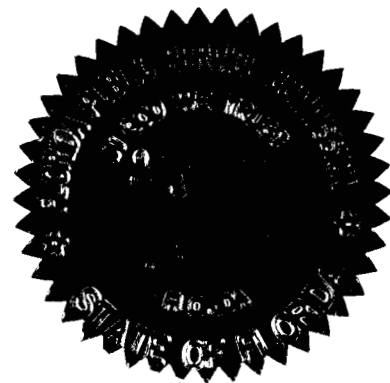


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :  
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Proposed amendments to Rules :  
25-4.002, F.A.C., Application :  
and Scope; 25-4.414, F.A.C., :  
Minimum Filing Requirements for:  
Rate of Return Regulated Local :  
Exchange Companies; Commission :  
Designee; 25-4.202, F.A.C., :  
Construction and Waivers; :  
25-24.455, F.A.C., Scope and :  
Waiver; 25-6.002, F.A.C., :  
Application and Scope; :  
25-6.043, F.A.C., Investor- :  
Owned Electric Utility Minimum :  
Filing Requirements; Commission: :  
Designee; 25-60438, F.A.C., :  
Non-Firm Electric Service - :  
Terms and Conditions; :  
25-17.087, F.A.C., Intercon- :  
nection and Standards; :  
25-30.010, F.A.C., Rules for :  
General Application; 25-30.011, :  
F.A.C., Application and Scope; :  
25-30.436, F.A.C., General :  
Information and Instructions :  
Required of Class A and B :  
Water and Wastewater Utilities :  
in an Application for Rate :  
Increase; 25-30.450, F.A.C., :  
Burden of Proof and Audit :  
Provisions; 25-30.455, F.A.C., :  
Staff Assistance in Rate Cases; :  
25-30.456, F.A.C., Staff :  
Assistance in Alternative Rate :  
Setting; 25-30.570, F.A.C., :  
Imputation of Contributions- :  
in-Aid-of-Construction; and :  
25-30.580, F.A.C., Guidelines :  
for Designing Service :  
Availability Policy. :  
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PROCEEDINGS:       **RULE HEARING**

BEFORE:             CHAIRMAN JOE GARCIA  
                      COMMISSIONER J. TERRY DEASON  
                      COMMISSIONER JULIA L. JOHNSON  
                      COMMISSIONER E. LEON JACOBS, JR.

DATE:                **Thursday, August 12, 1999**

TIME:                Commenced at 9:30 a.m.  
                      Concluded at 11:05 a.m.

PLACE:              Betty Easley Conference Center  
                      Room 148  
                      4075 Esplanade Way  
                      Tallahassee, Florida

REPORTED BY:        KIMBERLY K. BERENS, CSR, RPR  
                      FPSC Commission Reporter

1     **APPEARANCES:**

2                     **MATTHEW M. CHILDS**, Steel, Hector & Davis,  
3     215 South Monroe Street, Suite 601, Tallahassee,  
4     Florida 32301, appearing on behalf of **Florida Power &**  
5     **Light Company.**

6                     **JAMES D. BEASLEY**, Ausley & McMullen, Post  
7     Office Box 391, Tallahassee, Florida 32302, appearing  
8     on behalf of **Tampa Electric Company.**

9                     **CHRISTIANA MOORE**, Florida Public Service  
10    Commission, Division of Appeals, 2540 Shumard Oak  
11    Boulevard, Tallahassee, Florida 32399-0870, appearing  
12    on behalf of the **Commission Staff.**

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I N D E X

EXHIBITS

NUMBER	ID.	ADMTD.
1 - Composite Exhibit	14	14
2 - FPL Workshop Documents	14	14
CERTIFICATE OF REPORTER		69



## P R O C E E D I N G S

(Hearing convened at 9:35 a.m.)

**CHAIRMAN GARCIA:** Good morning. We will get started. I do want to let you know, Commissioner Clark will not be with us today and Commissioner Johnson is running a little bit late, but we'll go ahead and get started. If counsel could read the Notice.

**MS. MOORE:** Yes. This hearing is being held pursuant to Section 120.54 Subsection (3)(C) of Florida Statutes on a Notice of Rulemaking that was issued on December 18, 1998, and published in the Florida Administrative Weekly on December 31, 1998 -- 1998, and a Notice of Hearing subsequently issued on March 17, 1999 and published in the F.A.W. on March 26, 1999.

**CHAIRMAN GARCIA:** Okay. Take appearances.

**MR. CHILDS:** Commissioners, my name is Matthew Childs of the firm of Steel, Hector and Davis. I'm appearing on behalf of Florida Power & Light Company.

**MR. BEASLEY:** Commissioners, James D. Beasley of the law firm of Ausley & McMullen appearing on behalf of Tampa Electric Company.

**MS. MOORE:** Christiana Moore with the Public

1 Service Commission, Division of Appeals, appearing on  
2 behalf of Staff. With me are Craig Hewitt, John  
3 Slemkewicz, Connie Kummer and Mark Futrell from the  
4 Commission Staff in case there are any questions.

5 **CHAIRMAN GARCIA:** Okay. We're going to try  
6 to keep this informal and we'll follow the procedure  
7 laid out in the prehearing order, so we will begin  
8 with you, I guess, Mr. Childs or does Staff want to  
9 make -- I'm sorry. Staff did have to make a  
10 presentation.

11 **MS. MOORE:** We were going to make some  
12 introductory -- a summary.

13 **CHAIRMAN GARCIA:** Go ahead. Sorry, Chris.

14 **MS. MOORE:** That's okay. Commissioners,  
15 this is the rule docket where the Commission is  
16 proposing to repeal various waiver and variance  
17 provisions that appear in about 15 of its rules.

18 As you know, the 1996 rewrite of the  
19 Administrative Procedure Act, Chapter 120, the  
20 Legislature adopted Section 120.542 to govern rules,  
21 waivers and variances and they also adopted Section  
22 120.536 which require agencies to report to the Joint  
23 Administrative Procedures Committee, the JAPC, on  
24 rules that exceed it's rulemaking authority. And if  
25 legislation is not enacted to adopt or to authorize

1 those rules by 1998, the agencies are required to  
2 repeal them.

3 In the fall of 1997 the Commission approved  
4 a list of the rules and submitted it to the JAPC who  
5 forwarded it to the Legislature. Commission didn't  
6 seek legislation to authorize those rules, and  
7 because, as it stated in the letter to the Legislature  
8 to the JAPC, that authority is now in Section 120.542,  
9 and specific Uniform Rules of Procedure have been  
10 adopted by the Administration Commission.

11 I think why we're here today is because  
12 there is a fundamental difference of opinion between  
13 Florida Power & Light and Tampa Electric Company and  
14 Commission legal counsel about the significance of the  
15 statute, Section 120.542, and whether the Commission  
16 has some separate surviving overriding implied  
17 authority to waive its rules and not to follow the  
18 waiver procedures and standards in Chapter 120.

19 We don't think so because of the plain  
20 language of the statute and Section 120.542 and the  
21 definitions of variance and waiver.

22 The definitions say that any waiver and any  
23 variance must conform to the standards in Chapter 120  
24 and in the uniform rules. And Section 120.542 (1)  
25 says, "agencies are authorized to grant variances and

1   waivers to requirements of their rules consistent with  
2   this section and with rules adopted under the  
3   authority of this section."

4           So we think the Legislature made it pretty  
5   clear that all agencies, not -- excepting the PSC,  
6   must follow Section 120.542 unless they have another  
7   specific statute that allows it to waive its rules,  
8   because in -- Subsection 1 provides that it is  
9   supplemental and does not abrogate the variance and  
10   waiver provisions in any other statute and doesn't  
11   recognize waiver provisions in existing rules, just  
12   statutes.

13           And in my opinion, those other provisions  
14   must be explicit, not implied. So you have to look at  
15   our statutes and see if there are any other variance  
16   or waiver provisions, and we just can't find any in  
17   Chapter 366.

18           We're well aware that the Legislature  
19   intended to encourage flexibility and that's why they  
20   put the waiver and variance provisions in Chapter 120.  
21   The fact that the PSC wasn't one of the problem  
22   agencies, wasn't one that was too rigid in the  
23   applying its rule, doesn't really matter because  
24   there's nothing in Chapter 120 that says it doesn't  
25   apply to the Commission.

1           If it were not for Section 120.542 perhaps  
2 the Commission would -- and I don't think maybe the  
3 Commission would have included its waiver rules on the  
4 list that it sent to the JAPC saying that it didn't  
5 have the authority. But with a statute that expressly  
6 provides for waivers and expressly provides for the  
7 procedures and the notice requirements which are  
8 supposed to be uniform for all agencies, we concluded  
9 that we didn't have special or separate authority,  
10 either implied or expressed, and that we must follow  
11 Section 120.542.

12           I think that's all for now.

13           **COMMISSIONER DEASON:** I have a question. Is  
14 it your position that before the Commission can have  
15 specific waiver language within its rule, that the  
16 Commission -- there has to be specific statutory  
17 authority to first adopt that rule? And second, that  
18 the Commission has authority to grant waivers of that  
19 rule?

20           **MS. MOORE:** Yes, it is. I think we can have  
21 rules that provide exceptions, that give some  
22 standards for those exceptions. We can recognize that  
23 the rules aren't always applicable in every situation,  
24 but I think we have to have standards for those.  
25 Otherwise, we need a specific statute; a statute that

1 says the Commission by rule can waiver -- can waive --  
2 the Commission can waive its rules.

3 **COMMISSIONER DEASON:** Well, the language  
4 that's at issue here that is being recommended that it  
5 be deleted or repealed, are there standards that are  
6 implied in the granting of the waivers different from  
7 the standard that is within 120.542?

8 **MS. MOORE:** I think there are some express  
9 standards in our rule waiver provisions that are  
10 different; unreasonable difficulty or un --  
11 impractical, words like that that are different than  
12 the standards in the statute.

13 **COMMISSIONER DEASON:** The words may be  
14 different, but is the standard different?

15 **MS. MOORE:** Well, I guess it would depend on  
16 how the Commission applies it, but, yes, it seems to  
17 be. Unreasonable difficulty may not be the same as  
18 substantial hardship, but then the Commission could  
19 interpret --

20 **COMMISSIONER DEASON:** Well, what's the  
21 difference between unreasonable difficulty and  
22 substantial hardship? Are we in an exercise here  
23 for -- for practical purposes does it make any  
24 difference, I guess, is my question.

25 **MS. MOORE:** Whether repealing these, does

1 it --

2 COMMISSIONER DEASON: Yes.

3 MS. MOORE: Well, if the Commission --

4 COMMISSIONER DEASON: Have we been told to  
5 repeal these Sections?

6 MS. MOORE: Excuse me?

7 COMMISSIONER DEASON: Have we been told to  
8 repeal this; these rules that are being -- have we  
9 been told specifically to repeal them?

10 MS. MOORE: Yes. The statute says repeal --  
11 we must initiate rulemaking to repeal rules that we  
12 had on that list if the Legislature in a subsequent  
13 Section -- session did not enact language to authorize  
14 us.

15 COMMISSIONER DEASON: But apparently we have  
16 authority to have the rule. You're saying we just  
17 don't have authority to waive the rule.

18 MS. MOORE: Yes. We have authority for the  
19 substantive provisions and we have authority to put  
20 exceptions in our rules.

21 COMMISSIONER DEASON: So, if we have the  
22 authority to adopt a rule, and a lot of the language  
23 in adopting those rules we're implementing language  
24 like fair and reasonable and things of that nature  
25 which are subjective in nature, does that also imply

1 that we have the ability to waive that on a  
2 case-by-case basis?

3 **MS. MOORE:** And --

4 **COMMISSIONER DEASON:** I guess what I'm  
5 saying is, if you have the authority to adopt a rule,  
6 is it implicit in that that you also have the  
7 authority to waive the rule?

8 **MS. MOORE:** I don't think so any longer.  
9 The -- that used to be the case according to the  
10 courts that -- and Section -- Section 120.68, the  
11 statutes, allowed an agency to deviate from its rules  
12 if it explained the deviation. That was changed in  
13 1984 by the Legislature to then -- to take out the  
14 authority to explain it and avoid a reversal so  
15 that -- I think after that is when we adopted  
16 particular waiver provisions in our rule -- rules.

