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Public Service Commission

May 29, 2025

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1400

VIA E-MAIL
japc@leg.state.fl.us

Re: Docket No. 20250081-EU: Petition for Declaratory Statement or, in the alternative, Petition for Variance or Waiver from Rule 25-6.049(5) & (6), F.A.C.

Dear Mr. Plante:

The Florida Public Service Commission received a Petition for Declaratory Statement or, in the alternative, Petition for Variance or Waiver from Rule 25-6.049(5) & (6), F.A.C., from 20 North Oceanside Owner, LLC, on May 23, 2025. A copy of the petition is enclosed. The notice was published in the Florida Administrative Register on May 29, 2025.

Sincerely,

/s/ Susan Sapoznikoff

Susan Sapoznikoff
Senior Attorney

Enclosures

cc: Office of Commission Clerk

IN RE:

20 North Oceanside Owner, LLC.
a Florida Limited Liability Co.

Docket# _____

Petitioner
_____/

**PETITION FOR DECLARATORY STATEMENT
OR IN THE ALTERNATIVE**

**PETITION FOR VARIANCE OR WAIVER
FROM RULE 25-6.049(5) & (6)
OF THE FLORIDA ADMINISTRATIVE CODE**

Petitioner, 20 North Oceanside Owner, LLC ("20 North") whose address is 2850 Tigertail Avenue, Suite 800, Miami, Florida, 33131, is the developer of a mixed-use real estate project located at 20 North Ocean Boulevard, Pompano Beach, Florida 33062. The planned development includes two connected towers constructed on a shared podium. Condo Parcel 1 ("Tower 1") is to be developed as a separate residential condominium project comprised of [77] residential units. Condo Parcel 2 ("Tower 2") is to be developed as a separate condo-hotel consisting of 296 condo-hotel units. Ownership structure of both parcels will be pursuant to Chapter 718, Florida Statutes while operation of the condo-hotel will be pursuant to Chapter 509 Florida Statutes.

Petitioner requests a declaratory statement pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code that: 20 North is not required to individually meter the 296 condo-hotel units in Tower 2 because it meets the exceptions to the individual meter rule found in

Rule 25-6.049(5), F.A.C., or in the alternative pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C requests the Commission grant 20 North a variance or waiver from the individual metering requirement of Rule 25-6.049 for Tower 2. (The 77 units in Tower 1 are to be individually metered).

I. Applicable Rule: Rule 25-6.049(5) requires individual metering for each separate occupancy unit of a condominium unless an exception applies.

II. Exceptions: Rule 25-6.049(5) includes the following exceptions to the individual metering requirement:

25-6.049(5) (b) "For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems;"

25-6.049(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)." "Overnight Occupancy" means use of an occupancy unit for a short term such as per day or per week where permanent residency is not established. 25-6.049(8) (b)

25-6.049(5) (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."

III. FACTS AND PETITIONER'S SET OF CIRCUMSTANCES: 20 North has invested significant resources in developing two distinct

condominium projects to be built on a shared platform. Great care has been taken in explaining the offering in two separate sets of legal documents, the Prospectus for 20 N. Ocean Condominium Residences (Exhibit "1") and the Prospectus for 20 N. Ocean Condominium Hotel (Exhibit "2"). Each Prospectus includes Master Covenants, Declaration of Condominiums, By-Laws and Management Agreements for two distinct condominium associations. The residential condominiums and the condo/hotel units are being developed as part of an integrated luxury resort with shared facilities being available to hotel guests and to residents.

20 North has entered into an agreement with W. Hotel Management, the luxury brand of Marriott International, to manage both condominium associations. [See Exhibit 1-Prospectus-Residential Condominium Association Management Agreement ("RCMA") p.423 of 774 and Exhibit 2-Prospectus-Condo/Hotel Association Management Agreement ("CHMA") p.542 of 927].

The RCMA for the 77 residential units makes it clear that there will be a hotel operating on the property. (See Exh.1-RCMA p.423 of 774, Section C, "The Condominium is located within a mixed-use real estate development (the "Project") which contains, in addition to the Condominium, the following Components, all as further described in the Project Documents:

- (i) the Hotel, comprised of multiple parcels (the "Hotel Commercial Parcels");
- (ii) a parcel (the "Condo Hotel Parcel") to be developed as a separate residential condominium project (the "Condo Hotel Condominium") comprised of [303] W-branded

residential units, related common elements, and a shared components condominium unit;

- (iii) a shared facilities parcel, which includes, without limitation, the hotel lobby, trash room, trash chutes, certain back of house spaces, loading dock and receiving area.....exterior grounds and landscaping, exterior pool deck and pool facilities...hotel fitness room, and outdoor pickleball and paddleball courts)."

