

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
H. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD

POST OFFICE BOX 551 32302 0551
215 SOUTH MONROE STREET SUITE 420
TALLAHASSEE, FLORIDA 32301 1841

TELEPHONE (850) 681 6788
TELECOPIER (850) 681 6515

OF COUNSEL
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS
PATRICK R. MALOY
AMY J. YOUNG

August 24, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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Re: Florida Power & Light Company's Petition for Waiver

981064-EZ

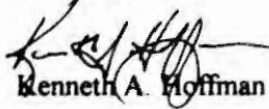
Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Power & Light Company ("FP&L") are the original and fifteen copies of FP&L's Petition for Waiver.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

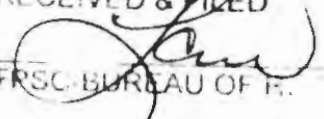
Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

- ACK _____
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Enclosures
Tab 3

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FPSC-BUREAU OF RECORDS

9158-418
Aug 24

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application of Florida Power & Light)
Company for a Waiver of Certain)
Requirements of Rule 25-6.0437, F.A.C.)
as They Apply to FPL's General Service)
Non-Demand Rate Class.)
_____)

Docket No. 981764-EI

Filed: August 24, 1998

**FLORIDA POWER & LIGHT COMPANY'S
PETITION FOR WAIVER**

Pursuant to Section 120.542, Florida Statutes (1997) and Rules 28-104.002 and 25-6.0437(3), Florida Administrative Code, Florida Power & Light Company ("FPL") hereby petitions the Florida Public Service Commission ("Commission") for a waiver of: (1) certain requirements of Rule 25-6.0437(3), Florida Administrative Code, as they apply to FPL's General Service Non-Demand ["GS(T)-1"]¹ rate class; and (2) those portions of Rule 25-6.0437(6) and (7) contemplating the replacement of load research samples every two years. Pursuant to this Petition, FPL requests the same waivers, approved by the Commission on numerous occasions in the past, authorizing the use of a $\pm 15\%$ accuracy criterion at the 90% confidence level for estimating the GS(T)-1 rate class' winter peak demand and the continued use of a three-year cycle for the replacement of load research samples. In addition, FPL requests approval of its Load Research Sampling Plan as filed on August 24, 1998, for the GS(T)-1, General Service Demand ["GSD(T)-1"]², General Service Large Demand

¹The GS(T)-1 rate class encompasses Rate Schedules GS-1, General Service Non-Demand, and GST-1, General Service Non Demand - Time of Use (Optional). These Rate Schedules apply to commercial customers with monthly electrical demands of 20 kilowatts or less.

²The GSD(T)-1 rate class encompasses Rate Schedules GSD-1, General Service Demand, and GSDT-1, General Service Demand - Time of Use (Optional). These Rate Schedules apply to commercial and industrial customers with monthly electrical demands in excess of 20 kilowatts but less than 500 kilowatts.

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Aug 24

["GSLD(T)-1"]³ and Residential Service ["RS(T)-1"]⁴ rate classes.

In support of this Petition, FPL states as follows:

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

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174
(305) 552-3559 (office)
(305) 552-3247 (fax)

2. All pleadings, notices, staff recommendations, orders or other documents required to be served, filed by any party or issued by the Commission in this proceeding should be forwarded to the following individuals:

W. G. Walker, III
Vice President
Regulatory Affairs Department
Florida Power & Light Company
215 South Monroe Street, Suite 800
Tallahassee, Florida 32301-1859
(850) 224-7517 (Telephone)
(850) 224-7197 (Telecopier)

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Underwood, Purnell
& Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

A. BACKGROUND

3. Subsections (1), (6) and (7) of Rule 25 6.0437 require each investor-owned electric utility in Florida which had gross annual retail sales of 500 GWH or more in 1983 to: (a) submit a current, revised sampling plan not less than every two years after such utility's initial sampling plan

³The GSLD(T)-1 rate class encompasses Rate Schedules GSLD-1, General Service Large Demand, and GSLDT-1, General Service Large Demand - Time of Use (Optional). These Rate Schedules apply to commercial and industrial customers with monthly electrical demands of at least 500 kilowatts but less than 2,000 kilowatts.

