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July 27, 2020

VIA ELECTRONIC FILING

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 20200175-EU
Florida Power & Light Company's Comments Regarding Casa Devon's
Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6) of the
Florida Administrative Code**

Dear Mr. Teitzman:

Enclosed please find Florida Power and Light Company's ("FPL") Comments regarding Casa Devon's Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6) of the Florida Administrative Code.

Please contact me if you or your Staff has any questions regarding this filing at (561) 691-2512.

Sincerely,

/s/ Kenneth M. Rubin
Kenneth M. Rubin
Fla. Bar No. 349038

Enclosure

Cc: Christopher M. Horton, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: CASA DEVON VENTURE, LP, a Florida
limited partnership**

Petitioner

Docket No: 20200175-EU

Filed: July 27, 2020

**FLORIDA POWER & LIGHT COMPANY’S COMMENTS REGARDING CASA
DEVON’S PETITION FOR EMERGENCY VARIANCE OR WAIVER FROM
RULE 25-6.049(5)-(6) OF THE FLORIDA ADMINISTRATIVE CODE**

Florida Power & Light Company (“FPL”) is submitting these comments for the Commission’s consideration as it prepares to address the Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6)¹ of the Florida Administrative Code filed on behalf of Casa Devon in Docket No. 20200175-EU.

Casa Devon (“Casa”) has asked the Commission for a variance from or waiver of Rule 25-6.049, F.A.C. - Measuring Customer Service (the “Rule”), which requires individual metering for each separate occupancy unit. Casa, the owner and developer of a Section 8 low-income affordable senior living facility in Miami, seeks to master meter the building and argues the applicability of subsections (5) and (6) of the Rule, or alternatively claims the need for a waiver based upon economic hardship and principles of fairness. It should be noted that each of the 210 individual apartment units at Casa Devon is currently taking service from FPL through individual meters.²

Casa first claims that it is entitled to relief pursuant to two exceptions to the individual metering requirement found under subsection (5) of the Rule. Simply put, their facility, which is comprised of 210 apartment rental units housing 210 individual FPL customers, does not qualify

¹ Rule 25-6.049(6), F.A.C., applies to master metered condominiums where the declaration of condominium requires at least 95% of the units to be used solely for overnight occupancy. Casa Devon is not a condominium, nor does it satisfy any of the criteria of that portion of the Rule.

² In addition to the 210 meters for the individual apartment units, there are 2 house meters for the current Casa Devon accounts.

under any of the enumerated exceptions. Sections (5)(c) and (d) cited by Casa identify the types of specialized housing and facilities offering overnight occupancy that may qualify for master metering.³ Casa's facility which offers permanent occupancy in an apartment building fails to meet these exceptions or any of the other enumerated exceptions under Section (5) of the Rule.

The fundamental deficiency in the Casa waiver/variance request lies in the consideration of the purpose of the Rule. One of the enabling statutes for this Rule is Section 366.81, F.S. (the FEECA Statute). The Commission has been clear for decades that the purpose of the individual metering requirement, consistent with FEECA, lies in the desire to promote energy conservation. See Staff Recommendations issued September 8, 2005 in Docket Nos. 20050152-EU and 19990188-EI, at page 2; and issued September 26, 1996 in Docket Nos. 19951485-EU and 19960020-EU, at page 6. As noted in both of these recommendations, both of which led to approval by the Commission of proposed amendments to the Rule, the goal of promoting conservation with regard to energy consumption cannot be achieved in temporarily occupied units. Such is not the case with Casa. Casa contains 210 permanent occupancy units. The rationale for allowing a waiver – because these units are akin to overnight or temporary occupancy and therefore have no motivation to save energy — is simply not present. The Casa tenants do indeed have the typical motivation to save energy and reduce their electric bill as they are permanent occupants and today have individual meters that permit them to control their consumption and save energy.

³ The pertinent provisions of Rule 25-6.049(5) read as follows:

(5)(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;

(5)(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).

It should also be noted that Casa’s purported need for a waiver appears to have been caused by their own actions. Their professed economic hardship, and their need to rely upon “principles of fairness”, are creations of their own making. The documents submitted with the petition reflect that Casa negotiated their agreement with HUD, including an agreement to master meter, without first consulting the Commission’s rules to determine whether they could in fact do so. A party who enters into an agreement first, makes financial commitments, and then comes to the Commission to request a waiver inappropriately places the Commission in the unenviable position of deciding whether to grant the requested relief knowing that the petitioner has already made financial commitments. And while the granting of this waiver would presumably not have legal precedential value, it would certainly establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief. The Florida Supreme Court has addressed this very situation in affirming the Commission’s denial of a rule waiver where the request for the waiver was caused by the applicant’s inaction.⁴

Petitioner claims that “[W]ithout 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. Again, these 210 individual apartment owners are individually metered today. Casa could install solar panels on their building, 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 make their own choice to net meter, or to keep their current service with FPL through their existing individual meter. At this point, based upon what has been filed with the Commission, there is no way to determine whether all 210 residents have agreed to terminate their service with FPL, or what may occur if that doesn’t come to pass.

⁴ *Panda Energy International v. Jacobs et al.*, 813 So 2d 46 (Fla. 2002).

Finally, based upon the materials filed with the Commission, along with information provided by Casa to FPL during the past few months, FPL cannot say with any degree of certainty that the property can be master metered. FPL has never received any electrical engineering plans, and above all we would need to be sure that we could safely deliver electricity to the building if master metering is permitted. Beyond our point of our delivery, the Authority Having Jurisdiction (i.e., the local building official) would need to sign off on the delivery system from the house meter to all of the ultimate consumers.

Respectfully Submitted,
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By: /s/ Kenneth M. Rubin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on this 27th day of July 2020 to the following:

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