

STATE OF FLORIDA  
BEFORE THE PUBLIC SERVICE COMMISSION

ORIGINAL

IN RE:

DUNES OF PANAMA OWNERS  
ASSOCIATION, INC

DOCKET NUMBER

001544-EU

Petitioners  
\_\_\_\_\_ /

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

COMES NOW the Petitioner Dunes of Panama Owners Association, Inc., (hereinafter "the Dunes") and hereby petitions the Florida Public Service Commission for a variance or waiver pursuant to Section #120.542 of the Florida Statute and Section #28-104.002 of the Florida Administrative Code.

**I. Applicable Rule** : The applicable rule from which petitioner seeks a variance or waiver is Rule 25-6.049(5)(a) of the Florida Administrative Code which states in pertinent part that;

(5)(a) "Individual electric metering by the utility company 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 for which construction is commenced after January 1, 1981.

The literal requirements Rule 25-6.049(5)(a) provide that the Petitioner should maintain individual electric metering for each unit of the condominium. However, a conflict between Section 25-6.049(5)(a) and Section 25-6.049(5)(a)(3) arises when the facts of this particular case are taken into consideration.

DOCUMENT NUMBER-DATE

12846 OCT-98

FPSC-RECORDS/REPORTING

"The Dunes" operates in accordance with Chapter 509.242 of the Florida Statutes as a Public Lodging Establishment. It meets the definition in the statutes of both 509.242(b) "Motel", and 509.242(c) "Resort Condominium" (Emphasis Added). Pursuant to statute a "Resort Condominium" is any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which advertises and holds out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

Florida Statute 509.242(b) defines a motel as any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is generally recognized as a motel in the community in which it is situated or by the industry. The Dunes meets this definition.

Section 25-6.049(5)(a)(3) of the rule provides certain exceptions to the individual metering requirement of the rule. In pertinent part the exception states:

(5)(a)(3) "For electric used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and occupied 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 home, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, **motels, hotels, and similar facilities.**" (Emphasis Supplied)

**II. Underlying Statute F.S. 366.05(1):** The applicable portion of the underlying statute indicates that the commission shall have the power 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. Rule 25-6.049(5)(a) & 25-6.049(5)(a)(3) have been adopted to accomplish this principle. The implementation of fair and reasonable rates and charges by the public utility companies in Florida is a goal of the Public Service Commission established by the legislature. See F.S. 366.03.

In addition, pursuant to docket # 810308-EU September 2, 1981, it appears that the intent of Rule 25-6.049(5)(a) and Rule 25-6.049(5)(a)(3) is to serve the public interest regarding energy conservation. Petitioner believes both the underlying statute requiring fair and reasonable rates, and the purpose of energy conservation are both better served, if in fact, petitioner's facility is master metered.

**III. Type of Action Requested:** Petitioner believes it is a motel or similar facility under Rule 25-6.049(5)(a)(3) and therefore excluded from the individual metering requirement. However, to avoid unnecessary delays and any possible confusion the Dunes requests the Commission grant a variance or waiver from the literal requirement of Rule 25-6.049(5)(a) wherein condominiums must be individually metered, and allow petitioner to master meter the facility.

IV. Facts Which Demonstrate Substantial Hardship or

Violation of Principles of Fairness: The Dunes of Panama Owners Association, Inc. is an association which represents investor/owners of condominium units at The Dunes of Panama Resort, located at 7205 Thomas Dr., Panama City, Florida, 32408.

Pursuant to Chapter 509.242 of the Florida Statutes The Dunes of Panama is a public lodging establishment which meets the definition under said statute of a "Motel" and "Resort Condominium". The Dunes offers transient rentals on a daily and weekly basis to the traveling public. It is registered with and licensed by the Florida Department of Business and Professional Regulation to engage in the business of providing transient lodging accommodations similar to hotels and motels, and is registered with the Florida Department of Revenue to collect and remit sales taxes on revenue realized from providing such transient accommodations.