The RCMA informs purchasers that the operation of the condominium and the hotel are specifically intended to be an integrated operation. (Exh.1-Prospectus-RCMA, p.425 of 774).

1.05 Integrated Operation and Management. "To facilitate the management and operation of the Condominium and the overall Project in accordance with System Standards, the Condominium and the other components of the Project will be operated and managed in an integrated manner as set forth in the Project Documents and subject to and in accordance with the terms of this Agreement, the Shared Facilities Management Agreement and the other relevant management agreements."

The Condo-Hotel Management Agreement informs prospective purchasers that there will be both hotel and residential condominiums located on the property. (Exh.2-CHMA-p.542 of 927).

In addition to the two Condominium Association Management Agreements, W. Hotel Management has an agreement to manage the "Shared Facilities". The offering for both the residential condominiums and the condo-hotel units contains a Shared Facilities Management Agreement("SFMA"), Exh.1-Prospectus, SFMA, Pg.468 of 774 and Exh.2-Prospectus, SFMA, p.642 of 927). In pertinent part the SFMA shows the project includes the following areas dedicated for Hotel operations; the hotel front desk, back-of-house...administrative offices, engineering office, luggage storage, employee lounge/cafeteria, employee lockers,

hotel retail/sundry shop, hotel restaurant and bar facilities, spa, ball rooms, meeting rooms, board rooms, pool deck spa, pool deck cabanas, and pool deck bar/grill/kitchen (collectively, defined in the SFMA as the "Hotel Commercial Parcels").

Marketing information for the development provides a glimpse of the luxurious nature of the property with an extensive list of intended hotel services, amenities, and perks, including discounts at "Marriott Hotels and Resorts Across the Globe", (Exh.2-Brochure p. 917 to 924).

The property zoning approval is for mixed use real estate development which includes up to 303 condo-hotel units and 77 residential units. (See Exhibit 3-Zoning Memo). The Declaration of Condominium for the 77 units in Tower 1 specifies that, "each unit shall be used as a residence." (See Exh.1-Prospectus-Declaration of Condominium-Section 17.1-Occupancy, p. 124 of 774). In comparison, the 296 condo-hotel units are not allowed to be used as permanent residences. The zoning restrictions applicable to all 296 condo-hotel units in Tower 2 are identified on numerous occasions throughout the Prospectus (See Exh.2,p.146 of 927-Summary of Occupancy and Use Restrictions, Exh.2,p.502 of 927-Purchase Agreement-Regulations and Certain Rental and Occupancy Restrictions, and finally Exh.2,p.865 of 927-City of Pompano Beach Zoning Ordinance. In pertinent part the city zoning ordinance states,

ORDINANCE - 155.4225. COMMERCIAL: VISITOR ACCOMMODATION USES

2. Definition

A condo hotel is a hotel comprised of lodging units that are owned by an individual, corporation, or any other legal entity having an ownership interest under condominium form of ownership, and is part of a condominium property or parcel and the building contains individual lodging units which may be occupied on a limited basis by the lodging unit owner, but whose primary purpose is a visitor accommodation use.

3. Standards

A condo hotel shall comply with the following standards:

a. Owner-occupation. Lodging units shall not be occupied by their owner(s) for more than 30 consecutive days and no more than a total of 180 days in any consecutive 12 month period. The restriction on owner occupation shall be included in the Declaration of Condominium.

b. Lobby required. The design of the condo hotel shall include an inner lobby that is internally oriented and which requires all tenants to pass through in order to gain access to the lodging units.

c. Management operation. A unified management operation plan shall be required as an integral part of the condo hotel facility for rental activities, including a uniform key entry service, customary daily maid services, back of house services, and other hospitality services. The management operation plan shall be included in the Declaration of Condominium.

