

1 APPEARANCES:

2 CHRISTOPHER M. HORTON and S. ELYSHA LUKEN,
3 ESQUIRES, 1010 N.E. Third Avenue, Suite 1910, Fort
4 Lauderdale, Florida 33301, appearing on behalf of Casa
5 Devon Venture, LP (Casa Devon).

6 KENNETH M. RUBIN and CHRISTOPHER T. WRIGHT,
7 ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida
8 33408-0420, appearing on behalf of Florida Power & Light
9 Company (FPL).

10 KATHRYN G.W. COWDERY, ESQUIRE, FPSC General
11 Counsel's Office, 2540 Shumard Oak Boulevard,
12 Tallahassee, Florida 32399-0850, appearing on behalf of
13 the Florida Public Service Commission (Staff).

14 KEITH C. HETRICK, GENERAL COUNSEL; SAMANTHA
15 M. CIBULA, ESQUIRE, Florida Public Service Commission,
16 2540 Shumard Oak Boulevard, Tallahassee, Florida
17 32399-0850, Advisor to the Florida Public Service
18 Commission.

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1 P R O C E E D I N G S

2 CHAIRMAN CLARK: We are going to go ahead and
3 get started, get this hearing on the road. Good
4 afternoon. We will call the hearing to order.

5 I would like to ask staff, if they would, to
6 please read the notice.

7 MS. COWDERY: By notice published in the
8 Florida Administrative Register on October 26th,
9 2020, and amended on November 4th, 2020, this time
10 and place has been set for hearing in Docket No.
11 20200175-EU.

12 CHAIRMAN CLARK: All right. Thank you, Ms.
13 Cowdery.

14 Now, let's take appearances. We will begin
15 with Casa Devon.

16 MR. HORTON: Good afternoon. Chris Horton. I
17 am here on behalf of Casa Devon Venture, LP.

18 CHAIRMAN CLARK: Thank you, Mr. Horton.
19 Florida Power & Light.

20 MR. RUBIN: Good afternoon. Ken Rubin here on
21 behalf of FPL. And I would also like to enter an
22 appearance for Chris Wright.

23 CHAIRMAN CLARK: Thank you, Mr. Rubin.
24 Staff.

25 MS. COWDERY: Kathryn Cowdery for Commission

1 Staff.

2 MS. CIBULA: Samantha Cibula, Advisor to the
3 Commission. And I would also like to make an
4 appearance for Keith Hetrick, our General Counsel.

5 CHAIRMAN CLARK: All right. Thank you.

6 Does anyone else care to make an appearance?

7 All right. Let's move on to preliminary
8 matters. Ms. Cowdery.

9 MS. COWDERY: There are two preliminary
10 matters to be addressed today. First, the
11 information and notices related to COVID-19 and
12 this remote hearing. And second, the status update
13 on the posture of this docket.

14 State buildings are currently closed to the
15 public, and other restrictions on gatherings remain
16 in place due to COVID-19. Accordingly, this
17 hearing is being conducted remotely, and all
18 parties will present argument by communications
19 media technology.

20 Members of the public who want to observe or
21 listen to this hearing may do so by accessing the
22 live video broadcast, which is available from the
23 commission website. Upon completion of the
24 hearing, the archived video will also be available.

25 Each person participating today needs to keep

1 their phone or device muted when they are not
2 speaking, and only unmute when they are called upon
3 to speak. If they do not keep their phone muted,
4 or put their phone on hold, they may be
5 disconnected from the proceeding and will need to
6 call back in.

7 Also, telephonic participants should speak
8 directly into their phone and not use the speaker
9 function.

10 Status update on the posture of the dockets is
11 as follows:

12 On november 9th, 2020, the parties filed a
13 joint motion for approval of a stipulation and
14 settlement agreement. The purpose of today's
15 hearing is to address whether it is in the public
16 interest for the Commission to approve the
17 stipulation and settlement agreement. If approved,
18 all issues in Docket No. 20200175-EU would be
19 resolved.

