

State of Florida



Public Service Commission  
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**DATE:** OCTOBER 24, 2002

**TO:** DIRECTOR, DIVISION OF THE COMMISSION &  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF AUDITING & SAFETY (VANDIVER) *AV/DM*  
DIVISION OF ECONOMIC REGULATION (SLEMKEWICZ) *IS DM*  
OFFICE OF THE GENERAL COUNSEL (VINING) *AEV NUT JDJ*

**RE:** DOCKET NO. 020824-EI - PETITION FOR WAIVER OF REQUIREMENT OF RULE 25-6.015(3), F.A.C., THAT RECORDS BE PRESERVED IN ACCORDANCE WITH APRIL 1, 1994 VERSION OF APPLICABLE FEDERAL ENERGY REGULATORY COMMISSION REGULATIONS, TITLE 18, SUBCHAPTER C, PART 125, CODE OF FEDERAL REGULATIONS, ENTITLED "PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES," BY FLORIDA POWER & LIGHT COMPANY.

**AGENDA:** NOVEMBER 5, 2002 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** PETITION FOR RULE WAIVER - THE COMMISSION MUST VOTE BY NOVEMBER 5, 2002

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\AUS\WP\020824.RCM

CASE BACKGROUND

On July 26, 2002, Florida Power & Light Company (FPL) requested a waiver of Rule 25-6.015(3), Florida Administrative Code, requiring the retention of source documents in their original form for a minimum of three years. Pursuant to Section 120.542(6), Florida Statutes, notice of FPL's petition was submitted to the Secretary of State for publication in the August 16, 2002, Florida Administrative Weekly. No comments concerning the Petition for Waiver were filed during the comment period. In accordance with Section 120.542(8), Florida Statutes, the Petition for Waiver is deemed approved if the Commission does not grant or deny it by

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October 23, 2002. This docket was deferred at the October 15, 2002, Agenda Conference. FPL waived the 90 day decision period until the next scheduled agenda conference on November 5, 2002. The Commission has jurisdiction pursuant to Sections 120.524(1), 366.04, and 366.05, Florida Statutes.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the utility's request for waiver of Rule 25-6.015(3) and Rule 25-6.015(3)(a), Florida Administrative Code, be granted?

**RECOMMENDATION:** The Commission should grant in part and deny in part the utility's request for a waiver. The Commission should grant a waiver of Rule 25-6.015(3)(a), Florida Administrative Code, as it relates to the storage media utilized to preserve records. The requested waiver will serve the purpose of the underlying statutes, and Florida Power & Light Company (FPL) will experience substantial hardship if its request is denied. The utility should also be required to petition for a new rule waiver if it changes the vendor or method used to copy its source documents. However, the Commission should deny the requested waiver of Rule 25-6.015(3), Florida Administrative Code, as it relates to the retention periods for records; because the requested waiver will not serve the purpose of the underlying statutes. (VANDIVER, SLEMKEWICZ)

#### **STAFF ANALYSIS:**

Section 120.542(2), Florida Statutes, provides that waivers and variances from agency rules shall be granted:

. . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, 'substantial hardship' means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, 'principles of fairness' are violated when the literal application of a rule affects a particular person in a manner

significantly different from the way it affects other similarly situated persons who are subject to the rule.

The underlying statutes for Rule 25-6.015, Florida Administrative Code, are Sections 366.05(9), 366.08, and 366.093(1), Florida Statutes, pursuant to which the Commission has the authority to review and secure reasonable access to public utility records, for the purpose of exercising any power conferred upon the Commission by Chapter 366, Florida Statutes, and to ensure that the utility's ratepayers do not subsidize nonutility activities.

**STORAGE MEDIA - Rule 25-6.015(3)(a)**

Commission Rule 25-6.015(3)(a), Florida Administrative Code, states that

. . . all 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. . .

. 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 consistently produces clear, readable copies that are substantially equivalent to the originals, and clearly reproduces handwritten notations on documents.

On October 15, 1993, the Commission issued Order No. PSC-93-1518-FOF-EI granting Florida Power & Light Company's (FPL) request for waiver of Rule 25-6.015(3)(a), Florida Administrative Code, requiring the retention of source documents in their original form for a minimum of three years. Specifically, the Commission granted FPL's request to retain source documents by using a microfilm or microfiche process; however, the Commission denied FPL's request for a waiver regarding documents copied using the imaging process. This Order was followed in 1996 by Commission Order No. PSC-96-1195-FOF-EI, issued September 23, 1996, which addressed another FPL waiver request based on an updated imaging process. This later Order found that documents copied using the revised

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imaging process were clear, easy to read, and available in a universal format, and approved FPL's request for waiver.