The Purchase Agreement for the Condo-Hotel Units specifies, **"no Residential Unit [Condo-Hotel Units] may be occupied as a permanent dwelling unit or residence."** (See Exh.2-Purchase Agreement- Zoning Regulations and Occupancy Restrictions- Sec.32(e)(3)-p.502 of 927). In contrast, the Declaration of Condominium for the 77 units in Tower 1 explains that "[E]ach Unit shall be used as a residence, with home office only permitted, except as otherwise herein expressly provided."

(Exh.1-Declaration of Condominium, Section 17.1-Occupancy, p.124 of 774).

Both offerings give notice to potential purchasers that in addition to a hotel, a commercial restaurant, café, or bakery might be operating on the premises and can possibly create a nuisance. (See Exh.1-Declaration of Condominium, Section 17.6-Nuisance, p. 126 of 774 and Exh.2-Declaration of Condominium-Section 17.7-Nuisances, p.150 of 927.

The Master Covenant for the 296 units explains that in accordance with the applicable zoning requirements Tower 2 is zoned as a condo-hotel and will be managed pursuant to a unified management operation plan for rental activities. The Shared Facilities Manager, W. Hotel Management, will be responsible for staffing 24 hour per day operations, including front desk personnel, concierge service personnel, package room attendants, uniform key entry service, customary daily maid services, back-of-house services, and other hospitality services. (See Exh.2-Master Covenant-Section 6.10 p.749 of 927). W. Hotel Management will also provide record keeping (as they do in all their managed resorts) for each unit showing the check-in and check-out date along with the name(s) of the individual(s) registered to occupy the unit. All telephone service within the units is intended to operate through a central switchboard controlled by the hotel management. (See Exh.2-Prospectus Text-Utilities-p.39 of 927). These are part of the criteria found in the exclusions to the individual metering requirement of Rule 25-6.049(5) (g).

In addition, pursuant to Rule 25-6.049(9)(a), F.A.C., the condo-hotel documents provide a reasonable apportionment method to allocate to each unit owner electricity costs authorized by the utility's tariff. According to the Prospectus, water, sewer and electrical service are not intended to be separately metered, such utility services to the units shall be billed directly to the Association or Shared Components Unit Owner and shall be paid for through Assessments and/or Shared Costs to the applicable entity. These costs will be apportioned as common expenses in the same manner as other common expenses on a pro-rata share based on the square footage of the unit as compared to the total square footage of all units. (See Prospectus-Summary of Certain Aspects of the Offering, Section 12(d)-Apportionment of Common Expenses and Ownership of Common Elements, p.40 of 927. See also Declaration of Condominium, Section 5.1, p.99 of 927).

Before or upon completion 20 North or Marriott International will be required pursuant to Chapter 509 Florida Statutes to register W. Hotel and Residences with the Department of Business Regulation.

§509.242(1)(a) "Hotel-A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing services generally provided by a hotel and recognized as a hotel in the community in which it is situated".

III. Underlying Statutes §366.05(1), §366.06(1), §366.81, and

§366.82: Pursuant to §366.05(1) the FPSC has authority to prescribe fair and reasonable rates and charges,

classifications, standards of quality measurements, and service rules and regulations to be observed by each public utility. §366.81 and §366.82 are collectively known as the Florida Efficiency and Conservation Act, or FEECA, and direct the Commission to adopt goals and approve plans regarding energy conservation. Rule 25-6.049, F.A.C., implements the statutes by setting forth the conditions under which individual metering and master metering shall be used by the utility. 20 North believes the underlying statute requiring fair and reasonable rates and the purpose of energy conservation are both properly served through master metering of the Condo-Hotel Units in Tower 2.

IV. Type of Action Requested: Petitioner requests a declaratory statement that 20 North is not required to individually meter the 296 Condo-Hotel units planned for Tower 2, or in the alternative requests the Commission grant 20 North a variance or waiver from the individual metering requirement of Rule 25-6.049 for Tower 2.

V. Facts Which Demonstrate Substantial Hardship or Violation of Principles of Fairness:

Basic tenants of fairness are violated when similarly situated entities are affected in a significantly different manner due to the literal application of a rule. In this case, if 20 North is not allowed to master meter and receive service on a commercial rate, it will incur approximately 20%-30% in additional electric costs over and above what other similar resort hotels experience.

The disparity between what 20 North will pay on the residential rate if it is individually metered, and what other similarly situated competitors pay on the commercial rate, creates a substantial hardship on 20 North in its effort to compete in the room rental business and pay all the associated costs of operating a public lodging establishment.