20 Counsel for Casa Devon and FPL are available
21 to answer any questions.

22 CHAIRMAN CLARK: Thank you, Ms. Cowdery.

23 All right. We are going to move into opening
24 remarks. Mr. Rubin, it is my understanding that
25 you are going to make remarks on behalf of both

1 organizations?

2 MR. RUBIN: Yes. Thank you, Mr. Chairman.

3 And I appreciate the opportunity do that.

4 So good afternoon, Chairman Clark and
5 Commissioners, and thank you for allowing me to
6 make these comments on behalf of both Casa Devon
7 and FPL in support of our joint motion to approve
8 the settlement that's before you today.

9 FPL's primary concern from the outset has been
10 focused on consistency in the application of the
11 Commission's rules and the Chapter 120 statutory
12 requirements that a party must satisfy to obtain a
13 variance from or a waiver of the Commission's
14 rules.

15 This process is grounded in the Commission's
16 authority and jurisdiction to receive requests for
17 variances and waivers to weigh the facts that are
18 presented, and based on the evidence, to make a
19 determination on whether the statutory requirements
20 for a variance or waiver have been satisfied.

21 Here, FPL has taken the position that the
22 notion of bypassing the Commission creating the
23 hardship by entering into an agreement that
24 obligates a party to take an action contrary to a
25 duly promulgated rule and then relying on that

1 hardship as the basis for the waiver or variance is
2 inappropriate.

3 While Casa Devon disputes that it did this,
4 for settlement purposes, Casa Devon has agreed that
5 such behavior would not be the basis for a
6 substantial hardship finding consistent with the
7 Commission's prior ruling.

8 FPL's other major concern relates to Casa
9 Devon's request to be exempted from the rule, and
10 to be considered a, quote, "specialized use housing
11 accommodation," end quote, akin to medical
12 facilities or a, quote, "similar facility," end
13 quote, to those other facilities that are
14 enumerated in Rule 25-6.049(5)(c).

15 FPL has taken the position that Casa Devon
16 does not serve or house transient residents, and
17 that's what the exemption in the rule is for. FPL
18 asserts that Casa Devon is an apartment building,
19 and though it serves low-income seniors through a
20 HUD assisted program, the residents are not
21 transient tenants.

22 From Casa Devon's perspective, their objective
23 has been to obtain approval to install its solar
24 energy system as designed, which will generate
25 solar energy and will eliminate the obligation of

1 its low-income senior tenants from paying for that
2 electricity.

3 This case presents a complicated and unique
4 set of facts that were stipulated by the parties
5 after extensive discovery, review and evaluation of
6 Casa Devon's project and claims. Allow me to
7 mention just a couple of the high points.

8 The Casa Devon apartment complex houses
9 low-income senior citizens, as I indicated.
10 Pursuant to the Housing Assistance Payments
11 contract with HUD, with the solar energy system
12 proposed by Casa Devon, its residents will not pay
13 for electricity.

14 Casa Devon has had an engineer analyze the
15 potential use of micro inverters or string
16 inverters to allow for the installation of the
17 solar panels and the individual metering of the 210
18 units. Because of the characteristics and
19 construction of this building, he determined that
20 even disregarding cost considerations, installing
21 the system with micro inverters or string inverters
22 would be, in his words, quote, "impractical or
23 impossible," end quote. And on the impractical
24 side, it would require significant construction and
25 alteration of plans to serve these residents, and

1 would cause severe disruption to the residents
2 during the pandemic.

3 We understand that the 210 residents of the
4 Casa Devon apartment complex would have to be moved
5 to temporary housing while the construction work
6 proceeded, which could be problematic really at any
7 time, but especially during the ongoing COVID-19
8 pandemic.

9 So taking everything into consideration, the
10 parties got together to see if we could come to a
11 mutually agreeable solution subject, of course, to
12 this commission's approval. Through that process,
13 we ultimately arrived at the settlement that's
14 before you today.

15 And while I won't go through it in detail, you
16 have it there in front of you, I would like to
17 highlight a few key points.

18 Casa Devon has acknowledged for purposes of
19 settlement that they though sought the counsel of
20 solar professionals, including engineers, and they
21 take the position that they contacted FPL regarding
22 their planned intentions prior to entering into
23 their contract with HUD, which FPL has disputed,
24 the appropriate course of action would have been to
25 request a variance or waiver from the Commission

1 before entering into the contract with HUD.

