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STATE OF FLORIDA



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# Public Service Commission

November 9, 2023

Kenneth J. Plante, Coordinator  
Joint Administrative Procedures Committee  
Room 680, Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1400  
japc@leg.state.fl.us

**SENT VIA EMAIL**

**Re: Florida Public Service Commission Docket No. 20230128-EU – Petition for declaratory statement regarding Rule 25-6.049, F.A.C.**

Dear Mr. Plante:

The Florida Public Service Commission received a Petition for Declaratory Statement from 1150 WHG, LLC on November 8, 2023. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Register on November 13, 2023.

Sincerely,

/s/ Caroline Dike  
Caroline Dike  
Attorney

Enclosures

Cc: Office of Commission Clerk

STATE OF FLORIDA  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:

1150 WHG, LLC,  
a Florida limited liability company

Docket No. \_\_\_\_\_

Petitioner \_\_\_\_\_ /

**PETITION FOR DECLARATORY STATEMENT BY 1150 WHG, LLC**

COMES NOW, the Petitioner, 1150 WHG, LLC (“1150 WHG” or “Owner”), who is the owner and developer of a residential building located at 1150 3<sup>rd</sup> Street SW, Winter Haven, FL 33880 (the “Property”), and pursuant to section 120.542, Florida Statutes and the Uniform Rules of Procedure Chapter 28-105, Florida Administrative Code, hereby petitions the FLORIDA PUBLIC SERVICE COMMISSION (the “Commission”) for a declaratory statement confirming that the Property, under rule 25-6.049, Florida Administrative Code (the “Rule”), is within the “grandfather” exception set forth in the Rule, which expressly exempts properties from individual metering if the property was constructed and has received master-metered service continuously since January 1, 1981.

In support of its petition, 1150 WHG states as follows:

1. The name and address of the agency from whom this declaratory statement is sought are:  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, Florida 32399
2. The name and address of the Petitioner are:  
1150 WHG, LLC  
1150 3<sup>rd</sup> Street SW,  
Winter Haven, FL 33880
3. All notices, pleadings, documents, and other communications filed in this docket are to be directed to:  
Christopher Horton

Smith, Currie & Hancock, LLP  
101 N.E. Third Avenue, Suite 1910  
Fort Lauderdale, Florida 33301  
(954) 761-8700  
E-mail: [cmhorton@smithcurrie.com](mailto:cmhorton@smithcurrie.com)  
Secondary E-mail: [cgare@smithcurrie.com](mailto:cgare@smithcurrie.com)

**I. DESCRIPTION OF 1150 WHG**

1150 WHG is a limited liability corporation with its principal office located at 1150 3<sup>rd</sup> Street SW, Winter Haven, Florida 33880. 1150 WHG is a single-purpose entity that serves as the developer of the Property.

**II. APPLICABLE RULE AND TYPE OF ACTION REQUESTED**

Petitioner seeks a declaratory statement regarding rule 25-6.049, Florida Administrative Code, wherein residential buildings must be individually metered *unless* such occupancy unit has been issued a construction permit and has received continuous master-metering service since January 1, 1981. 1150 WHG respectfully requests the Commission issue a declaratory statement regarding rule 25-6.049, Florida Administrative Code, confirming:

- a. that the Property qualifies for the “grandfather exception” set forth in rule 25-6.049 since the Property was constructed pursuant to a permit issued prior to January 1, 1981 and has received continuous master-metering since January 1, 1981.

**III. STATUTES AND RULES GOVERNING DECLARATORY STATEMENT**

The statutory provisions and Commission rules or orders applicable to the jurisdictional question raised in this petition are:

- a. Section 120.565, Florida Statutes;
- b. Rule 25-6.049, Florida Administrative Code;
- c. *Petition by Florida Power Corp.*, PSC-98-0449-FOF-EI (Fla. P.S.C. Mar. 30, 1998).

- d. *In Re: Petition by Wiscan, LLC for Waiver of Rule 25-6.049(5), Florida Admin. Code.*, PSC-15-0363-PAA-EU (Fla. P.S.C. Sept. 8, 2015).