17 And -- but in 1996 the Legislature chose to  
18 put in specific provisions for waivers and variances  
19 including notice and an opportunity for other parties  
20 to come in and participate and object to a waiver or  
21 variance.

22 I think we also have a problem in that when  
23 you have a rule and you put exceptions or waiver  
24 provisions in, you need to have some standards to  
25 avoid being applied arbitrarily and capriciously, and



1 also to avoid a determination that it's an invalid  
2 delegation of legislative authority because there are  
3 inadequate standards; the parties that are regulated  
4 by the rule, the parties that are effected.  
5 Otherwise, consumers do have a right to some  
6 predictability and some knowledge of the standards  
7 that will be applied and so that the rules aren't  
8 applied differently to different persons.

9 **CHAIRMAN GARCIA:** Very good. Mr. Childs.

10 **MR. CHILDS:** Commissioners, the Staff has  
11 put together an exhibit for this hearing and I would  
12 like to ask that in addition to that -- which includes  
13 notices and various filings that were made in the  
14 docket. And I'd like to ask that also as an exhibit  
15 that there be included FPL's June 12, 1998 request for  
16 a hearing and -- excuse me -- request for a workshop,  
17 and FPL's July 14, 1998 comments following up on that  
18 workshop, and I have copies for everyone. If it's  
19 appropriate to mark that, I'd appreciate that.

20 **CHAIRMAN GARCIA:** Ms. Moore.

21 **MS. MOORE:** I have no objection. We do also  
22 have Composite Exhibit No. 1 that we had not -- I  
23 believe the court reporter has marked it, but we'd  
24 like it entered into the record, too.

25 **CHAIRMAN GARCIA:** Okay. All right. So

1 entered and numbered. This is the booklet that Staff  
2 has?

3 **MS. MOORE:** Yes.

4 (Exhibit No. 1 marked for identification and  
5 received in evidence.)

6 **CHAIRMAN GARCIA:** Okay. And then No. 2 will  
7 be Composite Exhibit -- FPL's Composite Exhibits of  
8 its filing for a workshop, and Mr. Childs, why don't  
9 you give me a short title for that.

10 **MR. CHILDS:** Why don't we include it, FPL  
11 Workshop Documents.

12 **CHAIRMAN GARCIA:** Okay. That will be  
13 numbered Exhibit No. 2 then.

14 (Exhibit No. 2 marked for identification and  
15 received in evidence.)

16 **MR. CHILDS:** Thank you, Mr. Beasley. If  
17 it's appropriate, I'll just continue with some  
18 comments now.

19 I want to explain, Commissioners, that this  
20 is a rule docket. A lot of times rule dockets don't  
21 receive a lot of attention. This appears to be a  
22 technical docket having to do with some legal issues  
23 relating to the interpretation of the revisions to the  
24 Administrative Procedure Act and the Commission's  
25 authority.

1           The proposed revisions, although maybe not  
2 large in language or words, are very significant  
3 because they relate to waivers of the Commission's  
4 rules. And, for instance, I think I pointed out in  
5 one of our comments, if you look at Chapter 25-6 just  
6 the index of rules is nearly a page and a half of  
7 25-6. And out of that, it is proposed to repeal the  
8 waiver provision for those rules. And that would put  
9 everyone in the position of complying with the waiver  
10 provisions of 120.542 and the implementing  
11 regulations, which there is some difference, I think.  
12 There's the -- you know, the potential that you have  
13 to have hearings and notice to other people that may  
14 be interested or participate.

15           So that -- for instance, if you have a  
16 filing requirement to make to the Commission under  
17 Rule 25-6, you have a filing requirement and you find  
18 out that you've got a problem, like we did a number of  
19 years ago when we had a hurricane; we had a filing  
20 requirement to make, and if we had a problem making  
21 the filing, we had to comply with 120.542. I'm not  
22 going to suggest that this Commission couldn't find  
23 some emergency way, under those circumstances, to  
24 address the problem.

25           But what's happened is, is that we've now

1 been put into a different approach for obtaining  
2 waivers. It's cumbersome. It's expensive and it's  
3 time consuming. And I find that ironic since 120.542  
4 was intended to be remedial with the Legislature  
5 finding that the application of rules by agencies  
6 without the ability to grant a waiver produced  
7 unintended consequences and was burdensome, so they  
8 adopted a statute that they said was remedial and it's  
9 now being interpreted to eliminate some authority that  
10 we think you may have. That's the reason we're  
11 concerned about it.

12           There is actually another reason. And that  
13 is, it is our position that a rule with a waiver  
14 provision is -- they're not divisible. You can't just  
15 say, well, we adopted a rule with a waiver provision  
16 and we evaluated the impact on everyone of the rule  
17 with the waiver provision, but now we're going to do  
18 away with the waiver provision and there is no  
19 difference. There's a substantial difference. If a  
20 rule doesn't have the same waiver provision, there is  
21 a significant additional burden on everyone subject to  
22 the rule.

23           That has not been noticed or evaluated in  
24 the docket and we think that -- that it was overlooked  
25 and I can understand why it was overlooked under the

1 circumstances, but we don't think it should be.

2 One of the reasons that I asked that these  
3 two additional documents be made part of the record  
4 is, candidly, we've been trying to have the Commission  
5 address the rationale for the proposed repeal of the  
6 rules on waiver, and we don't believe we've had that  
7 rationale given to us.

8 It has been stated that the Legislature  
9 adopted 120.536 and adopted 120.542 and then there was  
10 a lot of discussion about Section 120.542 and the  
11 waiver language in that statute.

12 First let me go back to 120.536 which wasn't  
13 discussed too much today. And incidentally, when this  
14 rule was noticed -- when the rule amendment was  
15 noticed, 120.536 was identified as one of the bases  
16 for the action.

17 It is that Section 120.536 -- it is that  
18 section alone that directs agencies to identify those  
19 rules for which they lack authority. And it is  
20 those -- the revisions that is addressed in Section  
21 120.536 (2). And it says, by October of 1997 each  
22 agency shall provide to the Administrative Procedures  
23 Committee a listing of each rule or portion of rule  
24 adopted by that agency which exceeds the rulemaking  
25 authority permitted by this section.

1           Now, if you read this section -- and  
2 Subsection 1 addresses the debate that's been going on  
3 for years, and it addresses it by saying that "a grant  
4 of rulemaking authority is necessary, but not  
5 sufficient to allow an agency to adopt a rule; a  
6 specific law to be implemented is also required." "No  
7 agency shall have authority" -- well, that's the  
8 language. I'm not going to read it more than that.

9           But to make this point, the issue was, as to  
10 all agency rules, did the agency have the specific  
11 authority to adopt the rule?

12           Now, when we started this docket we said,  
13 well, wait a minute. You know, the Public Service  
14 Commission is not a member of the executive -- or is  
15 not an executive branch agency. The delegation issue,  
16 the Constitutional question on delegation of authority  
17 that was of great concern in the amendment to the APA  
18 may not apply the same way to the Public Service  
19 Commission because it's a legislative agency.

20           In addition, at that time there was a case  
21 pending before the First District Court of Appeals  
22 called Consolidated Tomoka, which we identified. And  
23 there was a holding that, well, the agencies did have  
24 authority for rules so long as it was an  
25 implementation of their general authority. There was

1 a big complaint and a lot of members of the  
2 administrative bar got exercised about that and it  
3 ultimately ended up with a more recent amendment to  
4 that section of APA this year, effective this year,  
5 which attempted to address that specific authority  
6 question.

7 But my point was this. When the rule was --  
8 when it was started out, that remedial action on  
9 120.536 had not been taken, but nevertheless, this  
10 Commission had identified on its filing with the Joint  
11 Administrative Procedures Committee these rules as  
12 being in excess of their authority under 120.536.

13 And so my question is then, in this docket  
14 there ought to be an explanation of why this  
15 Commission doesn't have authority for these waiver  
16 provisions.

17 Now, I would suggest that at some time the  
18 Commission thought these rules were valid, and they  
19 applied these rules, and clearly, they thought these  
20 rules were valid, including the waiver provisions.  
21 They thought they had authority.

22 So our question was, "Well, what is it that  
23 changed? What is it that changed under the law?" And  
24 really our belief is that it's not sufficient for the  
25 agency to say, "well, we put it on a list and since we

1 put it on list as one for which we lacked authority,  
2 then we have to go through the process of repealing  
3 the rule later on without any questions being asked."

4 Our view is, is that if it's rulemaking,  
5 it's subject to the same procedural requirements as  
6 any other administrative action and that requires this  
7 to be evaluated.

8 Once again, I'm saying, we're concerned  
9 about the thought process which says you have rules  
10 that are -- they're comprehensive. I started to say  
11 they're burdensome.

12 They're comprehensive rules. I think the  
13 rules can be burdensome if you are confronted with a  
14 structured waiver provision that is in -- as in the  
15 statute.

16 For instance, another illustration. One of  
17 the things that is a required showing -- and I think,  
18 Commissioner Deason, I think you asked this question.  
19 One of the required showings is -- under 120.542, is  
20 that the statute that's at issue which is being  
21 implemented by the rule, will be -- the purpose of the  
22 statute will be accomplished, even with the waiver.  
23 And my question is, what statute?

24 Many of these rules were adopted in the  
25 first instance by this Commission not to implement



1 specific statutes, but to implement general authority  
2 conferred upon the Commission, which raises the  
3 following point.

4           It seems to me that the rationale may be  
5 that the Commission lacks authority for the waiver --  
6 lacks specific authority for the waiver provisions,  
7 but no thought is given to whether that same rationale  
8 is applicable to the substantive rule.

9           And I was concerned from the very beginning  
10 that if you start opening the door that way, that --  
11 to say that the waiver provision is beyond our  
12 authority, then you have, I think, pointed the finger  
13 at the substantive rule and said, we have to ask the  
14 same question there, where is our specific authority.

15           Now, the issue was, I said, addressed by the  
16 Legislature this time around and there's a more  
17 current amendment to the APA. I don't think there's  
18 been any -- that I've seen, any additional rationale  
19 provided as to what the most current amendment to the  
20 law does with respect to these waiver provisions.

21           Now, 120.542, I do disagree with the Staff  
22 interpretation, but I really have also tried to get  
23 from them an explanation. I think they have a feeling  
24 that they're right and wonder why I ask the question.  
25 But, let me read the introductory sentence that

1 says -- of 120.542. It says, "strict application of  
2 uniformly applicable rule requirements can lead to  
3 unreasonable, unfair, and unintended results in  
4 particular instances."

5 Now, then the idea is, is that if you -- and  
6 I think this is a rationale expressed to you. If this  
7 Commission had not had a separate statute providing  
8 waivers, then you didn't have any authority for there  
9 to be a waiver -- you don't have any authority to  
10 grant a waiver. So you are left with only the  
11 remedial statute.

12 And I thought, well, historically that's  
13 kind of strange because historically for 30, 40 years  
14 this Commission has had rules and has had waivers and  
15 has attempted to address this very concern.

16 The Staff does make an argument that the  
17 existence or the reference in the 120.542 to -- and  
18 I'll read the sentence. The sentence they're  
19 referring to reads, "This section is supplemental to  
20 and does not abrogate the variance and waiver  
21 provisions in any other statute."

22 And they're reading that to say, "Well, it  
23 does, therefore, abrogate the variance and waiver  
24 provisions in any rule." My question is, why is that?

25 If you're going to reach that conclusion

1 then I think there has to be some sort of a rule of  
2 statutory construction that would lead to that result  
3 and I'm not aware of it. I've asked for it and I'm  
4 not aware of it.

5 I think that the wording -- and I say this.  
6 I think that the wording of 120.542, the definition  
7 sections that the Staff identifies, the section of the  
8 uniform rules that the Staff identifies, appear to be  
9 comprehensive. However, I would -- one of the things  
10 that they talk about is that the -- is that the --  
11 that wording suggests, therefore, that you can't have  
12 a contrary or a different method of rule waiver.