Requiring individual meters for the 296 Condo-Hotel units in Tower 2 would violate principles of fairness and be unjust and unreasonable. It would place 20 North at a competitive disadvantage to other hotels and resorts in the area who spend less on electricity via master meters and are therefore able to spend more on advertising, staffing, and amenities, making them more attractive to resort vacationers.

Because it is a Condo-Hotel 20 North must meet the requirements found in Chapter 509, F.S., which establishes a higher degree of care for public lodging establishments than for typical residential condominiums. Some of these requirements relate to general safety, fire safety sanitation, health and welfare of guests, and pool safety. See §509.211, §509.215 §509.221, §509.221(4), §509.222(6). For each of these items 20 North must spend more money in compliance than if it was a typical residential condominium. Also, licensing requirements are more burdensome and costly for a hotel than a residential condominium. (See §509.241)

20 North will compete directly for room night business with hotels, motels, and resorts from Miami Beach to West Palm Beach

and throughout Florida. To maintain market share Marriott International's W. Hotel Management Company will regularly advertise and promote the resort with travel agents and through trade shows in this country and abroad. In addition, to keep the units occupied, significant advertising dollars need to be spent to create and maintain a 1st class web site showcasing the luxury resort. Hotel Management will utilize its Marriott's internationally known reservation system to help keep the guest rooms at 20 North filled. To maintain the reservation system requires manpower and capital investment. This is an added expense that is significantly different than residential condominiums.

Operating as a hotel, 20 North's development will provide approximately 50 additional jobs in the area that a strictly residential condominium would not. Personnel will include those generally staffing a 1st Class Resort, including a General Manager, Assistant Manager, Front Desk Manager and Night Manager, Director of Sales and Marketing, Catering Manager, housekeeping, maintenance workers, accounting, security, valet, and concierge services. In addition to the positive financial impact on the State of Florida and the local area economy from the creation of additional jobs, the resort will also generate revenue for the state and local area through taxes charged on the room rental of the 296 condo-hotel units in Tower 2. This economic impact is significantly different than that of a residential condominium.

As a result of its intent to operate a hotel, 20 North has been designed to incorporate the American Disabilities Act Guidelines (ADA), required for all hotels. (Exh.4-Architectural Drawings-A1500-A1504, p.263-268 of 282) Compliance with these rules is more stringent and costly than compliance with the Florida Fair Housing Act which is the standard used for a typical residential condominium project. ADA units will be located on various floors throughout the resort. Furniture in the ADA units must be compliant for the handicapped; grab bars must be installed for toilet areas and showers, sight impaired rooms must meet sound requirements for fire safety, and telephones must be installed to meet hearing impaired criteria. These are additional costs that would not be incurred for a typical residential condominium.

VI. Violation of §366.05(1) and §366.06(1): Rule 25-6.049, F.A.C., implements §366.05(1) and §366.06(1), which give the Commission authority to prescribe rate classifications and rules and regulations to be observed by IOU's. In fixing fair, just, and reasonable rates the Commission takes into consideration load characteristics and usage patterns. Rule 25-6.049 is intended to implement individual metering for residential condominiums with certain exceptions. Based on the 296 condo-hotel units being used for transient occupancy, there can be no doubt its load characteristics and usage patterns will be like hotels and motels rather than typical residential customers. It will be impractical for 20 North to attribute energy usage to

individual transient occupants. All transient guests will pay a bundled rate for the use of a condo-hotel unit for a limited time. Here the Commission should look at the method of operation of the resort to determine the appropriate rate structure.

The Florida Department of Revenue and the Department of Business Regulation will treat Tower 2 like a commercial hotel based on its method of operation. Under this set of circumstances Petitioner will be substantially affected in a negative manner by incurring more costs from its electricity expenses if it is required to individually meter the 296 units in Tower 2. 20 North believes it should be treated in a similar manner to a hotel and permitted to master/meter the 296 Condo-Hotel units and take service from FP&L on a commercial rate schedule. It is unfair, unjust, and unreasonable to require 20 North's Tower 2 to receive service from FP&L at the higher residential rates when it operates like a commercial hotel.

