

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

M E M O R A N D U M

January 8, 1998

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

FROM: DIVISION OF APPEALS (HELTON) *Walt PS*  
DIVISION OF ELECTRIC & GAS (WHEELER) *DRW RLT*

RE: DOCKET NO. 971497-EG - PETITION FOR DECLARATORY STATEMENT  
BY HOLIDAY VILLAS II CONDOMINIUM ASSOCIATION, INC.,  
PURSUANT TO SECTION 120.565, F.S., AS TO APPLICATION OF  
RULE 25-6.049(5)(a)3., F.A.C.

AGENDA: 1/20/98 - REGULAR AGENDA - DECISION ON DECLARATORY  
STATEMENT - PARTICIPATION IS LIMITED TO COMMISSIONERS AND  
STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\971497DE.RCM

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CASE BACKGROUND

On November 13, 1997, Holiday Villas II Condominium Association (the Association) filed a Petition for Declaratory Statement with the Commission. The petitioner is an association that represents investor/owners of condominium units at the Holiday Villas II Resort Condominium (the Condominium) in Indian Shores, Florida.

Pursuant to Section 120.565(3), Florida Statutes, the Commission must issue a declaratory statement or deny the petition by February 11, 1998.

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Holiday Villas II Condominium Association's Petition for Declaratory Statement?

RECOMMENDATION: No, the declaration requested by the petitioner should be denied.

STAFF ANALYSIS: Section 120.565, Florida Statutes, provides in pertinent part:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

The Association seeks a declaration concerning Rule 25-6.049(5)(a)3., Florida Administrative Code. Paragraph (5)(a) of the rule requires individual electric metering

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.

(Emphasis added) Subparagraph (5)(a)3. of the rule exempts from the individual metering requirement

electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and 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 homes, facilities certificated under Chapter 651, Florida Statutes, college dormitories, convents, sorority houses, fraternity houses, motels, hotels, and similar facilities.

(Emphasis added).

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In its petition, the Association asserts that it is similarly situated to hotels and motels, and, as such, should also be exempt from the individual metering requirement. Specifically, the Association seeks a declaration that it "is a 'similar facility' under the exception to the individual metering requirement of Rule 25-6.049(5)(a)(3) of the Florida Administrative Code." (Petition at 6) The Association also seeks to have the Commission "direct Florida Power Corporation to master meter the resort as requested." (Petition at 6)

In support of its petition, the Association provides the following facts. It is in the business of providing short term lodging accommodations, and directly competes with other hotels and motels in the area. Guests are charged a nightly rate. Guests check in and out as they would if staying in a hotel or motel. The Association must comply with the rules and regulations of the Department of Business and Professional Regulation, Division of Hotels and Restaurants. The furnished guest rooms consist of one and two bedroom suites, with kitchenettes. Among the ancillary services provided are daily housekeeping and recreational facilities, such as a swimming pool. Telephone service is provided through a PBX so that all calls ring through a central switch board. (Petition at 2-3)

Because each of the guest rooms are individually metered, electric service is provided under Florida Power Corporation's (FPC's) residential rate. To stay competitive with the hotels and motels in the area that take service under FPC's commercial rate, the Association requested FPC to master meter the facility so it too could take service under the commercial rate. (Petition at 3) The Association argues that "the unique usage characteristics of the Petitioner is identical to other hotels and motels all along the area beaches which offer one and two bedroom suites with kitchen or kitchenette facilities." (Petition at 5) In addition, the Association asserts that FPC's position is anti-competitive and discriminatory. (Petition at 4)

The Association fails to acknowledge that condominiums are specifically required to be individually metered by paragraph (5)(a) of the rule. The Condominium at issue here may be a resort condominium engaged in the business of providing transient lodging accommodations. However, it is still a condominium.

The Association also ignores the fact that the Commission recently amended the rule to allow time-share plans to be master metered under certain conditions. Rule 25-6.049(5)(a)5., Florida Administrative Code. The rule now allows time-share plans to be exempt from the individual metering requirement if all of the

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occupancy units "are committed to a time-share plan as defined in Section 721, Florida Statutes, and none of the occupancy units are used for permanent occupancy." Id.

Under the Commission's current policy, there is a clear line drawn between hotels, motels, and time-share plans that may be master metered, and condominiums which must be individually metered. While a resort condominium may have some attributes in common with hotels and motels, it is still a condominium under Florida law. Because condominium units may be used for permanent residences, the Commission has required them to be individually metered. Extending the exemption, as suggested by the Association, would obviate the policy reason for the rule, which is to encourage energy conservation. The Association's request would make the distinction drawn by the Commission less clear and harder to administer.

Therefore, staff recommends that the Association's requested declaration be denied. Staff acknowledges that there are complaint-like circumstances raised by the instant petition. However, staff's recommendation that the requested declaration be denied essentially moots the Association's request to direct FPC to master meter the facility.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if the Commission accepts staff's recommendation in Issue 1.

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1, a final order can be issued disposing of the petition and the docket be closed.