letter to you that pursuant to Rule 25-6.049(5), Florida Administrative Code (F.A.C.), new facilities must be installed to provide individually metered electric service to the Store.

Rule 25-6.049(5), F.A.C., states: "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. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since January 1, 1981." As such, pre-1981 occupancy units must have been master-metered continuously since January 1, 1981 to be exempt from individual metering. ***(The Store received power from day one until August of 2011 when it was disconnected due to litigation which was settled in December 2014)***

Staff's preliminary assessment based on information available at this time is as follows:

The Store meets the definition of "occupancy unit" as defined in Rule 25-6.049(8), F.A.C. ***(the Store is not a "new commercial establishment", it is an existing commercial establishment)***

The Store does not qualify for any of the individual metering exemptions listed in Rules 25-6.049(5)(a) through 25-6.049(5)(g), F.A.C.

Although the Store was built prior to January 1, 1981, it has not received master-metered service continuously since that date; therefore, it must be individually metered.

This represents staff's opinion of the applicability of Rule 25-6.049(5), F.A.C., to your situation. If you wish to obtain a formal finding of fact issued by the Commission, you may file a Petition for Declaratory Statement pursuant to Section 120.565, Florida Statutes (F.S.), and Rule 28-105.002, F.A.C.

Best regards,

Elisabeth Draper

Economic Supervisor

Division of Economics

Cc: Matt Bernier, DEF

[2. Duke Attorney.pdf](#)



Matthew R. Bernier  
Senior Counsel

March 12, 2015

VIA ELECTRONIC MAIL

Mr. Ken Wegner  
1745 Chatham Street  
Racine, WI 53402

Dear Mr. Wegner,

I'm writing in response to your email dated February 25, 2015, addressed to Ms. Andrea Cleland ("February 25<sup>th</sup> email" or "email"). In your email, you express disagreement with Duke Energy Florida's ("DEF") and the Public Service Commission Staff's ("Staff") conclusion that your property needs to be individually metered to receive electric service from DEF and that your service cannot flow through, and then have your usage subtracted from, the Association's meter. In your email, you also propose an alternative arrangement whereby you would become the "master metered" customer and would render bills to the Association.

I first note that DEF adheres to its position outlined in the February 2, 2015, letter. DEF also agrees with the Staff's position outlined in Ms. Elisabeth Draper's email dated February 23, 2015.

Regarding the alternative arrangement you propose, DEF cannot provide service under the terms of your proposal. Rule 25-6.049(5)(a)-(g), F.A.C., provides the list of those types of accounts that qualify for master metering – i.e., those types of accounts that do not require individual metering. In pertinent part, that rule provides:

(5) 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. However, individual metering shall not be required for any such occupancy unit for which a construction permit was issued before, and which has received master-metered service continuously since January 1, 1981. In addition, individual electric meters shall not be required:

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(a) In those portions of a commercial establishment where the floor space dimensions or physical configuration of the units are subject to alteration, as evidenced by non-structural element partition walls, unless the utility determines that adequate provisions can be made to modify the metering to accurately reflect such alterations;

(b) For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems;

(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;

(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);

(e) For separate, specially-designated areas for overnight occupancy, as defined in paragraph (8)(b), at trailer, mobile home and recreational vehicle parks and marinas where permanent residency is not established;

(f) For new and existing time-share plans, provided that all of the occupancy units which are served by the master meter or meters are committed to a time-share plan as defined in Chapter 721, F.S., and none of the occupancy units are used for permanent occupancy.

(g) For condominiums that meet the following criteria:

1. The declaration of condominium requires that at least 95 percent of the units are used solely for overnight occupancy as defined in paragraph (8)(b) of this rule;

2. A registration desk, lobby and central telephone switchboard are maintained; and

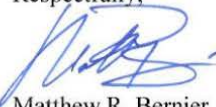
3. A record is kept for each unit showing each check-in and check-out date for the unit, and the name(s) of the individual(s) registered to occupy the unit between each check-in and check-out date.



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Your account does not fit into any of the provided exceptions. Therefore, the alternative arrangement is not permitted under the Public Service Commission's rules and DEF cannot legally provide service to you or any other customer who does not qualify under the Rule's exceptions as a master metered customer.

Respectfully,  
  
Matthew R. Bernier  
Senior Counsel

MRB/db

H. The reason why the waiver requested would serve the purposes of the underlying statutes such as conservation and reducing the growth rate of energy consumption. All units in the condominium are individually metered and therefore the occupants do not receive any benefit from the primary meter as they pay for every kilowatt used. The store is not a new load and since the energy costs are an operating expense every business owner strives to lower usage and this includes more efficient lighting, refrigeration units, and HVAC equipment, but the big savings is in gasoline which is not consumed by Condo Owners when they have to drive out of the Park for every item they require.

I. This waiver should be permanent as the Store will always be landlocked by the CRCA.

s/ (Ken Wegner May 11, 2015)