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June 11, 1998

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By Hand Delivery

Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard, Room 110
Tallahassee, Florida 32399-0850

**Re: Petition For Waiver of Rule
25-17.015(1), F.A.C**


990740 - EI

Dear Ms. Bayó:

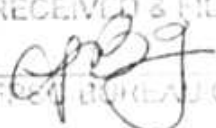
Enclosed for filing on behalf of Florida Power & Light Company are the original and fifteen (15) copies of Petition for Waiver of Rule 25-17.015 (1), F.A.C. Also enclosed is an additional copy of the Petition which we request that you stamp and return to our runner.

If you or your Staff have any questions regarding this filing, please contact me at 222-2300

Very truly yours,


Charles A. Guyton

- ACK _____
- AFA _____
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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Petition For Waiver Of Rule)
25-17.015(1), F.A.C.)**

**Docket No.
Filed: June 11, 1998**

PETITION FOR WAIVER OF RULE 25-17.015(1), F.A.C.

Pursuant to Section 120.545, Florida Statutes (1997), Florida Power & Light Company ("FPL") hereby petitions the Florida Public Service Commission ("Commission") to waive portions of Rule 25-17.015(1), Florida Administrative Code and permit FPL to file an Energy Conservation Cost Recovery ("ECCR") filing for the period January 1, 1999 through December 31, 1999, consistent with the filings for FPL's other adjustment clauses. As grounds for this petition, FPL states:

1. The petitioner's name, address, telephone number and facsimile number are:

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174
(305) 552-3643 (office)
(305) 552-2834 (fax)

2. FPL seeks a waiver of the portions of Rule 25-17.015(1), Florida Administrative Code, which require FPL to file an ECCR filing for an annual period other than a calendar year. FPL requests that the Commission waive the portions of Rule 25-17.015(1) which specify reporting periods and, instead, permit FPL to file ECCR cost recovery factors for the calendar year 1999 which presume a projection period of January 1 through December 31, 1999, an

estimated/actual true up for the period April 1998 through December 1998, and a final true up for the period October 1997 through March 1998. FPL requests a waiver of the following specific rule provisions and seeks the following alternative requirement:

Rule Provision To Be Waived	Alternative Requirement Sought
<p>FPL seeks a waiver of the requirement in Rule 25-17.015(1) that the ECCR proceeding be conducted "during the first quarter of each calendar year."</p>	<p>FPL seeks permission to have an ECCR hearing for the 1999 calendar year to be conducted at the same time the hearing is conducted for FPL's other adjustment clauses. That hearing is currently scheduled for November 1998.</p>
<p>FPL seeks a waiver of the requirement in Rule 25-17.015(1)(a) that the annual final true up filing be "for the most recent 12-month historical period from April 1 through March 31 that ends prior to the annual ECCR proceedings." That period for the ECCR hearing currently scheduled in the first quarter of 1998 should be from April 1, 1997 through March 31, 1998; however, since the final true-up from the last ECCR hearing covered the first six months of that period, the upcoming ECCR proceeding would already require a transition period for the final true-up shorter than the period prescribed by the Rule.</p>	<p>FPL seeks permission to have an ECCR final true up period of October 1997 through March 1998. The current ECCR factor includes a final true-up through September 1997, and any months past March 1998 are better handled in an actual/estimated true-up period.</p>
<p>FPL seeks a waiver of the requirement in Rule 25-17.015(1)(b) that there be "an annual estimated/actual true-up filing showing eight months actual and four month projected" data for the period beginning April 1 immediately following the period in paragraph (1) (a) of the rule. That period for the ECCR hearing scheduled for the first quarter of 1998 should be April 1, 1998 through March 31, 1999.</p>	<p>FPL seeks permission to have an ECCR estimated/ actual true-up for the period April 1998 through December 1998. FPL proposes to file actual data for April through July 1998 and estimated data for August through December 1998. This would allow the final true up for the following recovery period to end at the end of a calendar year. This will facilitate transition to a calendar year factor in the next ECCR proceeding.</p>

FPL seeks a waiver of the requirement of Rule 25-17.015(1)(c) that the projection filing show data for a twelve month period beginning April 1. For the ECCR hearing scheduled in the first quarter of 1999, that period would begin April 1, 1999.	FPL seeks permission to have a projection filing for the calendar year 1999. This would be consistent with the projection filings for FPL's other adjustment clauses. This would allow the estimated actual true up period for the following factor to be a calendar year.
FPL seeks a waiver of the requirement in Rule 25-17.015(1)(d) that the petition setting forth the ECCR factors be for factors beginning April 1 following the hearing.	FPL seeks permission to file a petition with annual ECCR factors becoming effective January 1, 1999.
FPL seeks a waiver of the requirement of Rule 25-17.015(1)(e) that FPL file a form PSC/EAG/44 for the first six months of the reporting period in paragraph (1) (a) of the Rule.	Since FPL seeks to make a final true up filing for only six months rather than for twelve months contemplated by the rule, FPL does not seek an alternative to this rule requirement, merely a waiver.