13 And I want to come back to the very sentence  
14 that I just read and said -- that says that, "This  
15 section is supplemental to and does not abrogate the  
16 variance and waiver provisions in any other statute."  
17 If that's so then the language that appears to be  
18 comprehensive in 120.542 and in the rules that  
19 implement it, has to -- has to recognize that there is  
20 an exception to that at least for other statutes.

21 And I'm -- I guess I come back to the point  
22 that it has a great impact on us. It seems to us that  
23 it changes the substantive rule so that with the  
24 different waiver provision being applicable it's going  
25 to be costly to those that are regulated.

1           The rationale about impact on others, impact  
2 on customers; with all due respect, I think what we're  
3 really talking about is a legal question here of,  
4 under 120.536 does the Commission have authority for  
5 this rule. And I know that 120.542 has been added as  
6 a reason for that, but I don't even think that  
7 120.542, that issue, and 120.536, extent of authority,  
8 are necessarily inclusive of one another.

9           In other words, if this Commission had  
10 sufficient authority for the rule in the first  
11 instance, then I don't see how you would read 120.542  
12 as taking that authority away.

13           So I think you can't read them, 120.542 and  
14 120.536, as being independent grounds for the action  
15 that is proposed to be taken.

16           **COMMISSIONER JACOBS:** Can I ask a quick  
17 question?

18           **MR. CHILDS:** Sure.

19           **COMMISSIONER JACOBS:** Would it be fair to  
20 say then, that under your analysis one or more of  
21 these proposed or repealed rules should not have even  
22 been identified because that was reckless or  
23 underlying authority?

24           **MR. CHILDS:** That's right.

25           **COMMISSIONER JACOBS:** Okay. And then --

1           **MR. CHILDS:** And we were left -- I was left  
2 with this question. You know, I thought, well, the  
3 Commission's gone ahead and identified these rules as  
4 being ones for which it lacks authority and didn't ask  
5 for there to be any additional authority granted.

6           Well, now where are we? Is it because they  
7 didn't make that request now that we have to follow  
8 through and just go ahead and repeal a rule? And I  
9 thought, well, you know, it's not pretty, but it has  
10 an adverse impact and I don't think they're right.

11           **COMMISSIONER JACOBS:** And you necessarily  
12 take a narrow interpretation of 120.542, which, I take  
13 it, Staff, you see 120.542 much broader? You see it  
14 as a restatement, in essence, of the law variances --  
15 of the administrative variances, I assume?

16           **MS. MOORE:** Absent express provision in one  
17 of our statutes, I see it as occupying the field.

18           **COMMISSIONER JACOBS:** I noticed that -- in  
19 something that I was looking at here. That the  
20 Administrative Commission was supposed to promulgate  
21 rules regarding 120.542. Has that been done?

22           **MS. MOORE:** Yes. That was done in 1997, I  
23 believe, Uniform Rules of Procedure on granting  
24 waivers and variance.

25           **COMMISSIONER JACOBS:** Do they give any

1 guidance as to what the scope should be in  
2 interpreting 120.542? How we should interpret it?

3 **MS. MOORE:** They're procedural. There are  
4 other statutes to the uniform rules apply to all  
5 agencies and agencies cannot deviate from those  
6 uniform rules unless they get an exception -- as long  
7 as the topic is within the scope of the Uniform Rules  
8 of Procedure. We can't deviate unless we get an  
9 exception to them.

10 **COMMISSIONER JACOBS:** And Mr. Childs raises  
11 the issue, that, "Well, does that fully apply to the  
12 Commission because of the quasi-legislative hat that  
13 we wear?"

14 **MS. MOORE:** Yes. The APA does fully apply  
15 to the Commission. There's case law to support that.  
16 Yes. All of the APA.

17 **MR. CHILDS:** I'm not arguing. I'm not  
18 arguing for an instance that the rules -- the uniform  
19 rules implementing 120.542 don't apply to this  
20 Commission. They do apply to this Commission. They  
21 apply to this Commission, however, for waiver requests  
22 under 120.542.

23 Now, the waiver provisions that you're  
24 proposing to repeal here are not part of the rules of  
25 procedure. They're not part of the -- if they had

1 been, then they would have been under a totally  
2 different process. They would have been identified to  
3 the Administration Commission under 120.54 as a rule  
4 that -- a rule of procedure that apparently was  
5 inconsistent with the rules of -- the Uniform Rules of  
6 Procedure. That's not -- this was done under -- these  
7 rules were identified under 120.536. They're  
8 substantive rules and the waiver provision is a part  
9 of the substantive rule. It's not a separate  
10 procedural question.

11 **COMMISSIONER JACOBS:** I see. Okay. I  
12 didn't understand that. Thank you.

13 **MR. CHILDS:** One other thing that was -- I  
14 take it that the explanation of the summary that was  
15 given was -- was the explanation by the Staff. I had  
16 thought that there would be an opportunity at a time  
17 to ask some questions ourselves about that, the  
18 question of authority of the Commission.

19 **CHAIRMAN GARCIA:** Well, it's a fairly  
20 informal proceeding, so I don't see anything wrong  
21 with that unless Staff has an objection to that.

22 **MS. MOORE:** I'm not sure I understand what  
23 he intends to ask, but no, I don't have an objection.

24 **CHAIRMAN GARCIA:** Okay.

25 **MS. MOORE:** I will explain that the rule --

1 the notice that he's speaking of that said -- gave  
2 Section 120.536 lack of authority as a primary reason,  
3 was a rule development notice. That's the first one  
4 that Staff does. The later notices were after the  
5 Commission voted to propose the rules. And as I said  
6 earlier, I'm not sure that we would submit it on a  
7 list today. But the fact is, it still conflicts with  
8 120.542 and that's enough reason to repeal them.

9           **CHAIRMAN GARCIA:** Okay. Mr. Childs, if  
10 you're finished with your presentation --

11           **MR. CHILDS:** Yes.

12           **CHAIRMAN GARCIA:** Okay. Mr. Beasley.

13           **MR. BEASLEY:** Thank you, sir. We support  
14 Mr. Childs' comments. A few brief observations, and I  
15 don't want to preach to the choir, but your regulatory  
16 function is very broad; it's very complex; perhaps  
17 more so than any other state agency in what you are  
18 charged with carrying out. Your proceedings are very  
19 fact intensive. They're very data intensive. It's  
20 very costly for all of the parties and the Commission  
21 to assimilate all of this information in a timely  
22 fashion and weigh it and make decisions.

23           You're rules recognize the need for  
24 flexibility. The Legislature, in assigning your role,  
25 recognized the need for flexibility. It charges you



1 with your duties and then authorizes you to prescribe  
2 all rules and regulations reasonably necessary and  
3 appropriate for the administration and enforcement of  
4 Chapter 366. That chapter has, as Commissioner Deason  
5 pointed out, a lot of very general statements like  
6 fair and reasonable, just and reasonable, and you have  
7 a lot of judgment that you have to exercise in making  
8 those determinations.

9 We believe that the statutory basis the  
10 Legislature has set for your rulemaking encompasses  
11 your ability to have waiver provisions in your rules.

12 As Matt pointed out, when you adopted the  
13 rules in question here today, you saw fit and the need  
14 to have these waiver provisions. You found it  
15 apparently reasonably necessary and appropriate for  
16 the administration and enforcement of the laws that  
17 you were assigned to carry out.

18 If we have to follow the rigorous time  
19 consuming and very expensive process set forth in  
20 Section 120.542, then waivers will be, in many  
21 instances, unobtainable. They just can't -- you can't  
22 go through all of that process in the time frame  
23 needed in order for your rate proceedings and other  
24 proceedings not to completely bog down. So in many  
25 instances a waiver under that process, under the new

1 1996 procedure, is just unavailable.

2           The Commission's MFR rule is one of the  
3 rules that we're concerned with here, your minimum  
4 filing requirements. And it purports to implement,  
5 among other provisions, Section 366.042(F) of the  
6 Florida Statutes which authorizes the Commission to  
7 prescribe and require the filing of periodic reports  
8 another data as may be reasonably available and as  
9 necessary to exercise its jurisdiction here under.

10           Now, terms like "as may be reasonably  
11 necessary" or "as necessary", to me connote your need  
12 to look at a particular set of circumstances in a  
13 particular case that may be filed, and determine what  
14 of the minimum filing requirements that are listed in  
15 your rule may or may not be necessary, may or may not  
16 be warranted, may not justify the cost involved in  
17 putting that together. So I think the Legislature  
18 has, in describing your role, recognized the  
19 flexibility that you need.

20           There has not been a case before the  
21 Commission that I can recall where the MFR listed  
22 requirements have been followed as a cookie cutter. I  
23 mean, it's not a one size fits all prescription of  
24 what you made need in a particular case for a  
25 particular utility. So consequently, in every case,

1 the minimum filing requirements have been a guide, not  
2 necessarily a template, to use to determine what you  
3 need in order to determine fair and reasonable rates.  
4 That's only one example.

5 We believe that if the waiver provisions of  
6 your rules are swept out, then you probably need to  
7 reconsider how your rules are worded in their entirety  
8 because, as Matt indicated, the waiver provision was  
9 adopted as part of the rules. It's an essential  
10 ingredient in making the rules work.

11 So, if you feel compelled to sweep away the  
12 waiver provisions then you need to revisit the rules  
13 themselves and determine how to fashion it. For  
14 example, in the MFR area, how to have some sort of  
15 precase conference where effected persons in a timely  
16 way, not necessarily under 120.3542, but in a very  
17 timely way can determine what's necessary for minimum  
18 filing requirements and what's not.

19 So we would urge you to very carefully  
20 consider sweeping away all these waiver provisions  
21 when they're key to the duties that you perform.

22 **CHAIRMAN GARCIA:** Commissioners, do you have  
23 any questions?

24 **COMMISSIONER JACOBS:** If we look at the --  
25 the court ruling in Tomoka -- Consolidated Tomoka, and

1 then follow through on what the Legislative response  
2 to that was, isn't it reasonable to come away with the  
3 conclusion that it was meant -- that at least the  
4 Legislative intent was that our interpretation of  
5 these uniform rules be fairly narrow in terms of our  
6 authority to go beyond them? Isn't it reasonable to  
7 look at the -- particularly the amendments that were  
8 passed this session and come away with that kind of a  
9 conclusion?

10 **MR. CHILDS:** Are you asking whether, sort of  
11 generally under the status of the law is it reasonable  
12 to conclude that there's a question about the  
13 authority for waiver provisions?

14 **COMMISSIONER JACOBS:** Right. Well, I guess,  
15 and in context of this docket, what I see here is an  
16 argument as to how narrow or how broadly we construe  
17 120.542 and what was meant there. And, I guess, my  
18 question is, if we look at this -- the chain of  
19 events, isn't it a reasonable conclusion that we shall  
20 interpret it narrowly rather than broadly? I'm sorry.  
21 We should interpret that -- its limitations broadly,  
22 that it is intended that it should cover as much of  
23 our consideration of waivers as there, and therefore,  
24 our ability to deter or deviate from it is fairly  
25 narrow?

1           **MR. CHILDS:** If I understood your question,  
2 you know, I believe that in terms of my reaction and  
3 my argument to you today, and earlier in my filings  
4 with the Commission on this question, I happen to  
5 believe that it's not -- it's not a question that you  
6 can say absolutely, we're right. I mean, I think you  
7 read the history of the changes to the statute and  
8 there was a lot of concern about what was going on.  
9 We were of the opinion, for instance, that the -- that  
10 it wasn't 120.542. That it was 120.536 that was  
11 relied upon.

12           And if I can, for just a minute, I mean, one  
13 of the things the Staff said is, "Well, they might not  
14 have done this if it hadn't been for 120.542." I  
15 think that's what they said. And that there was  
16 another notice that came out in December about  
17 rulemaking and they corrected me and said that what I  
18 identified was on the rule development phase of the  
19 docket when they reference 120.536.

20           I will point out, though, that what -- it  
21 was filed with the Joint Administrative Procedures  
22 Committee on December 24, 1998 by this Commission.  
23 There has to be this statement of facts and  
24 circumstances justifying the action, justifying the  
25 rule. That's a statutory requirement. And in that,

1 they identified 120.536 and 120.542. You know, that's  
2 the statutory requirement of the statement of facts  
3 and circumstances. And so, back to your question,  
4 because I think that's significant as to your  
5 question.