⁴The RS(T)-1 rate class encompasses Rate Schedules RS-1, Residential Service, and RST-1, Residential Service - Time of Use (Optional).

has been approved by the Commission; and (b) perform a complete load research study in accordance with the Rule's specifications not less often than every two years after December 31, 1985, and submit to the Commission the results of each study within 120 days of the study's completion. FPL submitted its most current Sampling Plan on August 24, 1998. In that transmittal (at page 3), FPL indicated its intention to apply for a waiver of the $\pm 10\%$ relative accuracy at the 90% confidence level, mandated by Rule 25-6.0437(3), as it would pertain to FPL's GS(T)-1 Rate Class for FPL's 1997 winter peak demand. The GS(T)-1 Rate Class sample size in FPL's August 24, 1998 filing was based upon a $\pm 15\%$ relative accuracy with relation to FPL's winter coincident peak statistics. In the same transmittal (at page 3), FPL also indicated its intention to continue the use of a three-year replacement cycle for its load research sampling points for the GS(T)-1, GSD(T)-1, GSLD(T)-1 and RS(T)-1 rate classes. See Order Nos. PSC-94-1501-FOF-EI⁵ and PSC-97-0379-FOF-EI.⁶

4. The GS(T)-1, GSD(T)-1, GSLD(T)-1 and RS(T)-1 rate classes account for more than one percent of FPL's annual retail electric sales and are therefore required to be included in the sampling plan pursuant to subsection (3) of Rule 25-6.0437. The remaining rate classes which account for more than one percent of FPL's annual retail electric sales are 100% metered with recording meters and therefore do not require sampling.

5. Subsection (3) of Rule 25-6.0437 authorizes utilities to request a waiver of the requirements identified in paragraph 3 above for any specific rate class.

⁵See 94 F.P.S.C. 12:85 (1994).

⁶See 97 F.P.S.C. 4:109 (1997).

**B. SPECIFIC FACTS JUSTIFYING A WAIVER OF THE
±10% ACCURACY CRITERION, IN FAVOR OF A
± 15% ACCURACY CRITERION, FOR THE
GENERAL SERVICES NON-DEMAND RATE CLASS**

6. FPL's Load Research Sampling Plan filed on August 24, 1998, satisfies the sampling plan design requirement identified in paragraph 3 above for all classes specified in paragraph 4 above except the GS(T)-1 rate class. The Load Research Sampling Plan is designed to provide an estimate of the GS(T)-1 rate class' winter peak within $\pm 15\%$ at the 90% confidence level. This same accuracy change has been utilized in FPL's 1986, 1988, 1990, 1992, 1994 and 1996 Sampling Plans; and the Commission has approved similar applications of FPL for waivers submitted in conjunction with these six previous Sampling Plans. The Load Research Sampling Plan filed by FPL on August 24, 1998, is designed to otherwise comply with the sampling-related requirements of Rule 25-6.0437.

7. FPL requests that the relative accuracy requirement of Rule 25-6.0437(3) be waived for the GS(T)-1 rate class' winter peak as set forth in FPL's most-current Load Research Sampling Plan based on the following factors and justification:

(a) The GS(T)-1 rate class' sample is designed to meet the Rule's $\pm 10\%$ relative accuracy criterion for FPL's summer peak.

(b) The GS(T)-1 rate class' peak demand, which is used for cost-of-service studies, has generally occurred during the summer in recent years.

(c) During 1997, a 3.67% accuracy was achieved for the GS(T)-1 rate class' twelve-month coincident peak average, which is also used for cost-of-service studies. (See Table contained in FPL's April 1998 filing of its load research study results). The 1998 GS(T)-1 Sampling Plan is

designed to achieve better than a $\pm 10\%$ accuracy for this average.

(d) The GS(T)-1 rate class represents 6.92% of FPL's kWh for the four sampled rate classes; however, a sample designed to achieve a 10% winter peak relative accuracy for the GS(T)-1 rate class would require 61.3% of the total samples for the same four sampled rate classes.

(e) A GS(T)-1 rate class sample size which would satisfy the Rule's relative accuracy criterion of $\pm 10\%$ for FPL's winter peak would require 554 additional samples (a 115.6 % increase), resulting in approximately \$120,000 of additional meter installation and removal costs and an increase in on-going metering expenses of approximately \$530,000 over the planned three-year life of the sample. The additional capital cost to purchase the necessary meters would be approximately \$235,000. These expenses are not cost-justified when one considers the factors enumerated in (a), (b), (c) and (d) above.