3. The statute which Rule 25-17.015(1), Florida Administrative Code, implements is Section 366.82(5), Florida Statutes (1997).

4. In Order No. PSC-98-0691-FOF-PU, issued on May 19, 1998, the Commission determined that the adjustment clauses for all investor-owned electric utilities should be determined on an annual, calendar year basis. The Commission ordered several different transition schedules to place all the adjustment clauses on an annual, calendar year basis. The Commission also found that the ECCR clause should be determined on an annual, calendar year basis, but noted that its rule regarding the ECCR clause would require amendment to permit such a change. The Commission initiated rule making to amend Rule 25-17.015, Florida Administrative Code, so that the transition to an annual, calendar year ECCR clause could be made by the year 2000. The purpose of FPL's rule waiver petition is to allow waiver of Rule 25-17.015, Florida Administrative Code, to permit FPL to make a transition to an annual, calendar

year ECCR clause in 1999 before the initiated rule making to amend Rule 25-17.015 rather than waiting until after that rule making and beginning in the year 2000. Such a waiver would allow FPL to establish annual, calendar year factors for all its adjustment clauses at one hearing, capturing all the advantages previously found by the Commission in Order No. PSC-98-0691-FOF-PU to justify the transition to annual, calendar year factors.

6. The Commission found a number of advantages to an annual fuel adjustment clause factor in Order No. PSC-98-0691-FOF-PU. First, it found that an annual hearing would reduce the number of hearing days per year, allowing the Commission and the parties to use their time and monetary resources more efficiently and gain greater efficiencies by saving the time and expense associated with an additional hearing. Second, it found that midcourse corrections would occur less frequently with annual factors. Third, it found that an annual factor would provide customers with more certain and stable prices. The Commission also found that an annual Environmental Cost Recovery Clause ("ECRC") hearing would have many of the same advantages:

An annual ECRC hearing will reduce the number of hearing days reserved for the ECRC and provide efficiencies for the parties as well as this Commission. In addition, customers will be able to project electricity costs more easily because the ECRC factor will remain unchanged for a twelve-month period.

Order No. PSC-98-0691-FOF-PU at 6, 7.

7. While the Commission has previously decided to move the ECCR clause to an annual rather than six month period, that annual period (April through March) does not coincide with the annual period (calendar year) to which the Commission has moved the other adjustment clauses. As a result, absent a waiver of a portion of Rule 25-17.015(1), Florida Administrative Code, FPL

will lose the advantages found by the Commission to be associated with annual hearings. (A) FPL will not reduce the number of hearing days per year for its adjustment clauses; FPL would have to undertake two hearings for its 1999 adjustment clauses - one in November for all clauses other than ECCR and another in the first quarter of 1999 for ECCR. This will mean that FPL, the Commission and the parties will not be able "to use their time and money more efficiently" and will not "gain greater incentives by saving the time and expense associated with an additional hearing." (B) FPL and FPL customers would face confusing adjustment clause rates associated with differing periods. Because the annual periods for the clauses differ, customers will not have the "more certain and stable prices" envisioned by the Commission. Customers will not be able "to project electricity costs more easily" for a twelve month period, for the ECCR clause will change during the calendar year used for the other clauses.