2 FPL and Casa Devon both agree that a party may
3 not demonstrate a, quote, "substantial hardship,"
4 end quote from the rule -- here, the rule requiring
5 individual metering -- by taking actions that
6 bypass the Commission's jurisdiction and then
7 seeking permission to master meter after those
8 action have been taken.

9 In this case, Casa Devon has agreed to make a
10 \$25,000 contribution to FPL's Care to Share
11 Program, which will be distributed to local
12 agencies to assist customers in need to pay their
13 electric bills.

14 So in light of this, FPL has no objection to
15 the master metering of Casa Devon based upon the
16 complicated and unique circumstances involved in
17 this case, provided the Commission approves the
18 settlement. In that event, the docket can be
19 closed after the following actions have been taken:

20 First, Casa Devon will file a voluntary
21 dismissal with prejudice of its corrected petition
22 for a formal administrative hearing within five
23 days of a Commission vote approving the settlement.

24 Within 20 days, the Commission will issue a
25 consummating order approving the settlement

1 agreement, stating that the determinations in the
2 PAA order that was issued by the Commission on
3 September 2nd shall be deemed final and effective
4 with the express exception of the denial of their
5 request for the variance or waiver, which request
6 shall be granted.

7 The determinations concerning, quote,
8 "substantial hardship," end quote, in the PAA order
9 shall reflect Commission precedent as applied to
10 future substantially similar facts.

11 Commissioners, Mr. Horton and I, on behalf of
12 both Casa Devon and FPL, thank you for your
13 consideration of this request, and we respectfully
14 request approval of the stipulation and settlement
15 agreement.

16 We also thank you for allowing us to make this
17 joint presentation.

18 We are both available to answer any of your
19 questions.

20 Thank you so much.

21 CHAIRMAN CLARK: All right. Thank you very
22 much, Mr. Rubin.

23 Commissioners, do you have any questions for
24 the parties?

25 Commissioner Brown.

1 COMMISSIONER BROWN: Thank you.

2 I don't have a question for the parties, but I
3 do want to thank them for, and commend them for
4 bringing this to a resolution. I know this would
5 have been a lengthy litigated case with lots of
6 witnesses, so I commend you.

7 I also want to say that -- commend Casa Devon
8 for what an incredible project providing low-income
9 elderly leasing housing, and ultimately paying for
10 the electricity as well.

11 And I do acknowledge, you know, I originally
12 thought there was a substantial, and I still do
13 think that there was a substantial hardship given
14 the unique circumstances of the facts here that
15 would make it very, very difficult not master meter
16 and install individual inverters.

17 But irrespective of that all that, I did want
18 to ask our legal counsel that provided us a
19 document yesterday, and if they can just kind of go
20 over some of the highlights with the staff
21 recommendation and ruling, that would be helpful.

22 CHAIRMAN CLARK: Ms. Cowdery.

23 MS. COWDERY: Yes, Commissioner.

24 I agree with FPL and Casa Devon's analysis,
25 that the Commission must find that the settlement

1 agreement is in the public interest.

2 In addition to that, as part of the findings,
3 the Commission -- the authorization from the
4 Legislature to grant a variance or a rule waiver
5 comes from the Florida Administrative Procedures
6 Act, Section 120.542. And under that section, the
7 Commission must find that the requirements of
8 120.542 are met.

9 So as part of -- if the Commission decides it
10 wishes to approve the settlement agreement, finding
11 it in the public interest, it also find that the
12 rule waiver or variance meets the purpose of the
13 underlying statute by achieving it through other
14 means, and then the application of the rule would
15 create substantial hardship. So that is something
16 that you need to do.

17 There are also some points in the settlement
18 agreement talking about precedent. I would just
19 want to point out that Commission precedent is
20 established specifically by Commission orders. It
21 is not established by specific stipulations in
22 settlement agreements. Parties' stipulations do
23 not bind third parties, they do not bind the
24 Commission in their future action.