6 I think there's significant question right  
7 now about the scope of the authority of any  
8 administrative agency to adopt any rule at all without  
9 a specific grant of authority to you to adopt that  
10 rule.

11 My reaction in part is, and that was  
12 principally as a result of the most current amendments  
13 to the statute, which has not been addressed in my  
14 view in this docket. This docket was initiated under  
15 the 1996 revisions and the Notice of Hearing Request  
16 and going to hearing had been -- had been already  
17 decided before the statute was amended.

18 And one of the things I was checking was to  
19 see, well, was the statute effective before we go to  
20 hearing. And it's effective now. It hasn't been  
21 effective very long, the most current revisions.

22 But, if you -- when I say that about the  
23 question as to the agency's authority, one of my  
24 points is this. Mr. Beasley talked about the MFRs.  
25 That is -- those requirements are extremely expensive

1 and cumbersome, and yet you -- I think there's a fair  
2 question. Where's your authority for that rule?  
3 Where is the authority for 25-6, Chapter 25-6? Where  
4 is the specific authority for the Commission to do  
5 these things?

6 Well, you look at what's identified as  
7 authority. And I did. I looked at what's identified  
8 as authority. It's very -- usually it's very general.  
9 The Commission shall have authority to adopt rules.  
10 Well, that's exactly the thing that the statutory  
11 revisions to the Administrative Procedure Act was  
12 suppose to address.

13 And so, I guess my -- first of all, that's a  
14 more current revision and I felt that we're -- you're  
15 not an executive branch agency. There has been  
16 authority in the past, cases, decisions by the Florida  
17 Supreme Court saying that this agency, Florida Public  
18 Service Commission, had broad authority to adopt rules  
19 and it did adopt rules and it believed that it had  
20 that power at one time. And my reaction was, why are  
21 we identifying the most -- the worst part of the rule  
22 and saying we don't have authority for that? That's  
23 the waiver provision.

24 But, you know, I really want it understood  
25 in terms of my comments about the question as to what

1 should have been done or our view on this docket is, I  
2 was trying to -- trying to obtain a more explicit  
3 rationale for the action in this docket so the --  
4 being a little pedantic in saying, well, where's the  
5 authority and that's an interpretation of the statute,  
6 what's the basis for that was really for that purpose;  
7 to say we've got something very serious here, it has a  
8 significant impact on the companies, let's not just  
9 follow through and say it was on a list a year and a  
10 half ago so we have to do it. Okay.

11 **CHAIRMAN GARCIA:** Yes.

12 **MS. MOORE:** Just a couple of brief  
13 statements. I want to say first, that I agree with  
14 Mr. Beasley and Mr. Childs that the Commission has a  
15 tremendous amount of implied authority and discretion,  
16 but I just can't agree that it overrides the express  
17 provisions of 120.542.

18 Also, Staff agrees that the procedure under  
19 120.542 is cumbersome, it's expensive, it's time  
20 consuming. But I think the answer is with the  
21 Legislature, and that it should be addressed there,  
22 either to except the Commission or to change the  
23 procedures and the substance perhaps of 120.542.

24 One last thing, our statute says that --  
25 enact their adopt rules and require things that are



1 fair and reasonable. Uses term such as, "as  
2 necessary".

3 And I suggest that the Commission, by  
4 adopting rules and requiring certain things, has  
5 decided what is fair and what's reasonable and what's  
6 necessary and it should be generally applicable to  
7 everyone. If it's something that is so unique to a  
8 case or that is very highly dependent on case by case  
9 circumstances then perhaps the adoption of a rule in  
10 the first place isn't required because it's not  
11 practical. And under the statute there are times  
12 where rules aren't practical or aren't feasible. But,  
13 as long as the Commission has adopted the rule, I  
14 don't think you can escape the requirement that  
15 Section 120.542 tells you how and when they can be  
16 waived. Thank you.

17 **COMMISSIONER DEASON:** Well, let me ask a  
18 question. What about the argument that when the  
19 Commission adopted those rules, those rules which do  
20 contain waiver provisions, that the Commission  
21 evaluated the rule in its entirety, including the  
22 waiver provision, and relied upon the waiver provision  
23 in reaching that goal of having rules which were  
24 appropriate and were -- met the requirements and gave  
25 some flexibility to the Commission; and that without

1 the waiver provisions, perhaps the Commission wouldn't  
2 even have adopted the rules to start with? And you're  
3 taking one portion of that rule and now eliminating it  
4 and saying everything else in the rule is still valid.  
5 How do you make that leap?

6 **MS. MOORE:** Well, I think maybe the  
7 Commission -- no one's identified any particular  
8 provisions. I know Mr. Beasley suggested the whole  
9 MFR rule. But, particular -- really the MFR rule  
10 consists of all of the schedules and particular  
11 requirements and those. And perhaps they knew if  
12 someone thinks some of that is too rigid or the  
13 requirements are too great, then perhaps those rules  
14 do need to be amended. But I think that's also in the  
15 waiver and variance statute; the requirements of that.  
16 We have to keep track of waivers that have been  
17 granted and variances that have been granted, and I  
18 think the purpose of that is to provide a basis to  
19 later amend the rule because it demonstrates a need if  
20 we keep waiving it or varying it.

21 But I don't know of any particular  
22 provisions right now that the Commission would not  
23 want to keep without a general variance provision in  
24 there. We still do have 120.542 which does allow the  
25 variance and waiver, the standards just might be

1 different.

2           **COMMISSIONER JACOBS:** Earlier, I think in  
3 response to a question, you said that we were directed  
4 to repeal all of these variance provisions. Was that  
5 according to your interpretation of 542 or was that  
6 something that we got back from JAPC?

7           **MS. MOORE:** No. The requirement to initiate  
8 rulemaking to repeal is in Section 120.536 which  
9 requires specific authority. That's what -- we began  
10 the process of reviewing our rules to meet that  
11 requirement and because there was a new variance and  
12 waiver provision we thought that that resulted in our  
13 not having specific authority.

14           **COMMISSIONER JACOBS:** You may have done this  
15 already, but how would you respond to the idea that  
16 the enactment of 542 really didn't narrow -- I guess,  
17 let's stick to the ones that have been cited -- did  
18 not narrow the underlying authority that supported the  
19 variance provisions that have been cited in comments  
20 here?

21           **MS. MOORE:** I think the plain language. I  
22 don't think we need to go to rules of statutory  
23 construction really, that the plain language of  
24 120.542 says this is the way waivers and variances  
25 will be granted, if that answers your question.

1                   **COMMISSIONER JACOBS:** Well, that's  
2 interesting because when you mention that, I, quite  
3 frankly, hadn't read through that section. I just  
4 read it real quick. And that first section -- and an  
5 argument that's raised is that the very first section  
6 of 120.542, which I thought I had, but I can't find it  
7 now --

8                   **MS. MOORE:** I think it's in the middle of  
9 the paragraph that says, "agencies are authorized to  
10 grant variances and waivers consistent with this --"

11                   **COMMISSIONER JACOBS:** Right. Right. Right.  
12 And not to belabor the point, but I want to just  
13 briefly touch on to the discussion point here is that  
14 if we're starting to cut very fine lines and we're  
15 starting to say that things have to have explicit  
16 authority in statute to do, the argument here is that,  
17 does this statute raise -- does this statute raise to  
18 that level in negating whatever provisions previously  
19 justified these other statutes? And what I hear you  
20 saying is that on its face it rises to that level and  
21 it does effectively negate what happened before and to  
22 justify these variance provisions that were cited.

23                   And I guess what I want to discuss for a  
24 moment is how do we get -- if we take that position  
25 and under the face of this challenge, how do we really

1 defend that? Because worrying, in my mind, does not  
2 nail it down to that level of fine tuning. It says,  
3 what it says.

4 That consistent with these provisions -- and  
5 I think what I'm coming to conclude is that there's a  
6 whole lot of ambiguity or a whole lot of uncertainty  
7 about how these revisions had been adopted, the scope  
8 that they were originally intended to capture. And  
9 I'm wondering, is that how we -- is that the sole  
10 reason that we proceed in supporting the repeals?

11 **MS. MOORE:** I think it is now and when the  
12 Commission actually proposed to repeal these the  
13 reason is because 120.542, and I assume an agreement  
14 that it occupied the field, and that the exclusive way  
15 unless there's separate statutory authority in our  
16 substantive statutes.

17 **COMMISSIONER JACOBS:** Okay.

18 **COMMISSIONER DEASON:** So you're saying that  
19 the statute itself would have to say that the  
20 Commission is authorized to adopt rules on this  
21 subject matter and is authorized to grant waivers  
22 consistent with its discretion within its rules? I  
23 mean, you would want language that detailed in the  
24 statute before we could have a waiver provision in a  
25 rule itself?

1           **MS. MOORE:** Well, an example, Commissioner  
2 Deason, in a law review article on the APA variance  
3 and waiver provisions, gives an example of authority  
4 under a specific substantive statute. And, for  
5 instance, it was a DEP statute that's used as an  
6 example. And the statute itself says, "variances and  
7 waivers shall be granted when the person responsible  
8 for site" -- excuse me. That DEP is authorized to  
9 grant variances and waivers from the documentation  
10 requirements of Paragraph (E) (2) and from the  
11 requirements of rules applicable in technical and  
12 financial audits and so forth. But that's what the  
13 statute said, specifically granting authority to waive  
14 their own rules adopted under the statute.

15           **COMMISSIONER JACOBS:** And the conclusion  
16 there is that that statute was -- essentially, should  
17 be cited on 120.536?

18           **MS. MOORE:** Yes. What the text of the law  
19 review article says is the Legislature has indicated  
20 that variances and waivers can be sought, either under  
21 the general authority in the APA, which is 120.542,  
22 and there they called it general, or under the  
23 authority of specific substantive statutes.

24           **COMMISSIONER JACOBS:** I see you. So they  
25 cite that as a type of statute that you'd have to have

1 in response to Commissioner's Deason.

2 **MS. MOORE:** Yes.

3 **COMMISSIONER DEASON:** Let me ask another  
4 question. But that example you gave, it appeared to  
5 me that that -- the statute itself prescribes  
6 something that someone has to do or do it in a certain  
7 manner and that the agency was given discretion to  
8 waive that under certain circumstances. Is that the  
9 same as when this Commission has some broad grant of  
10 authority and we determine that we're going -- we have  
11 rate of return regulation and part of that we've  
12 determined that we're going to have MFR requirements.  
13 Well, the Legislature didn't tell us, you know, go  
14 adopt MFRs and you can waive those. It just said,  
15 you've got rate of return regulation. We've  
16 interpreted that means we have the authority to  
17 require MFRs.

18 So it would be impossible for the  
19 Legislature to say, and by the way, you can waive MFRs  
20 when it doesn't even mention MFRs. It seems to me  
21 that there's an implication that if we've got broad  
22 enough authority to adopt a rule, that we've got broad  
23 enough authority to implement a waiver under certain  
24 circumstances. And you're saying no, that the general  
25 rule supersedes all of that.

1           **MS. MOORE:** Well, I don't think it can be  
2 just a general waiver provision. I think you need to  
3 put some standards in there for waivers and  
4 exceptions. And more narrowly define who it applies  
5 to and when. But I don't think we can just have  
6 blanket waiver provisions.

7           **COMMISSIONER DEASON:** So you're saying that  
8 the waivers in our rules as they exist now don't  
9 contain any standards on how the Commission would  
10 determine whether it would or would not grant a  
11 waiver?

12           **COMMISSIONER JACOBS:** She's saying that we  
13 don't have a statute that pertains to MFRs that says  
14 that MFRs can be waived.

15           **COMMISSIONER DEASON:** Well, you know, we  
16 don't have a statute that says we can waive MFRs.  
17 Neither do we have a statute that says we can have  
18 MFRs.

19           **MS. MOORE:** That's right. And I agree with  
20 what you said in that I don't think there needs to be  
21 It's not --

22           **COMMISSIONER DEASON:** If we're going to take  
23 this to the extent that we're going to require  
24 specific language that says that we can waive MFRs  
25 requirements in the law before we have a waiver, well,



1 then we're going to have to also make the  
2 interpretation that we've got to have language in the  
3 law that says we can require MFRs before we can have a  
4 rule that requires MFRs.