#### **IV. FACTS THAT DEMONSTRATE A SUBSTANTIAL EFFECT ON PETITIONER**

The Property was issued a construction permit in 1971 and construction was completed in 1973. Since its completion, the Property has continuously operated using a master-meter electrical system. *See* Affidavit of 1150 WHG enclosed herewith. 1150 WHG is the owner of the 224-unit Property that will serve as small one- and two-bedroom residential units. *Id.* 1150 WHG purchased the Property in November 2022, with plans to partially renovate the Property. *Id.* In December of 2022, the city of Winter Haven approved and issued permits for 1150 WHG's plans to partially renovate the Property while maintaining the main electrical gears, master meter and main panels. The approved plans did not include any major electrical renovations but rather included 1150 WHG's plan to continue using the master-metering system on the Property, adding sub panels to each unit with sub-meters that will measure each residential unit's electrical use. *Id.*

In January 2023, Tampa Electric Company ("TECO") representatives visited the Property and were informed and advised that 1150 WHG planned to install a sub-metering system for electrical use that would be used by an independent third party to invoice and collect the amounts from tenants as reimbursement. 1150 WHG plan to have tenants pay for their individual electrical use at the same rate at which the landlord is billed by TECO, incentivizing tenants to conserve energy. *Id.* In addition, 1150 WHG has already advanced plans to install solar panels on newly constructed carports that will be tied into the master-meter under a co-generating arrangement with TECO which will further the conservation and renewable energy initiatives of both the federal and state governments. *Id.* Without a master meter, the tenants would not be able to share in the benefits of this solar energy and would make the cost of installing solar panels financially unjustifiable. *Id.*

Given the clear understanding of the exemptions under the Rule, the approval of the renovation plans, and lack of a timely objection by TECO, 1150 WHG began the costly process of installing the sub-meters. *Id.* TECO did not express any issues with the planned installation of the sub-metering systems until July 2023, approximately five months after the TECO representatives visited the Property and were informed of such installation plans. To date, 1150 WHG has incurred substantial costs in performing the renovations as planned and as previously reviewed by TECO. To retrofit the Property now with individual unit meters, 1150 WHG estimates that it will cost nearly \$2.5 million. *Id.*

## V. ANALYSIS

### A. *Petitioner Meets the “Grandfather” Exception Within Rule 25-6.049*

Petitioner requests that this Commission issue a declaratory statement finding that the Property falls within the “grandfather” clause of the Rule since the Property was constructed prior to January 1, 1981 and has continuously received master metering since January 1, 1981. Rule 25-6.049(5), Florida Administrative Code states:

“[i]ndividual 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.” (emphasis added).

The Rule should be read and applied as written, in accordance with the plain meaning of the Rule. While agencies are provided great deference in interpreting its rules, the interpretation cannot be contrary to the plain language of the rule and must be within the range of possible interpretations. *Newsome v. Agency for Persons with Disabilities*, 76 So. 3d 972, 974 (Fla. 1st DCA 2011); *South Miami Hosp., Inc. v. Department of Health and Rehabilitative Services*, 623 So. 2d

510 (Fla. 3d DCA 1993). The Rule does not require that the same purpose or use of the Property remain continuous in order to qualify for leave from the individual metering requirement of the rule. Additionally, the Rule does not state that any subsequent renovations to the property invalidates a party's wish to be grandfathered by the Rule. Rather, to qualify under the grandfather clause, the rule clearly only requires that (1) the construction permit was issued before January 1, 1981 and (2) the property has received continuous master-metering service since January 1, 1981. The Property meets both of these requirements.

Moreover, the Rule specifically states that units in "new ... residential **buildings**" require individual meters. In this case the buildings are not new but permitted and constructed before 1981. Therefore, the Rule itself is not applicable to the units in these buildings. The "grandfathering" clause that follows further clarifies this applicability of the Rule to only "new... buildings" by carving out units that operate for residential use provided the **buildings** were permitted before 1981 and have been operating under a master meter since. The plain reading of the rule is that unit metering is required for residential units in new buildings and by logic not units created within existing older (constructed pre-1981) buildings which qualify under the "grandfather exception." TECO's interpretation of the Rule is incorrectly broadening the Rule's application of mandatory unit metering.

This Commission clearly stated that the grandfather clause of the Rule "simply tolerates pre-existing non-conforming uses, it does not condone creation of new ones." *Petition by Florida Power Corp.*, PSC-98-0449-FOF-EI (Fla. P.S.C. Mar. 30, 1998). The Commission refused to find that buildings built prior 1981 that were individually metered and sought to subsequently re-install master-meters were grandfathered by the Rule. *Id.* at \*2. Here, the master-metering use by 1150 WHG is an existing non-conforming use because the Property, a building constructed prior 1981,

has continuously used a master-metering service. There is no evidence that the Property has ever utilized an individual metering system and now wishes to revert to the master-metering system. Thus, 1150 WHG's present use of the grandfather clause as a residential building does not create a new non-conforming use, but rather is a continuation of a prior non-conforming use.