The petitioner, operating under the name of The Dunes of Panama, is engaged in the business of providing short term (daily, weekly) lodging to vacationers as do hotels and motels in the adjacent and surrounding areas. Petitioner competes directly for room night business with nearby hotels and motels from Ft. Walton Beach to Panama City Beach. To maintain its market share petitioner regularly advertises and promotes its business with travel agents and in trade shows both in this country and abroad. The Dunes utilizes a full color marketing brochure as one of the many methods to promote its business and keep the units occupied with guests. A copy of the marketing brochure is attached as Exhibit "A".

The Dunes maintains a front desk in the lobby area of the resort for guest registration. All guests must check-in and check-out at the front desk in the same manner as a hotel or motel.

Telephone service for the Dunes is provided through a master telephone PBX with all calls ringing directly into the switchboard as a hotel or motel. Guest rooms are furnished with calling instructions and all charges are listed in compliance with the Department of Business Regulation, the FCC, and the PSC. A copy of petitioner's guest telephone information and instruction card is attached as Exhibit "B". To maintain this type of telephone operation, which is similar to most modern day hotels and motels, requires an investment of capital and time and effort of management.

Petitioner has hired a general manager who is responsible for the operation and care of the resort. His job duties are similar to those persons holding the title of general manager in any other hotel or motel of its size, including oversight and supervision of housekeeping, maintenance, security, guest services, marketing and advertising. It is the general manager's responsibility to operate the resort in accordance with the annual budget approved by the Board of Directors.

It is also the responsibility of the general manager to do the best job he can to compete with other hotels and motels in the area for guest-room nights. Rates for room nights must be kept in line with the competition. Advertising dollars must also be expended to fill the needed amount of room nights. These

principles exist for hotels and motels and also exist for the Dunes based on its manner of operation.

Without being allowed to master meter its facility, the Dunes will pay approximately 25% to 30% more for the same electric to operate as nearby hotels and motels. This creates a substantial hardship on the petitioner in its efforts to compete in the room rental business and pay all the associated costs (including taxes) of operating a public lodging establishment. It also violates principles of fairness in that other hotels and motels in the surrounding area will spend less money on electricity and be able to spend more on advertising or upgrading their facilities to make them more attractive to the traveling public than the Dunes.

In addition, according to staff report filed September 5, 2000, in Docket No. 000643-EU, it appears that the type of facilities exempted from the individual metering requirement are those that operate similar to hotels and motels where the occupants of the units are not billed for their use of electricity. The Dunes falls into this category.

It is impractical, if nearly impossible, to attribute and bill electric usage to the daily and weekly guests of the resort. They are billed a bundled rate for the limited use of the rooms rented while vacationing at the Dunes.

Petitioner requested a study be conducted by Tom Saxon, former Commissioner of the City of Madeira Beach and former employee of Florida Power who has worked with the hospitality industry for many years, including the time he was employed by FPC. A copy of his report is attached as Exhibit "C".

V. Conservation Issue: As noted earlier, one aspect of the development of Rule 25-6.049 was to encourage conservation of electricity. The PSC, its Staff, and IOU's in Florida have adhered to the philosophy that the end user will be more inclined to be conscious of conservation if such user is made aware of his or her electric use and associated costs. Section(5)(a) of the rule follows this theory by requiring individual metering. However, the implication which can be derived from this section is that condominiums are residential in nature, therefore, by requiring individual metering the owner occupant will be made aware of monthly electric usage and associated costs and will be more inclined to conserve electricity.

This theory is not applicable in the instant case since the Dunes is operating a transient rental facility catering to the traveling public. The owner/investors of units at the Dunes are not the ones responsible for energy conservation at the resort. The general manager has that responsibility just like his counterpart in the nearby hotels and motels. The monthly electric bills are forwarded by the power company to over one hundred ninety eight owners located in all parts of the country with no ability to implement energy conservation except through the general manager of the facility.

Recognizing that timeshare resorts are similar in nature to hotels and motels, in 1997 the Commission amended Rule 25.6-049(5)(a)(3) to include timeshare resorts in the exception from the individual metering rule. The theory being that conservation would be better served by the resort receiving one master bill for electric instead of many individual bills. In this manner the

resort manager would have more awareness of total electric usage for the timeshare resort and hopefully, as a result, pay closer attention to energy conservation.