5 **MS. MOORE:** I don't agree that that's  
6 necessary, no. When we've fleshed out a general  
7 statute or the statute says that we can require  
8 certain information, well, sure, in our rules we can  
9 say that if the information isn't available, you know,  
10 or, if --

11 **COMMISSIONER DEASON:** What if we have a --

12 **MS. MOORE:** It will not be required.

13 **COMMISSIONER DEASON:** -- that says that that  
14 is burdensome or things of nature? You know, if we  
15 have the authority to require information, MFRs is one  
16 of those, and we determine that for a certain utility,  
17 maybe it's a small utility and there's some type of  
18 billing determinants or some type of load study that's  
19 required and we say, "this doesn't make sense for this  
20 utility. It's going to cost more for them to do the  
21 load study than they're even requesting in a rate  
22 increase. Let's waive this." And you're saying, "No.  
23 We can't do that."

24 **MS. MOORE:** Yes. Under 120.542, certainly,  
25 or under our rules perhaps we can -- well, we can. In

1 fact, the statute encourages us to have different  
2 standards for smaller utilities or we can say, why --  
3 what -- instances in our rules, why it might not be  
4 practical. We can do that.

5 **COMMISSIONER DEASON:** But that's what you're  
6 recommending that we repeal.

7 **MS. MOORE:** No. We can't just, general  
8 waiver provisions. I think if the Commission has  
9 decided to adopt a rule and impose certain  
10 requirements they've -- in that decision, it's -- the  
11 Commission has decided that certain requirements are  
12 generally applicable and perhaps rules need amending  
13 otherwise.

14 **COMMISSIONER DEASON:** But it goes back to  
15 the argument we've decided is generally applicable  
16 only if we feel like we have the authority to waive it  
17 into those situations. If we were going to have a  
18 blanket rule that required some type of cost of  
19 service study for all our electric utilities, we might  
20 say, no, that doesn't make sense for some of our  
21 utilities so let's don't have a rule, and then when  
22 somebody files in a rate case we'll just get it in  
23 discovery or something. That's not efficient either.

24 I guess what you're saying is, is that the  
25 provisions of 120.542 would allow the obtaining of a

1 waiver when it meets certain criteria.

2 **MS. MOORE:** That's correct.

3 **COMMISSIONER DEASON:** But it has to go  
4 through the hearing and notice requirements, which I  
5 think everyone agrees can be cumbersome, expensive and  
6 time consuming.

7 **MS. MOORE:** Yes. The opportunity for a  
8 hearing, yes.

9 **COMMISSIONER DEASON:** So by the very nature  
10 of trying to prevent a utility from filing something  
11 that is costly, they're going to have to do something  
12 just as costly to prevent filing something that is  
13 costly. You see, it doesn't -- from a practical  
14 standpoint, it doesn't make sense to me.

15 **MS. MOORE:** Well, I think maybe the  
16 legislation needs to be changed then the statute,  
17 120.542, if it is generally too cumbersome and  
18 expensive because that I certainly -- I don't think  
19 was the intent but there is an intent that there will  
20 be notice and that --

21 **COMMISSIONER DEASON:** Doesn't the rule give  
22 the notice? Everyone out there that's participating  
23 in this rate case knows that -- and I keep coming back  
24 to the cost of service study, and I don't know if it's  
25 part of the MFRs. But if there is a waiver provision

1 for a cost of service study and MFRs, it's there.  
2 It's in black and white. It's in rule. Everybody  
3 that is going to participate in that rate knows that  
4 it's there. They're put on notice and they know that  
5 the company can ask for that. That serves the notice  
6 right there, doesn't it?

7 **MS. MOORE:** Well, I think the notice and  
8 perhaps requirements are a little broader, but we're  
9 talking about -- I believe the rules that we're  
10 repealing here are much more general and much broader  
11 than the individual requirements that are say in one  
12 of the MFR schedules that recognize differences among  
13 utilities.

14 **COMMISSIONER DEASON:** Well, I guess, where  
15 in 120.542 does it say that an agency cannot have a  
16 rule -- a waiver in their rules other than what is  
17 specifically stated in this statutory provision?

18 **MS. MOORE:** It does not say agencies can't.  
19 It says this is the way -- it says agencies are  
20 authorized to do it consistent with this section and  
21 with the Uniform Rules of Procedure.

22 **COMMISSIONER DEASON:** So it just basically  
23 boils down to interpretation of what that means?

24 **MS. MOORE:** Yes.

25 **COMMISSIONER DEASON:** Okay.

1           **MS. MOORE:** And the definitions of waiver  
2 and variance follow that.

3           **CHAIRMAN GARCIA:** Mr. Childs had asked if he  
4 could ask Staff some questions.

5           **MR. CHILDS:** Well, and in doing that, I  
6 wanted to pick up on that very point, which was the  
7 you -- you'd identified the sentence that agencies are  
8 authorized to grant variances and waivers --

9           **CHAIRMAN GARCIA:** Mr. Childs, you've got to  
10 turn on your microphone.

11           **MR. CHILDS:** I'm sorry. I turned my head  
12 the wrong way, too. I think that you identified a  
13 sentence out of 120.542 (1) which reads, "agencies are  
14 authorized to grant variances and waivers to  
15 requirements of their rules consistent with this  
16 section and with rules adopted under the authority of  
17 this section." And have -- you have or someone has  
18 reached the conclusion that that sentence means that  
19 there cannot be an inconsistent provision under agency  
20 rules for there to be a waiver. Is that correct?

21           **MS. MOORE:** Yes.

22           **MR. CHILDS:** Okay. And I think you also  
23 referenced a law review article in one of your prior  
24 comments. What law review article was that?

25           **MS. MOORE:** It's the one that you referred

1 to, I think, in your workshop comments, but it's the  
2 Loosening the Chains That Bind the New Variance and  
3 Waiver Provision in Florida's Administrative Procedure  
4 Act by Donna Blanton and Robert Roads and that was  
5 cited in the Commission -- the recommendation to --  
6 the Staff recommendation to the Commission.

7 **MR. CHILDS:** Okay. And Donna Blanton  
8 appeared at that workshop, right?

9 **MS. MOORE:** Yes, I believe, she did. That  
10 was conducted by another attorney in Appeals. But,  
11 yes, as I recall I was told she did.

12 **MR. CHILDS:** Okay. And the reason I ask  
13 that is when you cited that, I had part of that  
14 workshop transcribed and I only have one copy but --  
15 I'm going to ask this as a question.

16 One of the things that Ms. Blanton said with  
17 questions to her by Ms. Helton was as follows: "The  
18 whole purpose of coming up with Section 120.542 was to  
19 give agencies more discretion, not less, and to  
20 increase the opportunity for the exercise of the  
21 discretion. Many agencies, not the Public Service  
22 Commission because you did not have these rules, but  
23 many agencies felt for whatever reason they had no  
24 authority, that is, to grant a waiver. Their rules  
25 were their rules and no matter how absurd their result

1 we're going to apply those rules."

2 Now, wouldn't you conclude that the author  
3 of that article concluded that 120.542 was not to be  
4 interpreted to exclude the exercise of discretion?

5 **MS. MOORE:** Right. But I would prefer to  
6 have the Legislature say that and the statute say that  
7 it doesn't apply to the PSC than Ms. Blanton.

8 **MR. CHILDS:** She worked on drafting these  
9 statutory revisions, didn't she, for the Commission  
10 that did that?

11 **MS. MOORE:** I wouldn't know. Perhaps she  
12 did. I know Mr. Roads was the Chairman of the  
13 Commission and he is the coauthor.

14 **MR. CHILDS:** She was the executive director  
15 of the Governor's Administrative Procedure Act Review  
16 Commission. That's in the law review article. Okay.

17 But, I mean, it seems to me that when you  
18 look at it, the statute itself, 120.542 says that it  
19 shall be remedial. That to apply -- to reach the  
20 conclusion that that sentence excludes there being  
21 another alternative waiver, doesn't that require some  
22 application of a rule of statutory construction?

23 **MS. MOORE:** I think the plain language of  
24 the statute --

25 **MR. CHILDS:** So there is none that was

1 applied; is that correct?

2 **COMMISSIONER JOHNSON:** Let me interrupt for  
3 a second. You guys lost me on that last answer --  
4 response and answer. Ms. Moore, you said something,  
5 you think that that's what the statute requires. What  
6 were you saying? Did you finish up your statement?

7 **MS. MOORE:** I'm sorry. Now, I'm confused.  
8 Were we talking about going back to what Ms. Blanton  
9 said at the workshop and the intent of the statute?

10 **COMMISSIONER JOHNSON:** Yes. I think you  
11 guys were discussing -- he was asking you with respect  
12 to, I guess, her comments and the statutory intent,  
13 and then you said that you believe that the statute  
14 requires -- and I'm assuming --

15 **MS. MOORE:** Oh, about the intent and that it  
16 was only to apply to those rigid -- the agencies that  
17 were applying the rules so rigidly and not the PSC  
18 which had a lot of discretion and was flexible in its  
19 application. I said, I'd prefer to see that in the  
20 statute rather than hear it from Ms. Blanton and that  
21 I think the statute doesn't make an exception for  
22 agencies who weren't being as rigid. It says that  
23 these are -- you have the authority, all agencies have  
24 the authority and this is the way it's done.

25 And in that same law review article



1 Ms. Blanton wrote that the Legislature has indicated  
2 that variances and waivers can be sought this way and  
3 that it's not within the authority of an agency to  
4 substantively supplement or refine by rule the  
5 statutory standards for issuing a waiver of variance.  
6 That's Ms. Blanton's words and she was involved in the  
7 Commission, as Mr. Childs said.

8 **MR. CHILDS:** I think that that particular  
9 quote, "it is not within the authority of an agency to  
10 substantively supplement or refine by rule the  
11 statutory standards for issuing a waiver or variance,"  
12 is in Ms. Blanton's law review article at Page 369.  
13 And she's talking about explicitly Section 120.542 and  
14 says so in the article.

15 And I think that's -- also, that ought not  
16 to surprise anyone because that's a standard rule as  
17 to agency power. An agency cannot vary the  
18 requirements of a statute. But to say that because an  
19 agency can't vary the requirements of a statute,  
20 therefore, it can't vary the requirements of 120.542  
21 begs the question. Because the question is, does  
22 120.542 displace any other alternative.

23 If you're pursuing an alternative to 120.542  
24 then you're not applying a standard different than  
25 that statute because you're not applying that statute.

1 That's the whole question. Independent of 120.542,  
2 does this Commission have authority to grant a waiver?

3 And that's why I say that it's clear that  
4 120.542 expressly states that it's remedial in nature  
5 because of the bad consequences and unintended  
6 consequences of application of rules uniformly without  
7 waivers, and so they're trying to correct the problem.  
8 And by correcting the problem for agencies -- as Ms.  
9 Blanton points out, for agencies who thought they had  
10 no authority, this statute says, you have the  
11 authority now. It's remedial.

12 And to go from that to say that trying to  
13 give these agencies that were concerned with their  
14 lack of authority, trying to give them authority with  
15 a statute that says it's remedial in nature now takes  
16 away the authority of the Public Service Commission so  
17 that it has less discretion, I think, is a conclusion  
18 that is inconsistent with the statute.

19 And actually, Commissioners, I was going to  
20 ask the Staff some questions about this and there's a  
21 requirement under the APA that someone be provided to  
22 provide an explanation of the statute and I think that  
23 I won't ask any more questions at this point.

24 **COMMISSIONER JOHNSON:** Well, and I guess for  
25 Ms. Moore, if you could then -- the argument or the

1 statements that have just been provided by counsel  
2 seem to make sense to me, and even as I read the  
3 original memo that he provided with respect to how  
4 Section 120.542 was suppose to apply, and to the  
5 extent that you can't vary the requirements of a  
6 statute, yes, but that maybe we're reading a little  
7 more into what's written than was originally intended.