(f) FPL's winter peaks have, for the last few years, been experienced during the morning hours, and are driven by the Residential Service rate class.

**C. SPECIFIC FACTS JUSTIFYING A WAIVER OF THE
TWO-YEAR REPLACEMENT CYCLE FOR LOAD
RESEARCH SAMPLES IN FAVOR OF A
THREE-YEAR REPLACEMENT CYCLE**

8. As noted above in paragraph 3 of this Petition, FPL indicated in its August 24, 1998 Sampling Plan that it desires to continue to replace load research samples every three years (rather than every two years) as previously approved by the Commission in Order Nos. PSC-94-1501-FOF-EI and PSC-97-0379-FOF-EI. FPL is hereby formally requesting a continued waiver of the two-year turnaround indicated by the Commission in Order No. PSC-94-1501-FOF-EI as contemplated by Rule 25-6.0437(6) and (7) for all components of utilities' sampling plans and load research studies.

9. FPL is seeking approval of its continued use of the three-year replacement cycle for the same reasons as those justifying the Commission's approval of the same requests in Order Nos. PSC-94-1501-FOF-EI and PSC-97-0379-FOF-EI, specifically:

(a) **FPL Cost Savings** - A significant operation and maintenance cost associated with FPL's load research sample points is the cost of installation and removal of recording meters (SSDRs). A three-year cycle would spread out FPL employee's workload by eliminating approximately 1,100 installation/removal activities every six years; and approximately \$250,000 would be saved over that time period.

(b) **More Balanced Workload for Field Metering Personnel** - The number of meters to be installed under the proposed plan would be 321 in 1999, 479 in 2000, and 330 in 2001. If a two year cycle replacement schedule were utilized, the installation workload would be 321 in 1999 and 809 in 2000.

(c) **Rate Class Stability** - The GS(T)-1, GSD(T)-1 and RS(T)-1 sampled rate classes have been sufficiently stable to justify a one-year extension in the replacement cycle.

(d) **Continuous Sampling** - In order to obtain the data needed for the development and evaluation of rates, FPL collects and analyzes rate load research data every year (rather than every other year, as is done by some utilities). The most current data is always available. The continuation of the three-year replacement cycle adds only one year to the time that a sample point may be used.

(e) **Invalid Samples Are Replaced** - To maintain randomness, sample points are monitored and replaced as necessary (after all efforts are made to retain the original sample point), with alternates having a similar usage and location.

(f) Reasonableness of a Three-year Usage Period - Because FPL conducts continuous, on-going sampling, it is a reasonable alternative to continue the usage of sample points for a three-year period after first installation of an approved sampling plan. FPL will continue to submit sampling plans based on current load research data every two years as required by Rule 25-6.0437(3), (6) and (7).

D. THE REQUESTED WAIVERS MEET THE REQUIREMENTS OF SECTION 120.542(2), FLORIDA STATUTES

10. Section 120.542(2), Florida Statutes (1997) provides:

(2) Variances and waivers 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 a 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 Requested Waivers Serve the Purposes of the Underlying Statutes

11. Rule 25-6.0437, Florida Administrative Code, implements a number of Commission statutes, including Sections 366.04(2)(f), 366.05(1) and 366.06(1), Florida Statutes. Section 366.04(2)(f) authorizes the Commission "[t]o prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder." (Emphasis supplied). Section 366.05(1) authorizes the Commission "to prescribe fair and reasonable rates and charges...." In addition, Section 366.06(1) requires the Commission to fix "fair, just, and reasonable rates for each customer class" and to consider, among other factors, "the cost of providing

service to the class.... (and) the consumption and load characteristics of the various classes of customers...."

12. Rule 25-6.0437 implements the above-referenced statutory authority and requirements. The waivers sought by FPL pursuant to this Petition serve the purposes of the underlying statutes by providing the data required by the Commission rule which is "reasonably available" to FPL and necessary to meet the requirements of the rule on a cost effective basis. The granting of the waivers requested herein allow for cost effective implementation by FPL of the purposes of the load research sampling plan rule and the statutory requirement that fair, just and reasonable rates consider the cost of providing service to each customer class and consideration of the consumption and load characteristics of the various classes of customers.