The nature of timeshare resorts did not change by the commission's action. Nor did the characteristics of their electric usage. Timeshare resorts are still owned and operated as condominiums and used primarily by the owners for vacation weeks. Where timeshare owners live in the units for a week or more at a time during their vacation, petitioner's regular transient rental business is generally for shorter periods and less like an at home living environment. As such, its electric usage characteristics are more similar to hotels or motels than that of most timeshare resorts. Yet the owners of timeshares in this state now derive the benefit of lower electric costs as a result of being allowed to master meter the resort.


**VI. Conclusion** By granting Petitioner a waiver or variance from the individual metering requirements of Rule 25.6-049, the interests of the public relating to energy conservation would be better served. By receiving one bill each month at the facility the general manager would be more efficient in his efforts to control and conserve electric usage. In addition, the principles of fairness would be met in that the owner/investors at the Dunes would receive the benefits of lower electric costs due to master metering, as its owner/investor counterparts receive at timeshare resorts. Petitioner would also be able to compete with hotels and motels in the area on a more even basis as petitioner would not be paying higher costs for electric than its hotel/motel competitors.



VII. Duration of Variance or Waiver - Recognizing that the

rules governing use of the units at the Dunes will not change by granting of the variance or waiver from the individual metering requirements of Rule 25.6-049, and understanding that petitioner's owner/investors could vote to cease all operation as a public lodging establishment pursuant to Chapter 509.242 of the Florida Statutes, petitioner requests the variance or waiver be permanent with the condition that it continues to operate as a public lodging establishment in accordance with Chapter 509.242 of the Florida Statutes. In the event petitioner's owner/investors vote to change the operation of the Dunes and no longer allow transient rentals, the variance or waiver would terminate and the condominium units be subject to the individual metering requirements of Rule 25.6-049(5)(a).

WHEREFORE, for all of the foregoing reasons, Petitioner respectfully requests the Public Service Commission grant its request for a variance or waiver.

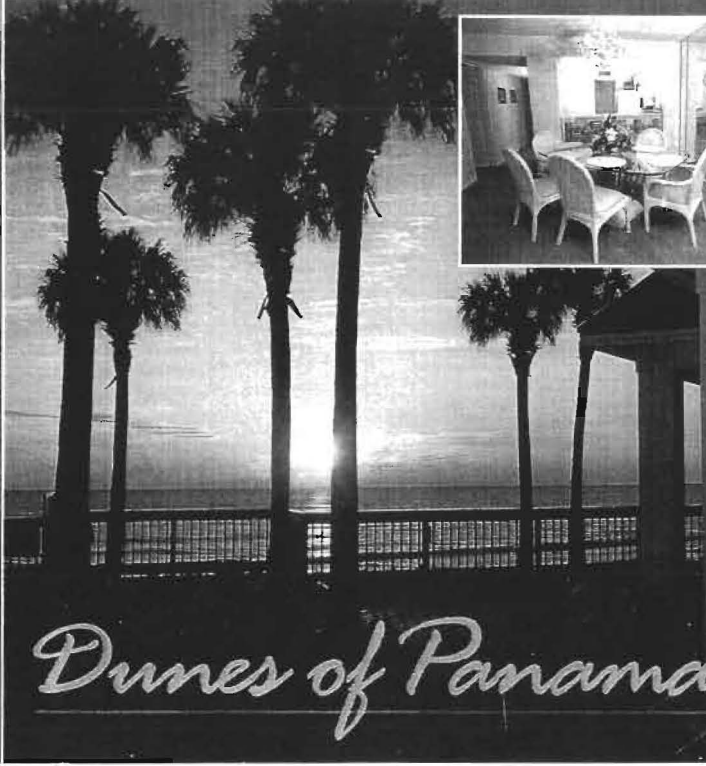
  
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MARC D. MAZO  
14252 Puffin Court  
Clearwater, Florida 33762  
Telephone (727)573-5787  
Facsimile (727)573-5675  
Authorized Representative  
The Dunes of Panama Owners Association

I HEREBY CERTIFY that an original and seven (7) copies of the foregoing Petition for Variance or Waiver have been furnished by U.S. Mail this 5<sup>th</sup> day of October, 2000, to the Public Service Commission, Attn: Ms Blanca s. Bayo, Director, Division of Records and Reporting.