8           Could you respond to the comments that he  
9 just provided as to that interpretation; how he walks  
10 through each of these provisions. That just seems to  
11 make sense to me so I'm having a hard time, Ms. Moore,  
12 with our particular interpretation.

13           And at one point I know that you stated that  
14 when Commissioner Deason asked a question, well, it  
15 does boil down to the interpretation of the language  
16 that you cited.

17           And it strikes me, too, that we would  
18 certainly want to interpret this with what the  
19 Legislature had intended in mind -- what the  
20 Legislature had intended for us to do, but in that  
21 same vein we need to try to interpret it in a way that  
22 makes the most logical sense. And I was having a hard  
23 time when you were also having a conversation with  
24 Commission Deason you stated that yes, you agree that  
25 it will probably be overly burdensome; yes, you agree

1 that in a lot of ways it doesn't even make sense; yes,  
2 you agree that it will cause a lot of additional  
3 expenses to be incurred, but that's what you thought  
4 that the law -- that's how you interpret the statute  
5 and that we should go back to the Legislature.

6 But to the extent that it is ambiguous and  
7 we can interpret it in a way that does make sense and  
8 that would give us the discretion that we needed,  
9 shouldn't we be doing that?

10 **MS. MOORE:** If you believe it's ambiguous --

11 **COMMISSIONER JOHNSON:** So you don't believe  
12 it's ambiguous?

13 **MS. MOORE:** I don't. And I did agree that I  
14 think we have -- I believe the Commission's found it  
15 cumbersome in some cases under the waiver and variance  
16 provision, and certainly there is that F.A.W notice,  
17 and if someone requests a hearing then that certainly  
18 takes additional time and expense, but I didn't say  
19 that is doesn't make sense all of it. I think some of  
20 it does and that other parties are notified and that  
21 there are certain standards that will be applied the  
22 same, and that is the purpose of rules after all. You  
23 have generally applicable standards, the people know  
24 what to expect, they're predictable, and they know  
25 what's required of them.

1           And I think, you know, one of the purposes  
2 of 120.542 is to avoid the arbitrary application of  
3 waivers beyond the encouraging and allowing  
4 flexibility, it does provide some standards.

5           And so -- but no, I don't think it's  
6 ambiguous. I think it recognizes that there may be  
7 provisions in other statutes, but I think -- that  
8 allow an agency to waive its rules, but I think they  
9 have to be a little more explicit.

10           **MR. BEASLEY:** Commissioners, if I may. Your  
11 rules are a lot different than rules that say a gas  
12 pump must measure a gallon and must be tested  
13 periodically. That's a pretty specific function.

14           But the question here is whether you have  
15 authority or the statutory flexibility to waive  
16 provisions separate and apart from 120.542, and we  
17 think you do.

18           The same Legislature that charged you with  
19 the very broadly worded duties that you have also gave  
20 you the authority to prescribe all rules and  
21 regulations reasonably necessary and appropriate for  
22 the administration and enforcement of this chapter.

23           We think that's broad enough to encompass  
24 the waiver provisions that are integral parts of these  
25 rules that the Commission has adopted. We would urge

1 that you stand by your rules and not voluntarily do  
2 away with these waiver provisions that are integral  
3 parts of them and keep them in your rules.

4           **COMMISSIONER JACOBS:** And this keeps  
5 disturbing me, I guess, would be the word. I think  
6 Staff raises a good argument, although I'm not so  
7 persuaded that there's this absolute clairvoyant  
8 interpretation that you would take away from. But I  
9 think that the language here is persuasive that where  
10 it says agencies are authorized to grant variances and  
11 waiver requirements of -- I'm sorry. And waiver  
12 requirements of their rules consistent with this  
13 section, does not give any limitation, does not give  
14 any restriction as to who, when, where, that would  
15 apply.

16           And then I'm persuaded that if you look at  
17 this on this face there are some questions, and so  
18 that's why I'm not persuaded that you wouldn't bring  
19 in statutory interpretation to deal with this.

20           But -- and I know Mr. Childs and I discussed  
21 this, but I think that's exactly what happened in  
22 Tomoka. And the court, I think, exercised that --  
23 those statutory constructions and went about that  
24 process and came away with, I thought, a reasonable  
25 conclusion and the Legislature came back and made, I

1 think, clear what their interpretation of what it was.  
2 And it baffles me now that the people who drafted that  
3 seem to think that they left all the flexibility in  
4 statute when they came back and reiterated in  
5 subsequent amendments to the statute that it would --  
6 very limited flexibility.

7           **MR. CHILDS:** Commissioner, the Legislature  
8 did not amend Section 120.542 as a result of  
9 Consolidated Tomoka. It amended 120.536 and other  
10 provisions to address the extent of agency authority  
11 to adopt rules in the first instance. So all the  
12 arguments that we've been hearing about 120.542 and  
13 whether it displaces the field and whether there's  
14 statutory construction is not related to that. That's  
15 the fundamental question of, does the agency have the  
16 authority to adopt a rule without a specific  
17 authorization from the Legislature. And that's what  
18 the Legislature then went back after Consolidated  
19 Tomoka and said, no.

20           And so -- but my point was that that's not  
21 in this docket yet. This docket was initiated and has  
22 been followed through under 120.536 as it was before.  
23 And, in any event, I think as I trying to say, and as  
24 Commissioner Deason commented I think too, that if  
25 you're going to look at the specific -- whether you

1 have the specific authority to grant a waiver, you  
2 have to look at whether you have the specific  
3 authority to grant for the substantive rule.

4 **CHAIRMAN GARCIA:** You would contend that if  
5 we have the authority to grant the rule, the waiver --  
6 the ability to grant the waiver is implicit in that?

7 **MR. CHILDS:** I guess I argue that if you  
8 have the authority for the rule you have the authority  
9 for the waiver, this Commission does. And if you  
10 don't have the authority for the waiver, then I think  
11 you don't have the authority for most of these rules.  
12 And that's not a question that's before us now, but I  
13 think it's an implication and that's one of the things  
14 that I'm concerned about is that I'm concerned about  
15 it not only as it relates to the legal argument, but  
16 I'm concerned about it as it relates to the  
17 application of the rules as changed, which I think  
18 would be burdensome.

19 **CHAIRMAN GARCIA:** Okay.

20 **COMMISSIONER DEASON:** Question for  
21 Mr. Childs. If we do not adopt the rule amendments,  
22 the repeal of the waiver provisions, we leave it in  
23 place as is, and at some future time a waiver is  
24 granted under the waiver provisions within one of  
25 those rules, are we opening ourselves up to an appeal



1 of that decision based upon the argument that before  
2 we can grant a waiver of a rule it has to meet the  
3 requirements within the uniform -- the uniform  
4 requirements contained in 120.542?

5 **MR. CHILDS:** Perhaps you are. I think  
6 there's a practical question to ask. You may be  
7 opening yourselves up to a legal challenge and I think  
8 one of the questions would be, by whom, and under what  
9 circumstances could it be challenged.

10 I would think that if the Commission saw fit  
11 to accept that -- the argument that we're making, that  
12 it might want to review the question of it's specific  
13 authority for the underlying rules in any event.

14 I know you have that right now. You have a  
15 matter before you as a result of the most recent  
16 revisions to the APA where you're undergoing a process  
17 of looking at your rules. I think there's been some  
18 preliminary identification of rules for which you may  
19 or may not have statutory authority.

20 I think the initial reaction was that  
21 nothing has changed much, but I could be wrong. I  
22 would think that, for instance, that you -- that if  
23 there's a question in the Commission's mind about  
24 wanting to avoid some problem down the road, that the  
25 best course of action as an administrative agency is

1 not to put at risk its rules necessarily, but to keep  
2 the waiver provision and then pursue some  
3 alternatives, waiver authority, if it wants to in the  
4 future.

5 **COMMISSIONER DEASON:** And let me ask you  
6 this question. If we maintain our waiver provisions  
7 as they exist now, and for some reason someone cannot  
8 meet that, are they still then free to try to meet the  
9 requirements under 120.542 to have a waiver of that  
10 rule provision granted?

11 **MR. CHILDS:** I think you have the  
12 alternative. I mean, I think to the extent that --  
13 that the -- and this is the way I read it. Is that  
14 why I was asking the questions of Staff about the  
15 interpretation of that sentence is that if you retain  
16 the waiver provision under the various rules  
17 independently, independent a waiver provision, that  
18 those subject to the rule can seek to obtain a waiver  
19 under either the provision in the rule or 120.542.

20 **COMMISSIONER DEASON:** So our specific rule  
21 waivers are not in any way trying to supersede what is  
22 in 120.542?

23 **MR. CHILDS:** Absolutely not.

24 **COMMISSIONER DEASON:** That probably would be  
25 something that we cannot do.

1           **MR. CHILDS:** In fact, that's the  
2 illustration of what I think the -- that the Staff  
3 referenced to the law review article about you can't  
4 vary the standards. And I said, I'm not suggesting  
5 that you do. You keep 120.542 and it's applicable,  
6 and to the extent that it's sought as the basis for a  
7 waiver you apply it. But if it's not sought, then you  
8 don't use it. There can be alternatives. It's like  
9 the -- you know, there are various alternatives under  
10 statutes to do things already.

11           **COMMISSIONER DEASON:** In a nutshell you're  
12 saying that 120.542 is not the exclusive way a waiver  
13 can be granted; that we can adopt in our rules and put  
14 everyone on notice within by adopting that rule for a  
15 given circumstance that a waiver can be granted if "x,  
16 y, and z" are demonstrated or whatever the requirement  
17 may be.

18           **MR. CHILDS:** I'm trying to say that if you  
19 have the authority to adopt the rule you have the  
20 authority to waive it and you have the history of the  
21 court decisions about the extent of that authority,  
22 particularly of the Public Service Commission and the  
23 extent of its authority. And so what I had done here  
24 in terms of -- what we're engaging in is a discussion  
25 about what I think. One of the things that I trying

1 to do is to find out, well, what do you guys think  
2 because I think it's incumbent upon the agency when it  
3 proposes to repeal a rule for this reason to be -- not  
4 just because it's rulemaking, but because of the  
5 significance of it, to be real explicit as to the  
6 legal basis for doing what it's doing.

7 And so, what I was trying to point out is I  
8 don't think that there's been a rationale expressed  
9 that justifies this action. Independently of that I  
10 would point out that there have been in the past  
11 findings that there's authority for the Commission and  
12 it's broad in nature.

13 **COMMISSIONER JACOBS:** Do you think that the  
14 Legislature may have already spoken on that? If I'm  
15 not mistaken, it may not be in 120.536, but in some  
16 place it is outlined that the course of action that we  
17 should take is to submit to the Legislature those  
18 provisions, those rules, that we think we don't have  
19 statutory support for and let them make the  
20 decision --

21 **MR. CHILDS:** That's an excellent point. If  
22 it's thought by the Commission that the most recent  
23 revisions to the Administrative Procedure Act as to  
24 the specific authority, if it's thought by the  
25 Commission that those revisions do provide some

1 additional or more significant question to this  
2 Commission's authority, then I think what the  
3 Commission ought to do is not follow through with this  
4 docket and repeal the rule. What it ought to do is  
5 follow through with the provisions of that statute  
6 about identifying the rules for which it may think it  
7 has lack of authority and take the next step.

8 **COMMISSIONER JACOBS:** My question though, is  
9 that my reading of those provisions, we don't have  
10 that discretion. We tell the Legislature what we  
11 don't think we have authority for and then it chooses  
12 whether or not it wants to put that authority in a  
13 statute. Then we come back and put the -- that's a  
14 good question, though.

15 What is the effectiveness of those rules  
16 during the interim, because it's my understanding  
17 you're exactly right. We don't repeal them. We tell  
18 the Legislature we don't think we have authority and  
19 then it enacts law. And so what is the --

20 **MR. CHILDS:** Commissioner, I don't have -- I  
21 was thumbing through my back to see if I had the most  
22 recent update of the statute and I don't. I've looked  
23 at it. I think there's a procedure that requires an  
24 identification. You have a docket or some matter  
25 already before you where you're going through that

1 process. I think you're required -- and this is from  
2 memory. You're required to identify rules that you  
3 think fall into that category.