13. As previously stated, the waivers requested herein have been granted by the Commission for FPL on numerous occasions. The Commission has waived the requirements of Rule 25-6.0437 with respect to the precision of the winter peak for the General Service Non-Demand rate class on six previous occasions. In its most recent order approving this waiver, the Commission concluded:

A waiver is reasonable when the peak hour for the applicable class does not occur within the season for which the waiver is requested, and if (the Commission is) not currently using, for any utility, a cost of service methodology which allocates production plant on a single coincident peak hour. The first condition ensures that the estimate of the class peak hour used to develop an allocation factor for distribution plant meets the precision requirement of the rule. The second condition ensures that the allocation factors developed for production plant used in rate cases and in the recovery clauses meet the accuracy requirements of the rule.

(Order No. PSC-97-0379-FOF-EI issued April 7, 1997.

The above conditions are satisfied with respect to the instant request for waiver and serve the purposes of the above-referenced underlying statutes.

14. Finally, FPL's request for a waiver to allow the continued use of a three-year cycle for the replacement of load research samples serves the purposes of the above-referenced underlying statutes by providing a more cost effective alternative for FPL in meeting the goals and purposes of Rule 25-6.0437 and providing the data, information and load sampling plan required by the rule.

**Failure to Grant the Requested Waivers Would
Create a Substantial Hardship**

15. As demonstrated above, the failure to grant the requested waivers would create a substantial hardship for FPL and its ratepayers by requiring FPL to incur significant additional expenses - - roughly \$885,000 of additional costs if the waiver of the $\pm 10\%$ accuracy criterion for FPL's GS(T)-1 winter peak is not granted and approximately \$250,000 in additional costs if the Commission requires FPL to discontinue the prior approved use of a three-year replacement cycle for load research samples.

16. Apart from this demonstrated economic hardship, a strict application of the rule (i.e., failure to grant the requested waivers) would require FPL to forego the benefits of granting these requested waivers as identified in this Petition and as previously recognized by the Commission in the above-referenced orders. Where, as here, a strict application of Rule 25-6.0437 would require FPL and its ratepayers to forego substantial benefits and would produce "unreasonable, unfair, and

unintended results,"⁷ the requested waivers should be granted.⁸ Granting the waivers requested herein also is consistent with the Legislature's intent in enacting Section 120.542, Florida Statutes (Supp. 1996), to grant agencies broad discretion and flexibility to forego rigid adherence to rules when a more cost-effective, sensible approach to accomplishing specific statutory goals is available.⁹

WHEREFORE, FPL respectfully requests the Commission:

- A. To grant a waiver of the above-specified requirements of Rule 25-6.0437, Florida Administrative Code;
- B. Authorize FPL's use of a $\pm 15\%$ accuracy criterion at the 90% confidence level to estimate the GS(T)-1 rate class' winter peak in FPL's 1998 Load Research Sampling Plan;
- C. Authorize FPL's continued use of a three-year cycle for the replacement of load research samples; and
- D. Approve FPL's Load Research Sampling Plan as filed on August 24, 1998.

⁷See Fla. Stat. §120.542(1) (1997).

⁸At the Commission's August 18, 1998 regular agenda, in Docket No. 980740-EI, the Commission granted FPL's Petition for Waiver of Rule 25-17.015(1), Florida Administrative Code, based on the Commission's determinations that the term "substantial hardship" under Section 120.542(2), Florida Statutes, may include the loss of substantial benefits for the petitioning utility and its ratepayers if a waiver request is denied and circumstances where a failure to grant a requested waiver of a Commission rule leads to an unreasonable, unfair or unintended result. As of the date of the filing of this Petition, an order granting FPL's Petition for Waiver of Rule 25-17.015(1), Florida Administrative Code, had not been issued.

⁹See Loosening the Chains that Bind: The New Variance and Waiver Provisions in Florida's Administrative Procedure Act, Donna E. Blanton and Robert M. Rhodes, Vol. 24, Florida State University Law Review, 353 at 371 (Winter 1997, No. 2).

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

Rutledge, Ecenia, Underwood, Purnell
& Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302-0551

(850) 681-6788

FPL.wai