VII. Conservation Issue: Rule 25-6.049, F.A.C., also implements \$366.81 and \$366.82, collectively known as the Florida Efficiency and Conservation Act, or FEECA. These statutes direct the Commission to adopt goals and approve plans regarding energy conservation. The rule specifies the requirements for measuring electric service of customers. Paragraph (5) of the rule requires condominium units to be individually metered by the utility. The rule was adopted to promote conservation. The premise was that condominiums are residential in nature, and therefore, by requiring individual

metering the owner occupant receives a price signal for electric usage and will be more inclined to conserve energy. However, individual metering only promotes energy conservation when the occupants of the unit are directly responsible for the energy they consume. When individuals don't see a direct financial impact on energy they consume individual metering defeats the purpose of energy conservation. It was for this reason the Commission provided certain exceptions to the individual metering requirement. By operating Tower 2 as a hotel catering to the traveling public owner/investors of the 296 condo-hotel units in Tower 2 will not be responsible for energy conservation at the resort. W. Hotel Management will have full responsibility for energy management and conservation. However, without receiving an appropriate price signal through a master meter like other hotels and motels management will not be made aware of the electricity costs for Tower 2, and as a result, will not be as diligent in their efforts to conserve.

In hotels the GM has the overall responsibility for cost control. By working closely with staff and monitoring monthly electric expenses the GM can implement many policies to keep costs down by conserving electricity. It is anticipated that the management of the hotel at 20 North will implement regular maintenance schedules for all HVAC equipment so that it continues to operate at peak efficiency, regularly scheduled condo-hotel unit maintenance and inspections to insure all appliances are functioning properly, daily efforts by

housekeeping to draw curtains or shades after cleaning unoccupied rooms to prevent heat gain unnecessarily, thermostat turn down within unoccupied units to prevent unnecessary consumption, and measures to reduce heat island effects. The incentive to focus on conservation as a regular course of business is lost if the units in Tower 2 are individually metered and management never receives a price signal for the consumption of electricity at the hotel.

The design for the HVAC system is centralized. The condo-hotel units contain individual air handlers only and operate through a direct return roof mounted water-cooling tower and heat exchanger for the cooling and heating of the units.(See Exhibit 4,A-314,Roof Plan, p.22 of 282) (By itself this should qualify Tower 2 for master metering under the exception found in **Rule 25-6.049(5)(b)** "For electricity used in central heating, ventilating and air conditioning systems, or electric back up service to storage heating and cooling systems")

Finally, Florida Power & Light has energy conservation and incentive programs that will be available to Tower 2 as a hotel that would not otherwise be available to a typical residential condominium. FP&L offers business evaluations, help in payment for high efficiency cooling and/or energy recovery ventilation, business lighting programs, building envelope improvements, and business custom incentives. These on-going programs will be available to the condo-hotel at 20 North to help with energy conservation.

VIII. Conclusion If the condo-hotel units at 20 North are individually metered the monthly electric bills will be forwarded by FP&L to approximately 296 owners whose condominiums are used by others for temporary occupancy. These owners, located in all parts of the country and abroad, will have no ability to implement energy conservation except through hotel management. There will be little conservation incentive achieved by requiring individual metering. The purpose of Rule 25-6.049, F.A.C., in serving the goal of conservation is more effectively accomplished if Tower 2 receives service from FP&L via master meter. Further, based on Petitioner's set of facts and circumstances it appears 20 North is not required to individually meter its 296 condo-hotel units in Tower 2 as it meets all the criteria for the exceptions listed in the rule. However, in the abundance of caution and an effort to avoid any unnecessary construction delays 20 North requests the Commission issue a declaratory statement that Tower 2 is not required to individually meter the condo-hotel units, or in the alternative grant a waiver to 20 North to allow master metering for the 296 condo-hotel units in Tower 2.

IX. Duration of Variance or Waiver - If a waiver is granted rather than a declaratory statement Petitioner requests the waiver be permanent with the condition that 20 North continues to operate a transient rental facility and maintain registration with the DBPR as a public lodging establishment in accordance with Chapter 509.242, Florida Statutes.

WHEERFORE, Petitioner 20 North respectfully requests the Commission grant its request for a declaratory statement or in the alternative for a variance or waiver.

/s/ Marc Mazo
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Declaratory Statement or in the Alternative Waiver or Variance from Rule 25-6.049 F.A.C., has been furnished electronically this 22nd day of May 2025 to Adam Teitzman, Commission Clerk, Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission.

/s/ Marc Mazo
MARC MAZO