4 I think -- this is a guess. I believe that  
5 there was a grandfather provision as to the challenge  
6 to those rules for some period of time until some  
7 action has been taken. And so my point is, is that  
8 that most recent revision to the statute is  
9 significant. I'm not sure I know the answer to that  
10 yet, but it appears to be very significant.

11 But my point is, it hasn't been addressed in  
12 this docket yet. And to say, well, you know, we now  
13 have a further change which justifies doing what we  
14 started out to do in this docket I don't think is the  
15 best way to proceed.

16 **COMMISSIONER JACOBS:** Okay.

17 **CHAIRMAN GARCIA:** Okay. I guess that --  
18 unless Staff has something to add? Commissioners?

19 **COMMISSIONER DEASON:** Well, I have a  
20 question. What's the next step in this process?

21 **MS. MOORE:** I think the procedural order  
22 provides for posthearing filings, any posthearing  
23 comments. They're due several weeks after the  
24 transcript which will be ready next week, and then we  
25 go back to agenda with a recommendation on what to

1 adopt.

2           **COMMISSIONER DEASON:** Is it within our  
3 discretion to -- at this point to not move further  
4 with this rule and to basically propose that we --  
5 that it not be pursued any further; that it be killed?  
6 Or do we have to -- if the parties want the  
7 opportunity to file their posthearing, I don't know  
8 what they're going to file that has not been said here  
9 today. We've had a very thorough discussion it seems  
10 to me for the last hour and a half. I don't know what  
11 more can be added at this point.

12           **CHAIRMAN GARCIA:** Commissioner, I would --  
13 while, I think I philosophically agree with your  
14 position, if I could ask you not to do that. I know  
15 it puts more work on Staff and, of course, the  
16 companies, but if we could vote it out after Staff  
17 takes another analysis of what they've looked at  
18 today. And I know they may not change them. And I'd  
19 also -- I'd appreciate having Commissioner Clark here  
20 also to vote that out.

21           While I think if you called for a vote today  
22 you might get your majority, in fact, you probably  
23 wouldn't. You would roll me at least on my possession  
24 at least to defer it. I know it requires some time  
25 and effort from the companies and expense, as well as

1 time and effort and expense from our side, but if we  
2 could just have all the Commissioners here when we  
3 vote this out, because I just think it would be  
4 better.

5           **COMMISSIONER DEASON:** That's fine. I'll  
6 certainly defer to that.

7           **CHAIRMAN GARCIA:** Okay. Great. Thank you.  
8 That then adjourns the hearing. I would just say, I  
9 guess I stated my position. But I'd say, Staff, to  
10 think about it a little more. I know you have and --  
11 but Mr. Beasley and Mr. Childs' arguments, while  
12 certainly give me great comfort with what we have --  
13 and that's it. Thank you.

14           **MR. CHILDS:** Thank you, Commissioners.

15           (Thereupon, the hearing concluded at  
16 11:05 a.m.)

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STATE OF FLORIDA)  
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COUNTY OF LEON )

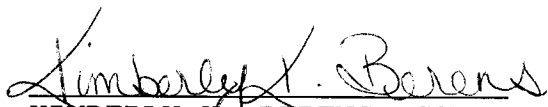
CERTIFICATE OF REPORTER

I, KIMBERLY K. BERENS, CSR, RPR, Official  
Commission Reporter,

DO HEREBY CERTIFY that the Rule Hearing in  
Docket No. 980569-PU was heard by the Florida Public  
Service Commission at the time and place herein  
stated; it is further

CERTIFIED that I stenographically reported  
the said proceedings; that the same has been  
transcribed by me; and that this transcript,  
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DATED this August 17, 1999.



KIMBERLY K. BERENS, CSR, RPR  
Florida Public Service Commission  
Official Commission Reporter

	<b>9</b>	arguing 26/17, 26/18 argument 22/16, 32/16, 33/3, 37/18, 40/5, 40/16, 46/15, 54/25, 58/6, 60/15, 61/1, 61/11 arguments 59/12, 68/11 article 42/2, 42/19, 49/23, 49/24, 51/3, 51/16, 52/25, 53/12, 53/14, 63/3 assigned 29/17 assigning 28/24 assimilate 28/21 Assistance 1/19, 1/20 attempted 19/5, 22/15 attention 14/21 attorney 50/10 Audit 1/18 audits 42/12 August 2/9, 69/10 Ausley 3/6, 5/23 author 51/2 authority 6/24, 7/8, 7/17, 8/3, 9/5, 9/9, 9/17, 9/18, 11/16, 11/17, 11/18, 11/19, 11/22, 12/5, 12/7, 12/14, 13/2, 14/25, 16/9, 17/19, 17/25, 18/4, 18/7, 18/11, 18/16, 18/24, 18/25, 19/5, 19/12, 19/15, 19/21, 20/1, 21/1, 21/5, 21/6, 21/12, 21/14, 22/8, 22/9, 24/4, 24/7, 24/10, 24/12, 24/23, 25/4, 25/5, 27/18, 28/2, 32/6, 32/13, 34/7, 34/9, 34/23, 35/2, 35/3, 35/4, 35/7, 35/8, 35/9, 35/16, 35/18, 35/22, 36/5, 36/15, 39/9, 39/13, 39/18, 40/16, 41/15, 42/3, 42/13, 42/21, 42/23, 43/10, 43/16, 43/22, 43/23, 45/15, 46/16, 49/16, 50/24, 52/23, 52/24, 53/3, 53/9, 54/2, 54/10, 54/11, 54/14, 54/16, 57/15, 57/20, 59/10, 59/16, 60/1, 60/3, 60/5, 60/8, 60/10, 60/11, 61/13, 61/19, 62/3, 63/19, 63/20, 63/21, 63/23, 64/11, 64/24, 65/2, 65/7, 65/11, 65/12, 65/18 authorization 59/17 authorize 6/25, 7/6, 11/13 authorized 7/25, 40/9, 41/20, 41/21, 42/8, 48/20, 49/8, 49/14, 58/10 authorizes 29/1, 30/6 Availability 1/23 available 30/8, 45/9 avoid 12/14, 12/25, 13/1, 57/2, 61/24
<b>&amp;</b>	980569-PU 1/3, 69/5 9:30 2/11 9:35 5/2	
<b>1</b>	<b>A</b>	
<p>1 4/5, 7/24, 8/8, 13/22, 14/4, 18/2, 49/13 11:05 2/11, 68/16 12 2/9, 13/15 120 6/19, 7/18, 7/23, 8/20, 8/24 120.3542 31/16 120.536 6/22, 17/9, 17/12, 17/15, 17/17, 17/21, 19/9, 19/12, 24/4, 24/7, 24/14, 27/7, 28/2, 33/10, 33/19, 34/1, 39/8, 42/17, 59/9, 59/22, 64/15 120.54 5/10, 27/3 120.542 6/20, 7/8, 7/15, 7/20, 7/24, 8/6, 9/1, 9/11, 10/7, 15/10, 15/21, 16/3, 17/9, 17/10, 20/19, 21/21, 22/1, 22/17, 23/6, 23/18, 24/5, 24/7, 24/11, 24/13, 25/12, 25/13, 25/21, 26/2, 26/19, 26/22, 28/8, 29/20, 32/17, 33/10, 33/14, 34/1, 36/17, 36/19, 36/23, 37/15, 38/24, 39/24, 40/6, 41/13, 42/21, 45/24, 46/25, 47/17, 48/15, 49/13, 50/18, 51/3, 51/18, 53/13, 53/20, 53/22, 53/23, 54/1, 54/4, 55/4, 57/2, 57/16, 59/8, 59/12, 61/4, 62/9, 62/19, 62/22, 63/5, 63/12 120.68 12/10 14 4/5, 4/6, 13/17 148 2/13 15 6/17 17 5/15, 69/10 18 5/12 1938 5/13 1984 12/13 1996 6/18, 12/17, 30/1, 34/15 1997 7/3, 17/21, 25/22 1998 5/12, 5/14, 7/1, 13/15, 13/17, 33/22 1999 2/9, 5/15, 5/16, 69/10</p>	<p>a.m 2/11, 5/2 ability 12/1, 16/6, 29/11, 32/24, 60/6 abrogate 8/9, 22/20, 22/23, 23/15 Absent 25/16 absolute 58/7 absurd 50/25 accept 36/22, 61/11 accomplished 20/22 Act 6/19, 14/24, 35/11, 50/4, 51/15, 64/23 action 17/16, 19/8, 20/6, 24/14, 33/24, 36/3, 61/25, 64/9, 64/16, 66/7 add 66/18 added 24/5, 67/11 address 15/24, 17/5, 19/5, 22/15, 35/12, 59/10 addressed 17/20, 21/15, 34/13, 36/21, 66/11 addresses 18/2, 18/3 adjourns 68/8 Administration 7/10, 27/3, 29/3, 29/16, 57/22 Administrative 5/13, 6/19, 6/23, 14/24, 17/22, 19/2, 19/11, 20/6, 25/15, 25/20, 33/21, 34/8, 35/11, 50/3, 51/15, 61/25, 64/23 ADMTD 4/3 adopt 6/25, 9/17, 11/22, 12/5, 18/5, 18/11, 34/8, 34/9, 35/9, 35/18, 35/19, 36/25, 41/20, 43/14, 43/22, 46/9, 59/11, 59/16, 60/21, 63/13, 63/19, 67/1 adopted 6/20, 6/21, 7/10, 8/2, 12/15, 16/8, 16/15, 17/9, 17/24, 20/24, 29/12, 31/9, 37/13, 37/19, 38/2, 41/7, 42/14, 49/16, 57/25 adopting 11/23, 37/4, 63/14 adoption 37/9 adverse 25/10 agencies 6/22, 7/1, 7/25, 8/5, 8/22, 9/8, 16/5, 17/18, 18/23, 26/5, 40/9, 48/18, 48/19, 49/7, 49/13, 50/19, 50/21, 50/23, 52/16, 52/22, 52/23, 54/8, 54/9, 54/13, 58/10 agency 12/11, 17/22, 17/24, 18/5, 18/7, 18/10, 18/15, 18/19, 19/25, 28/17, 34/8, 35/15, 35/17, 43/7, 48/15, 49/19, 53/3, 53/9, 53/17, 53/19, 57/8, 59/10, 59/15, 61/25, 64/2 agency's 34/23 agenda 66/25 agree 36/13, 36/16, 44/19, 45/5, 55/24, 55/25, 56/2, 56/13, 67/13 agreement 41/13 agrees 36/18, 47/5 allow 18/5, 38/24, 46/25, 57/8 allowed 12/11 allowing 57/3 allows 8/7 Alternative 1/20, 51/21, 53/22, 53/23, 62/12 alternatives 62/3, 63/8, 63/9 ambiguity 41/6 ambiguous 56/6, 56/10, 56/12, 57/6 amend 38/19, 59/8 amended 34/17, 38/14, 59/9 amending 46/12 amendment 17/14, 18/17, 19/3, 21/17, 21/19 amendments 1/4, 32/7, 34/12, 59/5, 60/21 amount 36/15 analysis 24/20, 67/17 answer 36/20, 52/3, 52/4, 66/9 answers 39/25 APA 18/17, 19/4, 21/17, 26/14, 26/16, 42/2, 42/21, 54/21, 61/16 appeal 60/25 Appeals 3/10, 6/1, 18/21, 50/10 APPEARANCES 3/1, 5/17 applicable 9/23, 21/8, 22/2, 23/24, 37/6, 42/11, 46/12, 46/15, 56/23, 63/5 Application 1/5, 1/9, 1/14, 1/15, 1/17, 16/5, 22/1, 51/22, 52/19, 54/6, 57/2, 60/17 applied 12/25, 13/7, 13/8, 19/19, 52/1, 56/21 applies 10/16, 44/4 apply 8/25, 18/18, 26/4, 26/11, 26/14, 26/19, 26/20, 26/21, 51/1, 51/7, 51/19, 52/16, 55/4, 58/15, 63/7 applying 8/23, 52/17, 53/24, 53/25 appreciate 13/19, 67/19 approach 16/1 appropriate 13/19, 14/17, 29/3, 29/15, 37/24, 57/21 approved 7/3 arbitrarily 12/25 arbitrary 57/2 area 31/14 argue 60/7</p>	
<b>2</b>		<b>B</b>
<p>2 4/6, 14/6, 14/13, 14/14, 17/21, 42/10 215 3/3 24 33/22 25-17.087 1/13 25-24.455 1/8 25-30.010 1/14 25-30.011 25-30.436 1/15 25-30.450 1/18 25-30.455 1/19 25-30.456 1/20 25-30.570 1/21 25-30.580 1/22 25-4.002 1/5 25-4.202 1/7 25-4.414 1/5 25-6 15/5, 15/7, 15/17, 35/3 25-6.002 1/9 25-6.043 1/10 25-60438 1/11 2540 3/10 26 5/16</p>		<p>bad 54/5 baffles 59/2 bar 19/2 based 61/1 bases 17/15 basis 12/2, 29/9, 36/6, 38/18, 63/6, 64/6 BEASLEY 3/6, 5/23 begs 53/21 belabor 40/12 belief 19/24 BERENS 2/17, 69/3 Betty 2/13 big 19/1 billing 45/18 Bind 50/2 bit 5/6 black 48/2 blanket 44/6, 46/18 Blanton 50/4, 50/7, 54/9 bog 29/24 boil 55/15 boils 48/23 booklet 14/1 Boulevard 3/11 Box 3/7 branch 18/15, 35/15 brief 28/14, 36/12 bring 58/18 broad 28/16, 35/18, 43/9, 43/21, 43/22, 57/23, 64/12 broader 25/13, 48/8, 48/10 Burden 1/18, 16/21 burdensome 16/7, 20/11, 20/13, 45/14, 55/25, 60/18</p>
<b>3</b>		
<p>3 5/10 30 22/13 31 5/13 32301 3/4 32302 3/7 32399-0870 3/11 366 8/17, 29/4 366.042 30/5 369 53/12 391 3/7</p>		<b>C</b>
<b>4</b>		
<p>40 22/13 4075 2/14</p>		
<b>5</b>		
<p>542 39/5, 39/16</p>		
<b>6</b>		
<p>601 3/3 68 69/8 69 4/8</p>		<p>came 33/16, 58/24, 58/25, 59/4 capriciously 12/25 capture 41/8 carefully 31/19 carry 29/17 carrying 28/18 case 6/4, 12/9, 18/20, 26/15, 30/13, 30/20, 30/24, 30/25, 37/8, 46/22, 47/23 case-by-case 12/2 Cases 1/19, 35/16, 56/15 category 66/3 Center 2/13 CERTIFICATE 4/8, 69/1 CERTIFIED 69/7</p>

