**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building**

 **101 East Gaines Street**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **MAY 6, 1993**

**TO : DIRECTOR OF RECORDS AND REPORTING**

**FROM : DIVISION OF APPEALS (RULE)**

 **DIVISION OF AUDITING AND FINANCIAL ANALYSIS (MAILHOT, SLEMKEWICZ)**

 **DIVISION OF RESEARCH AND REGULATORY REVIEW (MAHONEY)**

**RE : DOCKET NO. 920572-EI, PROPOSED AMENDMENT TO RULE 25-6.015, F.A.C., LOCATION AND PRESERVATION OF RECORDS.**

**AGENDA: MAY 18, 1993 - CONTROVERSIAL AGENDA - PARTIES MAY NOT PARTICIPATE**

**PANEL: FULL COMMISSION**

**CRITICAL DATES:NONE**

**SPECIAL INSTRUCTIONS: PLEASE PLACE ON AGENDA IMMEDIATELY AFTER DOCKET NO. 920343-TP, PROPOSED AMENDMENT OF RULE 25-4.020, F.A.C., LOCATION AND PRESERVATION OF RECORDS.**

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 **CASE BACKGROUND**

 The purpose of this recommendation is to discuss comments received after the Commission published notice of its proposal to amend Rule 25-6.015, F.A.C., Location and Retention of Documents. Comments were timely filed by Gulf Power Company ("Gulf"), Florida Power Corporation ("FPC") and the Joint Administrative Procedures Committee of the Florida Legislature ("JAPC"). No hearing was requested.

 Rule 25-6.015, Florida Administrative Code, Location and Preservation of Records, currently instructs electric utilities where and how long to keep required records. The proposed amendments update and incorporate by reference the current record retention requirements of the Federal Energy Regulatory Commission ("FERC"), specify that original source documents be kept for three years, require utilities to maintain written procedures for converting documents to another medium, and specify that documents converted to another medium be easy to search and read. According to the proposed rule, a utility may obtain a waiver of the requirement that source documents be maintained for three years if it employs an optical disk imaging system with write-once-read-many capability, or a system that produces comparable results.

 **DISCUSSION OF ISSUE**

**ISSUE 1:** Should the Commission modify its proposed amendments to Rule 25-6.015, Florida Administrative Code, Location and Preservation of Records, in response to comments received?

**RECOMMENDATION:** Yes. The Commission should adopt the attached modifications to its proposed amendment of Rule 25-6.015.

**STAFF ANALYSIS:** Comments were timely filed by Gulf, FPC and JAPC. Gulf commented generally on its current copying system and future plans, but did not suggest changes in the rule. After reviewing the comments, staff recommends that the Commission adopt the proposed rule, with the changes discussed below and shown on the attachment. On the attachment, recommended changes to the proposed rule are shaded.

 **25-4.020(3)(a):** (original source documents to be retained three years; waiver available).

 **Computer generated documents:**

 The comments filed by telephone companies in Docket No. 920343-TP regarding the possibility that the rule could be interpreted to require printing paper copies of computer documents are equally applicable here. This rule is not intended to require utilities to create paper copies of computer documents where the utility would not otherwise do so in the ordinary course of its business, so staff recommends that the Commission adopt the attached clarifying language.

 **Three year retention:**

 FPC states that it has no problem with retaining any or all of its source documents in a manner that produces acceptable copies, but that retention of the originals would be burdensome. The rule states that the utility may obtain a waiver of the requirement that originals be retained if it uses a system that produces acceptable results, so FPC should be able to avoid retention of originals.

 JAPC pointed out that the requirement that original documents be retained for three years conflicts in part with the retention schedule in the Code of Federal Regulations which is adopted by reference. Staff agrees, and recommends that the Commission adopt the attached clarification of the rule, which would allow utilities to retain originals for the lesser of the two time periods.

 JAPC also questioned whether the original source documents referred to in this paragraph include all of the documents listed in the incorporated regulations. Not all of the documents listed in the regulations are accounting source documents. This paragraph only requires retention of source documents in original form.