This Commission has also previously stated that the purpose and intention of the grandfather clause "was to allow master metered buildings constructed before 1981 to remain master metered to avoid retroactive application of the rule." *Id.* The grandfather clause allows buildings constructed before 1981 to circumvent the exorbitant costs associated with installing individual metering in a property. TECO has stated in correspondence with 1150 WHG that the most recent building permit, in essence, removed the Property from the "grandfather" exception. However, such an interpretation would be contrary to the Commission's previously stated purpose of the Rule. It would serve to retroactively require a building built prior to 1981, which has continuously received master-metering service, to install individual metering. If TECO's position that substantial upgrading of an older building's electrical lines is an indication that a new non-conforming use is created, it would produce substantial disincentives for developers, like 1150 WHG, to invest in such aging existing structures to support the public's desperate need for more permanent housing in the state of Florida. Such an interpretation would not only be arbitrary and capricious, but also contradict the Commission's former declaratory statement.

1150 WHG has already incurred substantial costs throughout the planning and approval process for the use of sub-meters interconnected to the master meter that has been pre-existing and continuous since 1981. All wiring for the sub-metering has already been installed, and the actual sub-meters have been installed in over 50% of the rooms. The installation of individual meters per unit would substantially affect 1150 WHG given the exorbitant cost of installing such systems.

1150 WHG estimates that the change in design and the installation of individual meters would cost nearly \$2.5 million, including \$1.5 million in design and installation costs as well as \$1.0 million as a result of the severe delays in unit readiness in occupancy. To require individual meters would negatively and substantially affect 1150 WHG in the form of significant additional costs.

This Commission previously denied a petition for rule waiver where the applicant requested that a master-meter be re-installed on a property which had been constructed before January 1, 1981, but had not received continuous master-metering. *In Re: Petition by Wiscan, LLC for Waiver of Rule 25-6.049(5), Florida Admin. Code.*, PSC-15-0363-PAA-EU (Fla. P.S.C. Sept. 8, 2015). The Commission reasoned that its denial stemmed from the property's lack of continuous master-metering service, as well as an applicant's inability to demonstrate that the underlying purpose of the statute would still be met through its proposal. *Id.* at \*6. 1150 WHG's petition for a declaratory statement is one of first impression as the requirements of the "grandfather exception" of the Rule have already been met. Contrary to the *Wiscan* applicant's petition for rule waiver, here 1150 WHG has demonstrated that it meets both requirements of the "grandfather exception," as the Property was constructed prior to January 1, 1981 and has continuously received master-metering. Additionally, 1150 WHG's installation of sub-meters interconnected to the master-meter would still achieve the purpose Florida Statute Sections 366.81 and 366.82, known collectively as the Florida Energy Efficiency and Conservation Act ("FEECA").

***B. Petitioner Also Meets the Purpose of FEECA.***

The purpose of FEECA is to promote the conservation of energy in Florida. Rule 25-6.049(5) seeks to achieve this goal by incentivizing individual customers to conserve electricity by reducing their own electrical consumption, through awareness of their actual electrical consumption. Fla. Admin. Code 25-6.049(5). 1150 WHG's desired use would achieve the purpose



of the FEECA as it would require that individual units be billed for their actual electric consumption. The installation of the sub-meter system will operate in the same fashion as an individual metering system, tracking individual tenant's energy consumption and holding individual tenants financially accountable for their own energy consumption further incentivizing conservation.

As previously stated, 1150 WHG plans on installing solar panels on three 40-carport structures located throughout the Property. The installation of these solar panels would further serve to meet the purpose of the underlying statute by increasing the Property's overall energy conservation and incentivizing residents to conserve electricity. However, the installation of the solar panels can only be justified when implemented in conjunction with a master meter. Without an interconnection between the solar panels and the master meter, there is no way to adequately distribute the benefits of the renewable power to the Property's residents.

1150 WHG's use of a sub-metering system interconnected with the current master-metering system not only meets both requirements of the grandfather exception, but also achieves the purpose of FEECA promoting the conservation of electrical consumption.

## **VI. CONCLUSION:**

To require the individual-metering of a building constructed prior to 1981, which has been continuously operating a master-metering system, would be an arbitrary and capricious interpretation of the Rule. The purpose of the grandfather clause of rule 25-6.049, Florida Administrative Code, is to avoid the costly retroactive installation of individual meters in buildings built prior to 1981 which have continuously used a master-metering system. This purpose can only be accomplished if 1150 WHG's property were to remain master-metered.

WHEREFORE, 150 WHG, LLC respectfully requests that the Commission grant its petition for a declaratory statement.

Dated: November 8, 2023

/s/ Christopher M. Horton

Christopher M. Horton, Esq.

Florida Bar No. 91161

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