25 An official action or official decision that

1 can be used in support for later actions or
2 decisions is what we think of as being precedent,
3 and it can furnish a basis for determining later
4 cases involving similar facts or circumstances.

5 So notwithstanding the outcome of one case, a
6 future case may be decided differently based on
7 that case's unique facts and circumstances, or
8 interpretations of applicable law by the
9 Commission.

10 That's somewhat of our legal analysis.

11 CHAIRMAN CLARK: All right. Thank you,
12 Ms. Cowdery.

13 COMMISSIONER BROWN: Thank you, Ms. Cowdery.

14 Mr. Chairman, and that pretty much
15 encapsulates -- kind of my only concern with the
16 settlement agreement was the precedential aspect of
17 it. As Ms. Cowdery stated, our orders are -- set
18 precedent, and we are not bound by a settlement
19 agreement in future actions because we evaluate
20 them on a case-by-case basis.

21 So with that, I do support the settlement
22 agreement. I am glad the parties were able to come
23 together.

24 CHAIRMAN CLARK: All right. Thank you,
25 Commissioner Brown.

1 Commissioner Polmann.

2 COMMISSIONER POLMANN: Thank you, Mr.

3 Chairman.

4 Can you hear me okay? I didn't check mic
5 before. Are we good?

6 CHAIRMAN CLARK: Yes, sir, loud and clear.

7 COMMISSIONER POLMANN: Thank you, sir.

8 I appreciate the opportunity here to make a
9 couple of remarks. And in the course of my review,
10 I did have a number of concerns and questions as
11 this matter has moved forward.

12 Now, having spent a fair amount of time on
13 this with my staff, and a subsequent analysis, I
14 have reached a sufficient level of comfort, I
15 believe, as Commissioner Brown has reflected
16 through, the adequate assurances provided by our
17 legal staff, and this concerns the, what I consider
18 to be, unique and somewhat peculiar circumstances
19 of this case, and with regard to the legal counsel
20 information that I received, this includes the
21 remarks provided here today by Ms. Cowdery.

22 As a result, I believe the posture we find
23 ourselves in today as a commission is entirely
24 reasonable. I therefore, have no questions for the
25 parties, and I do support the item before us.

1 I am not quite sure if Commissioner Brown made
2 a motion, but I do find this in total, as a
3 comprehensive package, to be in the public
4 interest, and, Mr. Chairman, I would be prepared to
5 make a motion for the Commission to accept this,
6 and to approve the item as presented, if there are
7 no other questions, Mr. Chairman.

8 CHAIRMAN CLARK: We've got a couple of
9 other -- we've got a couple of other folks that
10 want to make a comment. We will come back to you
11 for a motion in just a second, though, if that's
12 good with you.

13 COMMISSIONER POLMANN: Yes, sir. Thank you.

14 CHAIRMAN CLARK: Commissioner Fay.

15 COMMISSIONER FAY: Great. Thank you, Mr.
16 Chairman. Just a quick comment, and then a
17 question for staff.

18 I support this project too. I think the
19 parties did a really good job coming together.
20 This is the kind of, you know, good news that you
21 hope to read about, right? It's a great project.
22 The parties worked together, and it's low-income
23 senior housing. It's just really well done by all
24 the parties.

25 And Mr. Horton, I know you represent your

1 client, and you have never come before the
2 Commission before, but just showed some real effort
3 to get this resolved. I think we commend you for
4 that. I think that's the right thing to do here to
5 get a good project off the ground.

6 I did want to ask Ms. Cowdery just briefly.
7 Either Commissioner Polmann or Commissioner Brown
8 will take care of our motion, but as was stated in
9 front of us, there is some limitations on the
10 precedent and other things that we can grant within
11 this, but do we need to also just grant the waiver
12 and/or variance at the same time we approve the
13 settlement agreement?

14 CHAIRMAN CLARK: Ms. Cowdery?

15 MS. COWDERY: Yes, Commissioner. If you
16 approve the settlement agreement, part of the
17 settlement agreement is to -- for the Commission to
18 grant the waiver. What you would want to do
19 specifically is to make a finding that the
20 requirements of the rule waiver or variance,
21 Section 120.542(2), have been met.