In staff's last review, in Docket No. 960516-EI, FPL's Integrated Document Management (IDM) used two document systems: the Documetrix system to maintain documents that were scanned from paper to an electronic image stored on optical disk; and the Anacom Computer-Output-Microfiche (COM) system to print main-frame reports. Currently, the Documetrix system has been replaced with Documentum. Documentum utilizes the same process for converting the documents as Documetrix. The only difference between the two systems is the vendor. FPL has now implemented a completely automated report management system (On-Demand). The On-Demand system will eliminate the need for COM because it will capture corporate records generated electronically. Staff witnessed the reproduction of reports as well as the employee verification of the scanned document to the original in order to determine completeness and readability. Staff also reviewed copies of invoices with hand written comments to verify that these comments were clear and readable.

Staff's review indicates that the utility's method of storing data electronically meets the requirement for waiver of Rule 25-6.015(3)(a), Florida Administrative Code, which is that the utility "employ a storage and retrieval system that consistently produces clear, readable copies that are substantially equivalent to the originals, and clearly reproduces handwritten notations on documents." In addition, FPL has demonstrated that the purpose of the statutes underlying the rule have been achieved by other means, in compliance with the provisions of Section 120.542(2), Florida Statutes. The utility's method of storing data electronically still allows the Commission to review and secure reasonable access to public utility records, for the purpose of exercising any power conferred upon the Commission by Chapter 366, Florida Statutes, and to ensure that the utility's ratepayers do not subsidize nonutility activities. Therefore, staff recommends that the waiver of Rule 25-6.015(3)(a), Florida Administrative Code, should be granted because the purpose of the underlying statutes will still be achieved, and the waiver provision within the rule itself has been met by FPL.

The utility states that it conducted a detailed cost study and operations analysis which indicated that the elimination of the Computer Output Microfiche operation would result in an annual

operations and maintenance cost savings of approximately \$100,000. The new system has been purchased and is in operation, so the utility is currently operating two systems. The utility desires to discontinue its use of the microfiche system if the Commission approves the waiver. Staff did not audit the utility's detailed analysis; however, staff believes that requiring FPL to maintain two systems to retain electronically stored data would create a substantial hardship. Because staff believes that the purpose of the underlying statutes will still be served if the waiver is granted, and that denial of the waiver would create a financial hardship, staff recommends that the waiver be granted.

Because the waiver is based on the staff's review of the current methods used to copy documents, staff is concerned that the readability of the copies may change if the utility makes a change in vendors or some other part of the process. Therefore, we recommend that the utility be required to petition for a new rule waiver if it changes the vendor or method used to copy its source documents.

**RECORDS RETENTION PERIODS - RULE 25-6.015(3)**

Rule 25-6.015(3), Florida Administrative Code, requires utilities to preserve their records in accordance with the Federal Energy Regulatory Commission's (FERC) regulations, Title 18, Subchapter C, Part 125, Code of Federal Regulations (CFRs), entitled "Preservation of Records of Public Utilities and Licensees" as revised, April 1, 1994. Although Title 18 of the CFRs is revised annually every April 1<sup>st</sup>, the revisions are usually minor in nature. In the April 1, 2001, revision, FERC dramatically reduced the retention periods for certain records. Staff has reviewed these changes and believes that some of the shortened retention periods may be inadequate to ensure that certain records are available for review and audit by the Commission during rate cases and other proceedings.

As a result, FPL has not demonstrated that the purpose of the underlying statutes has been achieved by other means, as required by Section 120.542(2), Florida Statutes. The retention periods proposed by FPL have the potential to hinder the Commission's ability to review and secure reasonable access to public utility records, for the purpose of exercising any of the powers conferred upon the Commission by Chapter 366, Florida Statutes. Therefore, staff recommends that the waiver of Rule 25-6.015(3), Florida

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Administrative Code, should be denied because the purpose of the underlying statutes will not be achieved by other means.

Staff further notes that, because this is a generic issue that applies to all of the investor-owned electric utilities, it is better addressed in a rulemaking proceeding. In a footnote to its petition, FPL has even suggested that it would be appropriate for the Commission to open a rulemaking docket to amend the rule. Therefore, staff plans to investigate the changes to the FERC record retention schedule and take appropriate action.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (VINING)

**STAFF ANALYSIS:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.