BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition for emergency variance from or waiver of Rule 25-6.049(5)-(6), F.A.C., by Casa Devon Venture, LP. | DOCKET NO. 20200175-EU  ORDER NO. PSC-2020-0481-S-EU  ISSUED: December 8, 2020 |

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman

ART GRAHAM

JULIE I. BROWN

DONALD J. POLMANN

ANDREW GILES FAY

FINAL ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT, CONSUMMATING, WITH MODIFICATIONS, ORDER NO. PSC-2020-0295-PAA-EU, AND GRANTING RULE WAIVER

BY THE COMMISSION:

Case Background

On July 1, 2020, Casa Devon Venture, LP (Casa Devon) filed a Petition for Emergency Variance or Waiver from Rule 25-6.049(5)-(6), Florida Administrative Code (F.A.C.). We denied Casa Devon’s petition by Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued on September 2, 2020.

On September 17, 2020, Casa Devon filed a petition for a formal administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.). Casa Devon seeks a final order granting its petition for emergency variance from or waiver of the individual metering requirement of Rule 25-6.049(5), Florida Administrative Code (F.A.C.). On October 6, 2020, Florida Power & Light Company (FPL) filed an unopposed corrected motion for leave to intervene, which was granted by Order No. PSC-2020-0346-PCO-EU, issued on October 7, 2020. Pursuant to Order No. PSC-2020-0335-PCO-EU, issued October 1, 2020 (Order Establishing Procedure), an administrative hearing was scheduled for November 19-20, 2020.

On November 9, 2020, Casa Devon and FPL filed a Joint Motion for a Continuance of the November 19-20, 2020 Hearing on the Merits (Joint Motion for Continuance). Also on November 9, 2020, they filed a Joint Motion for Approval of a Stipulation and Settlement Agreement (Joint Motion to Approve Settlement Agreement). In their Joint Motion for Continuance, Casa Devon and FPL requested that we: (1) consider their Joint Motion to Approve Settlement at the hearing scheduled for November 19, 2020; and (2) continue the hearing on the merits pending the outcome of the disposition of the Joint Motion to Approve Settlement Agreement. The Joint Motion for Continuance was granted by Order No. PSC-2020-0432-PCO-EU, issued November 10, 2020.

We considered the Joint Motion to Approve Settlement Agreement at the hearing on November 19, 2020. A copy of the Settlement Agreement is appended as Attachment A. We have jurisdiction pursuant to Section 120.542, F.S.

The Settlement Agreement

In their Joint Motion to Approve Settlement Agreement, Casa Devon and FPL state that after an extensive review and evaluation of Casa Devon’s claims and the extensive discovery produced in this case, they entered into a Settlement Agreement. Casa Devon and FPL state that the Commission has a “long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties.” They further state that the proper standard for our approval of a settlement agreement is whether it is in the public interest. They assert that the Florida Supreme Court has explained that the determination of what is in the public interest rests exclusively with the Commission and that we have broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. They note that we are not required to resolve the merits of every issue independently and that a determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.

Casa Devon and FPL represent in the Settlement Agreement that under the renewed Housing Assistance Program (HAP) Contract with the United States Department of Housing and Urban Development (HUD), Casa Devon has committed to, among other things: (1) renovate the apartment complex; (2) install a solar energy system to reduce the total combined customer load at the apartment complex by an estimated 75 percent to 85 percent; and (3) convert the apartment complex from individually metered units to master metering so that the electric usage at the apartment complex would be paid by Casa Devon and not the tenants.

They state that under the unique circumstances surrounding the issues raised in this proceeding they have stipulated to the master metering of the Casa Devon apartment complex subject to the terms and conditions set forth in the Settlement Agreement. They stipulated that: (1) Casa Devon should have filed its petition for waiver or variance pursuant to Section 120.542, F.S., prior to entering into the HAP Contract with HUD; (2) “substantial hardship” under Section 120.542(2), F.S., may not be demonstrated “by taking actions that bypass the Commission’s jurisdiction and the required Commission approval to master meter a facility and then seeking permission to master meter after such actions have been taken;” and (3) on any future projects, the owner or developer will investigate the feasibility of installing micro-inverters or string inverters to be used in conjunction with individual meters. *See* Settlement Agreement, paragraphs 1-3.

