

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED

MEMORANDUM

July 24, 1997

JUL 24 1997  
11:57  
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (HAYO)

FROM: DIVISION OF ELECTRIC & GAS (KUMMER) *CKL*  
DIVISION OF LEGAL SERVICES (KEATING) *WCC* *Ready for RVE* *JDS*

RE: DOCKET NO. 970647-EU - REQUEST FOR AMENDMENT OF RULE  
25-6.049, F.A.C., MEASURING CUSTOMER SERVICE, BY 38  
TENANTS OF RECORD AT DUNEDIN BEACH CAMPGROUND

AGENDA: AUGUST 5, 1997 - REGULAR AGENDA - PROPOSED AGENCY  
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: Petition for Rule Waiver - the Commission  
must vote by August 25, 1997.

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970647.RCM

CASE BACKGROUND

Dunedin Beach Campground is a Recreational Vehicle (RV) park in Dunedin, Florida, served by Florida Power Corporation (FPC). Thirty-eight of the sites are individually metered, and the remaining 195 sites are master metered. By petition dated March 4, 1997, residents at the 38 individually metered sites (petitioners) requested a waiver of Rule 25-6.049, Florida Administrative Code. The rule waiver petition was addressed to the Office of Public Counsel (OPC) instead of the Commission. After Commission staff responded to the petition by letter, Mr. Earle C. Bartell, one of the petitioners, wrote the Division of Appeals requesting that the Commission either amend Rule 25-6.049 or waive it. Mr. Bartell's request was received by the Division of Appeals on May 27, 1997.

Pursuant to Section 120.542(6), Florida Statutes, notice of the rule waiver petition was submitted to the Secretary of State on June 10, 1997, for publication in the Florida Administrative Weekly. By Order PSC-97-0763-FOF-EU, issued June 27, 1997, the Commission denied the petitioners' request to initiate rulemaking to amend Rule 25-6.049. The Commission declined, however, to rule upon the rule waiver petition until the comment period required by

DOCUMENT NUMBER-DATE

07451 JUL 24 97

FPSC-RECORDS/REPORTING

DOCKET NO. 970647-EU  
JULY 24, 1997

Section 120.542(6), Florida Statutes, had expired. No comments were submitted during the comment period which ended July 7, 1997. In accordance with Section 120.542(7), Florida Statutes, the Commission must rule on this petition by August 25, 1997.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission waive application of the requirements of Rule 25-6.049(5)(a), Florida Administrative Code, as to the residents at the 38 individually metered sites at Dunedin Beach Campground?

**RECOMMENDATION:** No. The Commission should not waive application of Rule 25-6.049(5)(a), Florida Administrative Code, as to the residents at the 38 individually metered sites at Dunedin Beach Campground. Those residents have not met the statutory criteria for a rule waiver set forth in Chapter 120, Florida Statutes.

**STAFF ANALYSIS:** Rule 25-6.049(5)(a), Florida Administrative Code, requires individual electric metering by the utility "for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home, and recreational vehicle parks for which construction is commenced after January 1, 1981." The petitioners seek waiver of this rule as it applies to them.

The rule waiver petition states that Dunedin Beach Campground opened in 1973 with 195 RV sites constructed. The petition states that the original plans for the RV park called for the construction of 38 additional sites, but that matters beyond the developer's control postponed construction of those sites until 1982. Pursuant to Rule 25-6.049(5)(a), the 38 new sites required individual metering and were not permitted to receive service through the RV park's master meter. The petitioners complain that the lack of uniform electric metering throughout the RV park discriminates against them because they must pay higher rates, surcharges, and minimum monthly power charges that the 195 master metered sites are not required to pay. In addition, the petitioners complain that they, unlike the master metered residents, are required to pay a reconnect fee when service is disconnected for a short period of time.

DOCKET NO. 970647-EU  
JULY 24, 1997

Section 120.542, Florida Statutes, mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Section 120.542(2), Florida Statutes.

As a preliminary matter, staff notes that this statute is intended "to adopt a procedure for agencies to provide relief to persons subject to regulation." §120.542(1), Florida Statutes (1996) (emphasis added). The petitioners are arguably not persons subject to regulation by the Commission. The Commission could dismiss the petition on that basis. Staff recommends, however, that the Commission consider the merits of the petition. In this case, FPC is clearly a person subject to regulation that could request waiver of Rule 25-6.049. FPC advised the petitioners to seek a rule waiver to address their concerns and indicated to the petitioners that FPC will make the necessary meter changes if a rule waiver is granted. In addition, because the rule governs service, it affects both the regulated utility and the petitioners/customers.

