

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 020824-EI
ORDER NO. PSC-02-1623-PAA-EI
ISSUED: November 25, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING IN PART AND DENYING IN PART
FLORIDA POWER & LIGHT'S PETITION FOR A WAIVER OF
RULE 22-6.015(3), FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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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 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.

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

In the 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. The reproduction of reports as well as the employee verification of the scanned document to the original were witnessed by Commission staff in order to determine completeness and readability. Copies of invoices with hand written comments were also reviewed to verify that these comments were clear and readable.

Our 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, we find that the waiver of Rule 25-6.015(3)(a), Florida Administrative Code, is 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. No audit of the utility's detailed analysis was conducted; however, we find that requiring FPL to maintain two

systems to retain electronically stored data would create a substantial hardship. Because the purpose of the underlying statutes will still be served if the waiver is granted, and denial of the waiver would create a financial hardship, the waiver is hereby granted.

Because the waiver is based on the our review of the current methods used to copy documents, we are 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 find that the utility is 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 1st, the revisions are usually minor in nature. In the April 1, 2001, revision, FERC dramatically reduced the retention periods for certain records. We reviewed these changes and have determined 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, we hereby deny the waiver of Rule 25-6.015(3), Florida Administrative Code, because the purpose of the underlying statutes will not be achieved by other means.

We further note 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 suggested that it would be appropriate for the Commission to open a rulemaking docket to amend the rule. As a result, we plan to investigate the changes to the FERC record retention schedule and take appropriate action.

CONCLUSION

We grant in part and deny in part FPL's request for a waiver. We hereby grant a waiver of Rule 25-6.015(3)(a), Florida Administrative Code, as it relates to the storage media utilized by FPL to preserve records. The requested waiver serves the purpose of the underlying statutes and Florida Power & Light Company (FPL) will experience substantial hardship if its request is denied, as required by Section 120.542(2), Florida Statutes. In addition, FPL is required to petition for a new rule waiver if it changes the vendor or method used to copy its source documents. We hereby deny the requested waiver of Rule 25-6.015(3), Florida Administrative Code, as it relates to the retention periods for records. The requested waiver will not serve the purpose of the underlying statutes, as required by Section 120.542(2), Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition for a Waiver of Rule 25-6.015(3), Florida Administrative Code, is granted in part and denied in part. It is further

ORDERED that Florida Power & Light Company is required to petition for a new rule waiver if it changes the vendor or method used to copy its source documents. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of November, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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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 administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 16, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.