  
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MARC D. MAZO

# Dunes of Panama

7205 Thomas Drive, Panama City Beach, FL  
850-234-8839 • 1-800-874-2412



# Dunes of Panama

EXHIBIT "A"

*Dunes of Panama* is centrally located on the "World's Most Beautiful Beach". Make your next family vacation a memorable one, by joining us at the "Dunes".

Dunes of Panama units are gulf-front with fully furnished kitchens and full amenities. Large gulf-front pools, tennis courts and expansive sundecks are all ready and awaiting your arrival.

- 3 Beachside / Gulfside swimming pools, one seasonally heated
- 1500 feet of beach front
- 2 lighted tennis courts
- Barbeque areas
- Gazebos
- Volleyball
- Beach service
- Security
- On-site office
- Washer/Dryer
- Linens
- Private balcony from living and master bedroom
- Color television/HBO
- Non smoking units available
- Meeting facilities available

	Spring Break 3/1-4/30 Daily/Weekly	Spring 5/1-5/24 Daily/Weekly	Spring Monthly 4/30-5/29	Summer 5/25-8/16 Daily/Weekly	Fall/Winter 8/17-12/31 Daily/Weekly	Fall Monthly 8/16-12/31
1 Bedroom	135/810	120/720	1728	135/810	85/510	800
2 Bedroom	180/1080	150/900	2160	180/1080	105/630	1075
2 Bedroom Lg.	190/1140	160/960	2304	190/1140	115/690	1130
3 Bedroom	255/1530	235/1410	3384	255/1530	165/990	1385

\* Monthly Winter Specials Call 1-800-874-2412 \* Be sure and check out our winter activity programs.

\* Mastercard, Visa, Discover, American Express, and Personal checks accepted • 10 days notice of cancellation • 60 days notice for fall/winter monthly to avoid forfeiture of deposit • Minimum stay: three nights, walk-in - two nights, Holidays: Easter - 4 nights, July 4<sup>th</sup> - 1 week minimum • Parking permits required for all automobiles (max of 2 per unit) • Check-in 4 pm central time, check-out 10am • All rents due in full upon arrival • Security deposit is required • Tax and 40<sup>00</sup> cleaning fee is not included in rental rates • No pets • Registrants must be at least 25 years of age • We cannot accommodate boats, RV, Jet Skies, June, July or Major holidays.

[www.dunesofpanamapcbeach.com](http://www.dunesofpanamapcbeach.com) - Email: [dopma@worldnet.att.net](mailto:dopma@worldnet.att.net)

*Dunes of Panama*

7205 Thomas Drive, Building C  
Panama City, Florida 32408  
(850) 234-8839 (800) 874-2412

EXHIBIT "A-1"



# DUNES OF PANAMA

## GENERAL GUEST INFORMATION

**MAIL:** Outgoing mail is picked up daily from the mailbox outside the "C" building office, and in front of the "E" building. A Federal Express drop is located by the "E" building mailbox area.

**MOPEDS:** Mopeds, motorcycles, and dune buggies are not permitted on the property.

**OFFICE HOURS:** Please inquire as office hours are seasonal.

**PARKING:** Parking under the building is for the use of occupants with unit numbers posted on the garages. Please do not park in restricted areas or in the enclosed parking structure of the "E" building. Specific parking requests are unavailable. Secure your vehicle. We accept no responsibility for incidents outside of our control, which results in damages to your vehicle, (weather, vandalism, theft, etc.). **RVs, BOATS, AND OTHER TRAILERED VEHICLES MUST PARK IN DESIGNATED AREAS. SEE APPROPRIATE RENTAL OFFICES FOR THOSE AREAS.** We are unable to accommodate RVs, boats and other trailered vehicles during June, July or any major holiday.

**PETS:** Absolutely no guest pets are allowed.

**SAND DUNES/SEA OATS:** Please keep off the sand dunes and do not damage or pick sea oats. They are protected under Florida law.