On the merits, Staff recommends that the Commission deny the rule waiver petition. The petition fails to state how the purpose of the underlying statute will be achieved if the waiver is granted and fails to demonstrate that application of the rule would create a substantial hardship or violate principles of fairness.

DOCKET NO. 970647-EU  
JULY 24, 1997

### Purpose of the Underlying Statute

The petition fails to allege a reason why the requested waiver would serve the purpose of the statute underlying Rule 25-6.049. In any event, staff does not believe that the waiver would serve the purpose of the underlying statute.

As discussed in Order No. PSC-97-0763-FOF-EU, in which the Commission denied the petitioners' request to initiate rulemaking to amend Rule 25-6.049, the policy reason for the Rule is to encourage energy conservation. Converting customers from individually-metered residential units to master-metered units runs counter to this policy. Master-metered residential customers may not qualify for Commission-approved residential conservation programs and may be limited to those commercial conservation programs in which the metering agent chooses to participate. In re: Petition to Initiate Changes Relating to Rule 25-6.049, F.A.C., Measuring Customer Service, by micromETER Corporation, Order No. PSC-97-0074-FOF-EU, 97 F.P.S.C. 1: 450, 452 (1997).

In addition to contravening the Rule's underlying conservation policy, taking individually-metered residential customers out of the residential class would create a mismatch between costs and revenues. Id. The rates charged to the various classes of customers are based on the unique usage characteristics of each class. Allowing master-metered customers whose usage is residential in nature to take service under existing commercial rates will not result in the recovery of the entire cost to serve them. Id.

### Substantial Hardship

The petitioners estimate that they pay approximately \$16.00 per month more than those residents receiving service through master metering. This difference is attributed to the fact that the petitioners receive service as part of FPC's residential class, while all other residents of the RV park receive service through the master meter under commercial class rates and terms. As residential class customers, the petitioners are required to pay a monthly service charge, slightly higher KWH charges, and, in certain circumstances, a minimum monthly billing charge. (Although the master-metered customers pay lower KWH charges, they pay a portion of a higher monthly service charge and a portion of demand charges for maximum KW usage.) The petitioners are also subject to reconnect charges after temporary disconnections, while all other

DOCKET NO. 970647-EU  
JULY 24, 1997

residents are not subject to such charges.

While these additional charges, indirectly imposed by application of Rule 25-6.049, may seem burdensome to the petitioners, they do not rise to the level of creating a substantial hardship. These rates are applicable to every FPC customer receiving residential service and have been approved by the Commission as fair and reasonable.

#### Principles of Fairness

The petitioners' central argument is that the application of Rule 25-6.049 creates non-uniform electric metering and discriminatory billing within the RV park. Staff believes that this does not amount to a violation of principles of fairness that would justify waiver of the Rule as applied to the petitioners.

As previously stated, Section 120.542(2) provides that "'principles of fairness' are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." Staff does not believe that the petitioners and the grandfathered residents are "similarly situated persons" for purposes of determining whether principles of fairness are violated by the Rule's application.

Rule 25-6.049 contains a grandfather clause which, like any other grandfather clause, draws a line between two groups and provides for different treatment of those groups. The two groups are not similarly situated under the Rule, and the treatment of one cannot be compared to the treatment of the other to determine what is fair. Treatment of the group to which the petitioners belong must be compared to the treatment of similarly situated persons who are subject to the Rule, i.e., other persons who were not grandfathered by the Rule.

The petitioners have not shown that the rule affects them in a manner significantly different from the way it affects other persons not grandfathered by the Rule. The petitioners simply state the obvious effects of the grandfather clause: their group is treated differently from the grandfathered group. Therefore, different treatment of the two customer groups does not violate principles of fairness.

DOCKET NO. 970647-EU  
JULY 24, 1997

Conclusion

In summary, Staff recommends that the Commission deny the rule waiver petition, because the petition fails to state how the purpose of the underlying statute will be achieved if the waiver is granted and fails to demonstrate that application of the rule would create a substantial hardship or violate principles of fairness.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the order files a protest within 21 days of the issuance of the order, this docket should be closed.

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the Commission's proposed agency action shall have 21 days after issuance of the order to file a protest. If no timely protest is filed, the docket should be closed.