 **Waiver provision:**

 FPC commented that the rule contained no procedure for obtaining the waiver. Staff does not believe it necessary for the rule to require any particular procedure.

 JAPC pointed out that the rule provides that the Commission may waive the three year requirement, which implies that the Commission may not even though the specific requirements are met by the utility. Although staff anticipates that the Commission would grant the waiver whenever the conditions are met, staff is concerned that there may be other problems with the system, and therefore would like the Commission to reserve the right not to grant the waiver until the Commission has had more experience with this provision.

 **Optical disk format:**

 FPC raised a concern regarding the level of flexibility in available options for achieving the goal of clear, readable copies. Staff recommends that the same clarifying language included in Rule 25-4.020(3)(a) in response to similar comments be included in this rule. The rule should indicate that any system that consistently produces the desired result is acceptable.

 **25-4.020(3)(b):** (written procedures for conversion of documents)

 No comments were received regarding this section of the rule. However, in Docket No. 920343-TP, GTEFL commented that the sentence "Use of the new medium must not inhibit the audit process" is ambiguous and unnecessary, and should be deleted. Staff believes that GTEFL is correct, and that the Commission should delete the same sentence in this rule. If records are easy to search and easy to read, the audit process will not be inhibited by use of a new medium for storing records.

 GTEFL also questioned whether there is a distinction between an "original source document" as the term is used in 25-4.020(3)(a), and the term "source document" used in 25-4.020(3)(b). There is no distinction, so staff recommends that the word "original" be deleted.

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ATTACHMENTS:

Rule 25-6.015

18 CFR 125

 **25‑6.015 Location and Preservation of Records.**

 (1) All records that a utility is required to keep by reason of these or other rules prescribed by the Commission shall be kept at the office or offices of the utility within this state, unless otherwise authorized by the Commission.

 (2) Any utility authorized to keep its records outside of the state shall reimburse the Commission for the reasonable travel expense of the Commission's representative during any out‑of‑state audit.

 (3) All records shall be preserved in accordance with the Federal Energy Regulatory Commission's regulations, Title 18, Subchapter C, Part 125, Code of Federal Regulations, entitled "Preservation of Records of Public Utilities and Licensees" as revised, April 1, 1991~~87~~, which is hereby incorporated by reference into this rule, with the exception of Item 64 (Records of predecessors and former associates) of the Schedule of records and periods of retention contained in Title 18, Subchapter C, Section 125.3, Code of Federal Regulations. Instead, utilities shall retain records of acquired companies until permission for disposal is petitioned for and approved by the Florida Public Service Commission.

 (a) However, all ~~original~~ source documents retained as required by Title 18, Subchapter C, Part 125, Code of Federal Regulations shall be maintained in their original form for a minimum of three years, or for any lesser period of time specified for that type of record in Title 18, Subchapter C, Part 125, Code of Federal Regulations, after the date the document was created or received by the utility. This paragraph does not require the utility to create paper copies of documents where the utility would not otherwise do so in the ordinary course of its business. The Commission may waive the requirement that documents be retained in their original form upon a showing by a utility that it employs a storage and retrieval system that ~~an optical disk imaging system with write-once-read-many capability, or other system~~ that ~~produces comparable results, if the system~~ consistently produces clear, readable copies that are substantially equivalent to the originals, and clearly reproduces handwritten notations on documents ~~are clearly reproduced~~.

 (b) The utility shall maintain written procedures governing the conversion of source documents to a storage and retrieval system ~~another medium such as microfilm or microfiche~~, which procedures ensure the authenticity of documents and the completeness of records. ~~Use of the new medium must not inhibit the audit process.~~ Records maintained in the storage and retrieval system ~~new medium~~ must be easy to search and easy to read.

**Specific Authority: 366.05(1), 350.127(2), F.S.**

**Law Implemented: 366.05(1), F.S.**

**History: Amended 7/29/69, 7/19/72, 1/11/76, 9/28/81, 11/18/82, formerly 25‑6.15, Amended 10/1/86, 11/02/87,** .