22 CHAIRMAN CLARK: And that would be
23 including --

24 COMMISSIONER FAY: Great.

25 CHAIRMAN CLARK: By approving the settlement,

1 we would include that in the order?

2 MS. COWDERY: Right. Correct.

3 CHAIRMAN CLARK: Is that acceptable,
4 Commissioner Fay?

5 COMMISSIONER FAY: That's great. It answered
6 my question.

7 Thank you, Mr. Chairman.

8 CHAIRMAN CLARK: Thank you, sir.

9 Any other questions?

10 I would like to just make a couple of
11 comments.

12 I thank the other Commissioners for the
13 comments they have made in expressing the concerns
14 that they did, specifically regarding the
15 precedential value of this particular case. I do
16 continue to have concerns. I will support the
17 settlement agreement. I have serious concerns
18 about master metering a unit of this size and of
19 this nature.

20 Mr. Horton, I commend your company in the
21 leadership role they are taking in bringing and
22 adding a solar development, especially into a
23 low-income elderly assistance program. I think
24 that's commendable. I think -- I wish we could
25 have figured out a better way to have facilitated

1 this, but I am willing to accept the settlement. I
2 know you guys have come to terms with it, and I
3 think that we will be able to live with it under
4 the terms that you have laid out. But just go on
5 record as having some very serious reservations
6 about master metering under this concept.

7 Are there other questions from Commissioners?

8 All right. Commissioner Polmann, you are
9 recognized for a motion.

10 COMMISSIONER POLMANN: Thank you, Mr.
11 Chairman.

12 Let me state here, you know, with my motion to
13 accept the settlement agreement that's been
14 presented with whatever the appropriate language is
15 to do so, I want to recognize the comments just
16 offered by Commissioner Fay and the remarks from
17 legal counsel, as indicated by the Chairman, that
18 the -- that the order will reflect the comments
19 from legal counsel. So I didn't write all that
20 down, but I am sure that we will get that right.

21 So I would move that the Commission accept the
22 settlement agreement as presented, and Commissioner
23 Brown can correct me if I don't have that quite
24 right in your second.

25 Thank you.

1 COMMISSIONER BROWN: Thank you.

2 And I would second that, and incorporate Ms.
3 Cowdery's analysis that was previously provided to
4 us through a staff recommendation.

5 CHAIRMAN CLARK: And that it is found to be in
6 the public interest.

7 COMMISSIONER POLMANN: Yes.

8 COMMISSIONER BROWN: Yes.

9 CHAIRMAN CLARK: All right. We have a motion.
10 I have a second.

11 Any discussion?

12 All right. On the motion, all in favor say
13 aye.

14 (Chorus of ayes.)

15 CHAIRMAN CLARK: Opposed?

16 (No response.)

17 CHAIRMAN CLARK: All right. The motion
18 carries.

19 All right. Ms. Cowdery, do we have anything
20 else?

21 MS. COWDERY: We have nothing else.

22 CHAIRMAN CLARK: Okay. All right. Do any of
23 the parties have anything they would like to add?

24 All right.

25 MR. RUBIN: I just wanted to thank -- I just

1 wanted to thank you for your consideration, and we
2 both, Casa Devon and FPL both appreciate the
3 Commission's ruling.

4 CHAIRMAN CLARK: Thank you very much, Mr.
5 Rubin.

6 All right. Before we adjourn, let me say a
7 very special thank to everyone today. I want to
8 say thank you to Commissioner Polmann, as the
9 Prehearing Officer in this particular hearing,
10 getting us to a great posture.

11 I don't think I thanked Commissioner Brown for
12 the outstanding job she did in the Peoples Gas case
13 earlier today. We got through a mass -- I think I
14 thanked the entire staff and I overlooked my
15 Prehearing Officer. I apologize. But both of you
16 guys did a great job of posturing this. We had a
17 long week scheduled this week, and the outstanding
18 work that you all have done got this thing shaped
19 up and we are out of here on a Thursday afternoon
20 at 2:30. So we did great today.

21 Thank you all for being here and being a part
22 of this hearing today.

23 We stand adjourned.

24 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 8th day of December, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024