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July 12, 2019

Florida Public Service Commission
Attn: Commission Clerk
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 20190094-EU; Petition for variance from or waiver of Rule 25-6.049(5) and (6), F.A.C. by Calypso Towers III, LLC

Dear Mr. Teitzman:

I am writing on behalf of Gulf Power Company (“Gulf Power” or the “Company”) in regard to the petition for variance from or waiver of Rule 25-6.049(5) and (6), F.A.C. filed by Calypso Towers III, LLC (the “Petition”) in the above-referenced docket.

With some exceptions, Rule 25-6.049 requires individual electric metering for all separate occupancy units of new commercial and residential buildings, including condominiums. The requirement that individual occupancy units be individually metered serves the conservation goals of the Florida Energy Efficiency and Conservation Act because unit owners who are responsible for paying based on their actual electricity consumption are more likely to conserve to minimize their bills. The types of facilities exempted from the individual metering requirement are those for which it is not practical to attribute usage to individual occupants due to their nature or mode of operation.¹ One such exemption, which is directly applicable to this docket, is 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 the 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.

See, Rule 25-6.049(5)(g), F.A.C.

¹ The objective of the exemption is not to provide for the lowest possible energy cost to customers but to permit, in appropriate situations, a single, master meter and bill where individual metering and billing of actual occupants in a facility is not easily accomplished. Individual metering is required in order to serve the conservation goals of FEECA, irrespective of whether a building owner takes any other additional steps to ensure the overall building uses electricity efficiently, such as the use of motion sensors.

Having reviewed the Petition and responses to Commission Staff Data Requests submitted by the petitioner, it appears that subsection (5)(g)1 of the rule will not be met. Moreover, it is not clear from the Petition and responses to Data Requests whether subsections (5)(g) 2-3 will be strictly satisfied. For example, in Staff Data Request No. 6, Staff inquired as to whether Calypso III will have “a registration desk, lobby and central telephone switchboard.” In response, Calypso III stated that “there is a hospitality area on the first floor. This location will be used by many of the guests to check in and check out. However, owners are not obligated to use this desk to access their individual unit.” See, Calypso Response to Staff DR No. 6. It is unclear from Calypso III’s response whether it will, in fact, have a registration desk, lobby and central telephone switchboard. It is also unclear from Calypso III’s response to Staff Data Request No. 7, whether it will maintain a record of all rentals/occupants, or only those that register through the onsite rental management company.

Regarding subsection (5)(g)1 of the rule, the Declaration of Condominium submitted in response to Staff Data Request No. 1 does not appear to require that any --let alone 95%-- of the occupancy units be reserved solely for overnight occupancy. See, Article IX(D)(1). Rather, the Declaration appears to allow unit owners to reside permanently in any or all units; provided, however, that if the unit owner chooses to rent the unit, they must do so for a period of at least three nights. A requirement in the declaration of condominium that a substantial portion of units will be used solely for overnight occupancy provides the Commission with assurance that the condominium will operate in a manner akin to a public lodging establishment. Although the Commission has customarily granted rule waivers in instances where the declaration of condominium reserved fewer than 95 percent of occupancy units for overnight occupancy², it is less common for waivers to be granted where a declaration of condominium contains no restrictions on year-round occupancy.³

Moreover, despite the assertion contained in paragraph VIII of its petition to the contrary, Calypso III indicates in response to Staff Data Request No. 3 that it does not intend to register as a public lodging facility pursuant to section 509.241, Florida Statutes. On June 13, 2019, Staff issued a subsequent data request inquiring as to the rationale for not registering as a public lodging facility and seeking clarification as to whether Calypso III intends to “share” a public lodging license with other condominiums within the Calypso Resort complex. See, Items 1-2 of Staff’s June 13, 2019 DR. It remains unclear from Calypso III’s responses to these data requests whether, or how, Calypso III intends to operate as a public lodging facility under Chapter 509, Florida Statutes. Registration as a public lodging facility subjects the applicant to the jurisdiction of the Florida Department of Business and Professional Regulation and provides for the typical consumer and safety protections commonly applicable to hotels or other transient lodging facilities. Gulf Power is unaware of any instance where the Commission has granted a waiver of Rule 25-6.049(5)(g) without also conditioning the waiver on the applicant registering, or maintaining its registration, as a public lodging facility under Chapter 509, Florida Statutes.

² See e.g., Order No. PSC-13-0579-PAA-EU (granting waiver where declaration required that 72 percent of units (rather than 95 percent) be reserved for overnight occupancy and other exemption criteria in subsection (5)(g) were satisfied); Order No. PSC-15-0565-PAA-EU (granting waiver where declaration required that 90 percent of units (rather than 95 percent) be reserved for overnight occupancy and other exemption criteria in subsection (5)(g) were satisfied); Order No. PSC-2018-0351-PAA-EU (granting waiver where declaration required that 77 percent of units (rather than 95 percent) be reserved for overnight occupancy and other exemption criteria in subsection (5)(g) were satisfied).

³ Order No. PSC-05-0258-PPA-EU (granting waiver where condominium declaration contained no restrictions on year-round occupancy where Commission had other forms of assurance that the condominium would, as a matter of fact, be operated as a transient lodging facility).

Lastly, many condominiums qualifying for waivers in the past have represented that they will have common water, sewer, cable, pest control and customary hotel services, such as housekeeping and concierge. It is not clear whether Calypso III will possess any of these attributes.

In summary, it is Gulf Power's view that the materials and data submitted in the docket thus far leave open questions concerning: (i) which elements of Rule 25-6.049(5)(g), if any, will be satisfied; and (ii) assurances that all, or substantially all, of the occupancy units at Calypso III will be operated on a transient basis. In previous dockets granting waivers of Rule 25-6.049(5), the Commission has required clarity around both of the foregoing subjects and expressly conditioned the waivers on applicants' continuing to operate the condominiums as transient lodging facilities. See e.g., Order No. PSC-13-0579-PAA-EU

Sincerely,



Steven R. Griffin

cc: Andrew King, Esq.