

STATE OF FLORIDA
BUILDING COMMISSION

In the Matter of

POWER DESIGN, INC.,

Case #: DCA08-DEC-275

Petitioner.

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DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the Commission) by a Petition from Kenneth E. Norton of Power Design, Inc., which was received on September 19, 2008. Based on the statements in the petition and the material subsequently submitted, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. The Petitioner provides services in many capacities, largely related to electrical subcontracting, on projects that are subject to Rule 9B-3.0472, Florida Administrative Code.
3. The Petitioner has been requested to consult on the design of the appropriate carbon monoxide detection requirements for three buildings more specifically described below.
4. Generally, the Petition requests that the Commission approve application of alternative means of compliance for multifamily residential applications of the rule based

on provisions related to hospitals, hospice facilities and nursing homes; or based on the proximity of a specific housing unit to a potential source of carbon monoxide.

Specifically, the Petition asks:

(a). With regard to a 7 story residential condominium structure that surrounds a three level enclosed parking garage where living units on the first 3 levels are separated from the garage by fire walls and a corridor; additional units are built over the garage on the remaining 4 stories; and the only generating source of carbon monoxide is a mechanically ventilated, enclosed parking structure on the lowest 3 levels of the building.

i. Is the Rule intended to require that, with no other fossil burning appliances in consideration, the entire building will need to be equipped with carbon monoxide detection within 10 feet of every sleeping area?

ii. Is there any consideration given for a carbon monoxide monitoring system installed in the garage area?

(b). With regard to a 5 story, high-density, residential apartment building with several units equipped with fossil burning fire places;

i. Whether the Rule requires carbon monoxide detection within 10 feet of each room used for sleeping purposes in every residential unit, without taking into consideration their proximity to the actual appliances?

ii. Would the detection only be required in the units where the appliances reside?

(c). With regard to a proposed 30 story residential high rise in Aventura, Florida, that has no other fossil burning appliances other than a diesel powered emergency generator on the first floor; whether the Rule requires that all units in the building be

provided with carbon monoxide detection outside every sleeping area, no matter how distant they may be from the generator?

Conclusions of Law

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of 9B-3.0472, Florida Administrative Code, by entering a declaratory statement.

2. Section 553.885(1), Florida Statutes, requires that:

[e]very building, other than a hospital, an inpatient hospice facility, or a nursing home facility licensed by the Agency for Health Care Administration, for which a building permit is issued for new construction on or after July 1, 2008, and having a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage shall have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes. For a new hospital, an inpatient hospice facility, or a nursing home facility licensed by the Agency for Health Care Administration, an approved operational carbon monoxide detector shall be installed inside or directly outside of each room or area within the hospital or facility where a fossil-fuel burning heater, engine, or appliance is located. This detector shall be connected to the fire-alarm system of the hospital or facility as a supervisory signal.

3. Rule 9B-3.0472(2), Florida Administrative Code, provides that:

[e]very building for which a permit for new construction is issued on or after 7/1/08 and having a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage shall have an operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes.

4. The foregoing authorities do not authorize the Florida Building Commission to authorize any alternate means of compliance with the statutory requirements subsequently adopted into rule. Therefore, under the express terms of the statute, the Commission cannot apply criteria established for healthcare occupancies or that related to

proximity of a particular unit in a multifamily, residential building to a source of carbon monoxide.

5. Based on the foregoing, with regard to the 7 story residential condominium structure that surrounds a three level enclosed parking garage, the entire building is required to have carbon monoxide detectors within ten feet of each sleeping area without regard for a monitoring system included in the garage area.

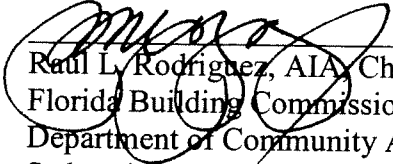
6. Based on the foregoing, with regard to the 5 story, high-density, residential apartment building with several units equipped with fossil burning fire places, carbon monoxide detectors are required within 10 feet of each room used for sleeping purposes in every residential unit, without taking into consideration their proximity to the actual appliances.

7. Based on the foregoing, with regard to the 30 story residential high rise in Aventura, Florida, that has no other fossil burning appliances other than a diesel powered emergency generator on the first floor, the statute and rule require that all units in the building be provided with carbon monoxide detection outside every sleeping area, no matter how distant they may be from the generator.

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and with Fla. R. App. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, and with the appropriate District Court of Appeal no later than thirty days after this Order is filed with the Clerk of

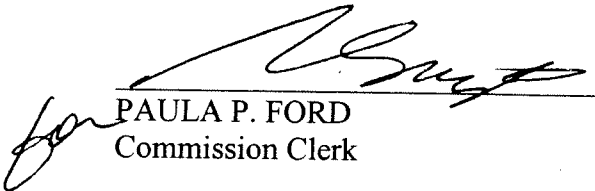
the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Florida Statutes.

DONE AND ORDERED this 6 of January, 2009, in Coral Gables, Miami-Dade County, State of Florida.


Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this 8th day of Jan, 2009.


PAULA P. FORD
Commission Clerk

Via U.S. Mail

Kenneth E. Norton
Power Design, Inc.
11600 9th Street North
St. Petersburg, Florida 33716

Via Hand Delivery

Mo Madani, C.B.O. Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100