They stipulated that the tenants of the Casa Devon apartment complex are and will be low-income elderly lessees, that Casa Devon has committed to pay for all costs to provide each tenant with electricity at all times, regardless of the source, and Casa Devon will not bill the tenants or otherwise recover said costs for electricity from the tenants of the Casa Devon apartment complex for the duration of the HAP Contract with HUD. *See* Settlement Agreement, paragraph 4.

They stipulated to the unique circumstances surrounding this case, specifically, that Casa Devon’s expert concluded that it would be impractical, extremely costly, or impossible to complete the work inside each Casa Devon apartment unit necessary to install individual inverters for each low-income lessee or tenant since wiring and conduit would have to be run from the roof to each dwelling unit; the concrete walls, ceilings, and some floors would have be to cut open in each unit; and the 210 tenants of the Casa Devon apartment complex may have to be relocated during the existing COVID-19 pandemic. *See* Settlement Agreement, paragraph 5.

The Settlement Agreement states that under the unique set of circumstances surrounding the issues raised in this proceeding, FPL has no objection to Casa Devon master metering its project, subject to the terms and conditions of the Settlement Agreement. *See* Settlement Agreement, paragraph 6.

In their Joint Motion to Approve Settlement Agreement, Casa Devon and FPL state that the Settlement Agreement represents a reasonable compromise of competing positions and reflects their collaborative efforts to reach a reasonable and mutually acceptable compromise on all issues. They state that, if approved by us, the Settlement Agreement will validate a series of stipulations that eliminate all issues, disputes, or claims raised or that could have been raised by Casa Devon in Docket No. 20200175-EU. They also state that they believe that approval of the Settlement Agreement will reduce the time and expense that would be incurred to litigate this case, while at the same time conserving Commission time and resources. They further state that they believe that, considered as a whole, the Settlement Agreement fairly and reasonably balances the interests of Casa Devon and FPL and its customers and is consistent with the public interest. They submit that approving the Agreement is consistent with our long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to our regulatory jurisdiction.

Casa Devon and FPL request that we enter a Consummating Order stating that the determinations in Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020, in this docket, shall be deemed final and effective with the express exception of the denial of Casa Devon’s initial petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, and that the initial petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049, F.A.C., be granted pursuant to the terms and conditions of the Settlement Agreement.

Decision

Based on the unique facts and circumstances of this case, as stipulated to and agreed upon by Casa Devon and FPL, we find that approval of the Settlement Agreement is in the public interest, and we grant the Joint Motion for Approval of a Stipulation and Settlement Agreement. We further find that Casa Devon has demonstrated that the purpose of the underlying statute will be or has been achieved by other means by Casa Devon and that application of the individual metering requirement of Rule 25-6.049(5), F.A.C., would create a substantial hardship. We hold that the determinations in Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020, in this docket, are deemed final and effective with the express exception of the denial of Casa Devon’s initial petition, as set forth in the Conclusion and Ordering Clause on pages 8-9 of the Proposed Agency Action Order No. PSC-2020-0295-PAA-EU. Casa Devon’s initial petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5), F.A.C., is granted as meeting the requirements of Section 120.542(2), F.S., and pursuant to the terms and conditions of the Settlement Agreement and this Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Joint Motion of Casa Devon Venture, LP and Florida Power & Light Company for Approval of a Stipulation and Settlement Agreement is hereby approved, as is the Settlement Agreement, attached hereto as Attachment A. It is further

ORDERED that Proposed Agency Action Order No. PSC-2020-0295-PAA-EU, issued September 2, 2020 in this docket, is final and effective, subject to the modifications set forth in the Stipulation and Settlement Agreement and in body of this Order. It is further

ORDERED that Casa Devon Venture, LP’s Petition for Variance from or Waiver of the individual metering requirement of Rule 25-6.049(5), F.A.C., is granted as meeting the requirements of Section 120.542(2), F.S., and pursuant to the terms and conditions of the Stipulation and Settlement Agreement and this Order. It is further

ORDERED that this docket shall be closed upon issuance of this order.

By ORDER of the Florida Public Service Commission this 8th day of December, 2020.

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|  | /s/ Adam J. Teitzman |
|  | ADAM J. TEITZMAN  Commission Clerk |

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KGWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission’s final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