**SECURITY:** Please notify security of problems or needs after office hours. Call 234-7430 or 832-6646.

**SKATEBOARDS:** Skateboards, skates and Rollerblades are not permitted on the property.

**SWIMMING POOLS:** Please observe all pool rules posted at each pool entrance. Decks and walkways can splinter and be slippery. Water shoes or suitable footwear is suggested. We are a family resort; when in pool areas, please wear proper attire that would not offend families. Please towel off before entering bathrooms, lobbies or office.

### TELEPHONE SERVICE:

- There is a 28-cent charge for each local call.
- Credit card, collect and third party billing calls are 55 cents for each call.
- Free 800 calls.
- One minute is allowed after a call is registered.
- Monthly guests may inquire about an \$18.70 per month fee, which will exempt them from paying a per-call charge for local, credit card and collect calls only. You may obtain phone extensions from the office to reach another unit.

### Telephone Dialing Instructions:

For local calls: dial 9 + desired number.

Long distance within 850 area code: dial 9 + 1 + desired number.

Operator assistance: dial 9 + 0 + area code + desired number.

### To reach the long distance carrier of your choice:

AT&T - dial 9 + 1 + 800 + call AT&T  
MCI - dial 9 + 1 + 800 + #  
SPRINT - dial 9 + 1 + 800 + #

### TELEPHONE DIRECTORY:

Directory of Services

EXHIBIT "B"

September 18, 2000

Mr. Marc Mazo  
Power Check Consultants  
14252 Puffin Court  
Clearwater, Fl 33762

Re: Dunes of Panama

Dear Mr. Mazo:

Per your request, enclosed are my findings regarding your question whether or not the Dunes of Panama operates like a hotel, motel, or similar facility; and if the property meets the criteria and intent of the Florida Administrative Code 6-25.049 for the exclusion from the individual metering requirement. The following are my findings pertaining to the property:

The Dunes of Panama is located on the Gulf of Mexico at 7205 Thomas Drive in Panama City Beach, Florida and operates like a hotel/motel or similar facility and meets the criteria established for exclusion from individual metering requirement.

The site has:

- A hotel type telephone system or central PBX that serves all units.
- Hotel call accounting system used to price calls and bill to the guest folio upon checkout.
- Daily maid service available.
- 24 Hour front desk check-in.
- Daily and weekly rentals.
- Central Reservation System.
- Regular resort vacation advertising.
- Conservation efforts by engineering staff and management.
- Monthly sales tax reports filed with the Florida Department of Revenue for sales tax on transient room rentals.

As an experienced professional who worked with and in the resort industry for over five years, it is my opinion that the subject property clearly operates like a hotel/motel or similar facility and competes regularly for business against the area hotels and motels.

Exhibit "c"

Mazo  
Page-2-  
9-18-2000

Based on my experience working with hotel/motel properties while employed by Florida Power Corporation, the Dunes of Panama is paying approximately 20% to 30% more for electric than its hotel/motel competitors.

Rule 6.25-049 Florida Administrative Code was clearly developed to encourage conservation measures by individual home owners i.e. turning off lights, raising or lowering thermostats, using less hot water, etc. The commission also recognized that businesses catering to transient rentals that do not pay or ever see the electric bills will not be encouraged to conserve energy by this code and therefore provided exclusions to the individual metering requirement.

Currently Rule 6-25.049(5)(a)(3) excludes hotels, motels, and similar facilities from the individual metering requirement. As such, based on the continued operation of the Dunes of Panama as a public lodging establishment, see Chapter 509.242 Florida Statutes, it is apparent that it should be excluded from the individual metering requirement and be allowed to convert to master metering.

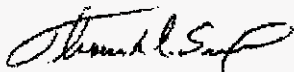
Revenue Factors:

The loss of customer charges for Gulf Power would consist of \$8.07 per unit; however, this loss will be offset by commercial customer charges of \$42 per meter for three meters and a reduction in labor cost because Gulf Power will no longer need to read 198 meters or process and mail billings for these accounts.

As stated above the customer can anticipate a 20 to 30% savings on their total electric bill. Base on the above information, the profit impact to Gulf Power is minimal and all parties involved should embrace the rate change.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Thomas W. Saxon

September 18, 2000

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14252 Puffin Court  
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