8. In Order No. PSC-98-0691-FOF-PU, the Commission also made findings addressing the advantage of the annual period for adjustment clauses being a calendar year. First, it found that an annual clause factor calculated on a calendar year basis would coincide with most commercial and industrial budget periods, providing ratepayers greater certainty about electricity costs due to a more stable, predictable twelve month charge for fuel. Order No. PSC-98-0691-FOF-PU at 8. Second, the Commission found that parties could analyze cost information more easily. *Id.* Third, the Commission found that an annual, calendar year factor would simplify Commission audits. *Id.* Fourth, the Commission found that an annual, calendar year factor allowed for greater administrative efficiencies. *Id.*

9. The Commission noted in several places in Order No. PSC-98-0691-FOF-PU that the efficiencies it had found for using an annual, calendar year for all factors would not occur if the period for the various factors differed. At pages 8 and 9 of the Order the Commission stated:

As a result of our finding above, the length of the recovery period for all components of all cost recovery clauses for all investor-owned electric and gas utilities will be twelve months. As we stated above, this Commission and the parties will gain greater efficiencies if the frequency of the hearings for the fuel clause for the investor-owned electric utilities and the ECRC for TECO is changed from a semiannual basis to an annual basis. These efficiencies do not occur, however, because the timing of the recovery periods differ among the four cost recovery clauses. Changing each recovery period to an annual, calendar year basis will allow these efficiencies to be gained.

Again at page 13 of the Order the Commission expressly noted that the timing of the ECCR clause had to be changed to an annual, calendar year for the intended advantages of moving to annual factors was to be realized:

Unless the timing of the recovery period for the ECCR is modified to coincide with the fuel clause, the ECRC, and the PGA True-up, the desired efficiencies can not be achieved.

10. The Commission decided in Order No. PSC-98-0691-FOF-PU to initiate rule making so that Rule 25-17.015 could be amended to make the ECCR recovery period coincide with the recovery period for the other clauses. However, in doing so it acknowledged that such a rule change could not be accomplished before the year 2000. As a result, FPL faces substantial hardships due to the ECCR factor for 1999 not coinciding with the recovery period for its other adjustment clauses. Absent a rule waiver which would allow the recovery period for ECCR to coincide with the recovery period with the other clauses, in 1999 FPL and its customers will lose all the advantages which the Commission found justified an annual, calendar year recovery

period for all clauses. FPL would not reduce the number of hearing dates. FPL would not be able to use its time and monetary resources more efficiently and would not gain greater efficiencies by saving time and expenses associated with an additional hearing. FPL would not have factors which provided customers with more certain and stable prices. FPL would not have an annual ECCR factor that coincided with most commercial and industrial customers' budget periods and would not be able to provide ratepayers with greater certainty about electricity costs due to the change in the ECCR factor during 1999. The parties would not be able to analyze cost information as easily. Commission audits would not be simplified. Most importantly, as the Commission explicitly found, FPL, the commission and the parties would not enjoy the greater administrative efficiencies intended by the Order. The granting of a waiver as requested by FPL is necessary to avoid the substantial hardships the Commission has previously found associated with recovery periods differing for adjustment clauses.

11. The purposes of the underlying statute will be achieved with the requested waiver of the portions of Rule 25-17.015(1), F.A.C. The underlying statute envisions that there will be an adjustment clause for the recovery of conservation costs. That purpose will continue to be fulfilled with the rule waiver sought by FPL. In fact, as the Commission pointed out in Order No. PSC-98-0691-FOF-PU, the clause will operate more efficiently if FPL's rule waiver is granted.

12. The waiver sought is temporary. FPL only seeks a waiver of the portions of Rule 25-17.015, Florida Administrative Code so that it may have an ECCR factor for 1999 that is based on a calendar year rather than the year beginning April 1, 1999. Before the subsequent ECCR factor for the year 2000 is established, the rule making proceeding initiated by the Commission


in Order No. PSC -98-0691-FOF-PU should be completed and there should be no further need for a waiver.

WHEREFORE, FPL respectfully requests that the Commission grant the waiver of Rule 25-17.015(1), Florida Administrative Code as more fully set forth in paragraph 2 above and that FPL be permitted to file ECCR cost recovery factors for the calendar year 1999 which presume a projection period of January 1 through December 31, 1999, an estimated/actual true up for the period April 1998 through December 1998, and a final true up for the period October 1997 through March 1998.

Respectfully submitted,

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Fax No. (904) 222-7510

Attorneys for Florida Power &
Light Company

By: 
Charles A. Guyton

CERTIFICATE OF SERVICE

I hereby certify that on this the 11th day of June, 1998, a copy of the foregoing Petition for Waiver of Rule 25-17.015(1) was served by hand delivery* or First Class United States Mail on the following:

Robert V. Elias, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Jack Shreve, Esquire
Public Counsel
Office of Public Counsel
Room 812
111 West Madison Street
Tallahassee, Florida 32399-1400

By *Charles A. Guyton*
Charles A. Guyton