CERTIFY 69/4  
 chain 32/18  
 Chains 50/2  
 CHAIRMAN 2/6, 5/3, 5/17, 6/5, 6/13, 13/9, 13/20, 13/25, 14/6, 14/12, 27/19, 27/24, 28/9, 28/12, 31/22, 36/11, 49/3, 49/9, 51/12, 60/4, 60/19, 66/17, 67/12, 68/7  
 challenge 40/25, 61/7, 66/5  
 challenged 61/9  
 change 36/22, 66/13, 67/18  
 changed 12/12, 19/23, 47/16, 60/17, 61/21  
 changes 23/23, 33/7  
 Chapter 6/19, 7/18, 7/23, 8/17, 8/20, 8/24, 15/5, 29/4, 35/3, 57/22  
 charged 28/18, 57/18  
 charges 28/25  
 checking 34/18  
 CHILDS 3/2, 5/19  
 choir 28/15  
 chooses 65/11  
 chose 12/17  
 Chris 6/13  
 CHRISTIANA 3/9, 5/25  
 circumstance 63/15  
 circumstances 15/23, 17/1, 30/12, 33/24, 34/3, 37/9, 43/8, 43/24, 61/9  
 cite 42/25  
 cited 39/17, 39/19, 40/22, 42/17, 50/5, 50/13, 55/16  
 clairvoyant 58/7  
 Clark 5/5, 67/19  
 Class 1/16  
 clear 8/5, 54/3, 59/1  
 clearly 19/19  
 coauthor 51/13  
 comfort 68/12  
 Commenced 2/11  
 commented 59/24  
 comments 13/17, 14/18, 15/5, 28/14, 35/25, 39/19, 49/24, 50/1, 52/12, 55/8, 66/23  
 COMMISSION 1/1, 1/7, 1/11, 2/17, 3/10, 3/12, 6/1, 6/4, 6/15, 7/3, 7/5, 7/10, 7/14, 7/15, 8/25, 9/2, 9/3, 9/14, 9/16, 9/18, 10/1, 10/2, 10/16, 10/18, 11/3, 15/16, 15/22, 17/4, 18/14, 18/19, 19/10, 19/15, 19/18, 20/25, 21/2, 21/5, 22/7, 22/14, 24/4, 24/9, 25/20, 26/12, 26/15, 26/20, 26/21, 27/3, 27/18, 28/5, 28/20, 30/6, 30/21, 33/4, 33/22, 35/4, 35/9, 35/18, 36/14, 36/22, 37/3, 37/13, 37/19, 37/20, 37/25, 38/1, 38/7, 38/22, 41/12, 41/20, 43/9, 44/9, 46/8, 46/11, 50/5, 50/6, 50/22, 51/9, 51/13, 51/16, 53/7, 54/2, 54/16, 55/24, 57/25, 60/9, 61/10, 63/22, 64/11, 64/22, 64/25, 65/3, 69/3, 69/5  
 Commission's 14/24, 15/3, 25/3, 30/2, 56/14, 61/23, 65/2  
 COMMISSIONER 2/6, 2/7, 5/4, 5/5, 9/13, 10/3, 10/13, 10/20, 11/2, 11/4, 11/7, 11/15, 11/21, 12/4, 20/18, 24/16, 24/19, 24/25, 25/11, 25/18, 25/25, 26/10, 27/11, 29/4, 31/24, 32/14, 37/17, 39/2, 39/14, 40/1, 40/11, 41/17, 41/18, 42/1, 42/15, 42/24, 43/3, 44/7, 44/12, 44/15, 44/22, 45/11, 45/13, 46/5, 46/14, 47/3, 47/9, 47/21, 48/14, 48/22, 48/25, 52/2, 52/10, 54/24, 55/14, 56/11, 58/4, 59/7, 59/24, 60/20, 62/5, 62/20, 62/24, 63/11, 64/13, 65/8, 65/20, 66/16, 66/19, 67/2, 67/12, 67/19, 68/5  
 Commissioner's 43/1  
 Commissioners 5/18, 5/22, 6/14, 13/10, 14/19, 31/22, 54/19, 57/10, 66/18, 68/2, 68/14  
 Committee 6/23, 17/23, 19/11, 33/22  
 Companies 1/7, 36/8, 67/16, 67/25  
 Company 3/5, 3/8, 5/21, 5/24, 7/13, 48/5  
 compelled 31/11  
 complaint 19/1  
 complex 28/16  
 comply 15/21  
 complying 15/9  
 Composite 4/5, 13/22, 14/7  
 comprehensive 20/10, 20/12, 23/9, 23/18  
 concern 18/17, 22/15, 33/8  
 concerned 16/11, 20/8, 21/9, 30/3, 54/13, 60/14, 60/16  
 conclude 32/12, 41/5, 51/2  
 Concluded 2/11, 9/8, 51/3, 68/15  
 conclusion 22/25, 32/3, 32/9, 32/19, 42/15, 49/18, 51/20, 54/17, 58/25  
 Conditions 1/12  
 conducted 50/10  
 Conference 2/13, 31/15  
 conferred 21/2  
 conflicts 28/7  
 conform 7/23  
 confronted 20/13  
 confused 52/7  
 Connie 6/3  
 connote 30/11  
 consequences 16/7, 54/5, 54/6

consideration 32/23  
 consistent 8/1, 40/10, 41/4, 41/22, 48/20, 49/15, 58/12  
 Consolidated 18/22, 31/25, 59/9, 59/18  
 constitutes 69/8  
 Constitutional 18/16  
 Construction 1/8, 23/2, 39/23, 51/22, 59/14  
 constructions 58/23  
 construe 32/16  
 consumers 13/5  
 consuming 16/3, 29/19, 36/20, 47/6  
 contain 37/20, 44/9  
 contained 61/4  
 contend 60/4  
 context 32/15  
 continue 14/17  
 contrary 23/12  
 Contributions 1/21  
 convened 5/2  
 conversation 55/23  
 cookie 30/22  
 copies 13/18  
 copy 50/14  
 correct 47/2, 49/20, 52/1, 54/7  
 corrected 33/17  
 correcting 54/8  
 cost 30/16, 45/20, 46/18, 47/24, 48/1  
 costly 23/25, 28/20, 47/11, 47/12, 47/13  
 counsel 5/7, 7/14, 55/1  
 COUNTY 69/2  
 couple 36/12  
 course 61/25, 64/16, 67/15  
 court 13/23, 18/21, 31/25, 35/17, 58/22, 63/21  
 courts 12/10  
 cover 32/22  
 Craig 6/2  
 criteria 47/1  
 CSR 2/17, 69/3  
 cumbersome 16/2, 35/1, 36/19, 47/5, 47/17, 56/15  
 customers 24/2  
 cut 40/14  
 cutter 30/22

D

data 28/19, 30/8  
 DATE 2/9  
 DATED 69/10  
 Davis 3/2, 5/19  
 deal 58/19  
 DEASON 2/6, 9/13, 10/3, 10/13, 10/20, 11/2, 11/4, 11/7, 11/15, 11/21, 12/4, 20/18, 29/4, 37/17, 41/18, 42/2, 43/1, 43/3, 44/7, 44/15, 44/22, 45/11, 45/13, 46/5, 46/14, 47/3, 47/9, 47/21, 48/14, 48/22, 48/25, 55/14, 55/24, 59/24, 60/20, 62/5, 62/20, 62/24, 63/11, 66/19, 67/2, 68/5  
 debate 18/2  
 December 5/12, 5/13, 33/16, 33/22  
 decided 34/17, 37/5, 46/9, 46/11, 46/15  
 decision 46/10, 61/1, 64/20  
 decisions 28/22, 35/16, 63/21  
 defend 41/1  
 defer 67/24, 68/6  
 define 44/4  
 definition 23/6  
 definitions 7/21, 7/22, 49/1  
 delegation 13/2, 18/15, 18/16  
 deleted 10/5  
 demonstrated 63/16  
 demonstrates 38/19  
 DEP 42/5, 42/8  
 depend 10/15  
 dependent 37/8  
 describing 30/18  
 Designee 1/7, 1/11  
 Designing 1/23  
 detailed 41/23  
 deter 32/24  
 determinants 45/18  
 determination 13/1  
 determinations 29/8  
 determine 30/13, 31/2, 31/3, 31/13, 31/17, 43/10, 44/10, 45/16  
 determined 43/12  
 development 28/3, 33/18  
 deviate 12/11, 26/5, 26/8, 32/24  
 deviation 12/12  
 difference 7/12, 10/21, 10/24, 15/11, 16/19  
 differences 48/12  
 difficulty 10/10, 10/17, 10/21  
 directed 39/3  
 director 51/14  
 directs 17/18  
 disagree 21/21

discovery 46/23  
 discretion 36/15, 41/22, 43/7, 50/19, 50/21, 51/4, 52/18, 54/17, 56/8, 65/10, 67/3  
 discuss 40/23  
 discussed 17/13, 58/20  
 discussing 52/11  
 discussion 17/10, 40/13, 63/24, 67/9  
 displace 53/22  
 displaces 59/13  
 District 18/21  
 disturbing 58/5  
 divisible 16/14  
 Division 3/10, 6/1  
 DOCKET 1/3, 6/15, 13/14, 14/20, 14/22, 16/24, 18/12, 19/13, 32/15, 33/19, 34/14, 36/1, 36/3, 59/21, 65/4, 65/24, 66/12, 66/14, 69/5  
 dockets 14/20  
 documentation 42/9  
 Documents 4/6, 14/11, 17/3  
 doesn't 8/10, 8/23, 8/24, 16/20, 19/15, 43/20, 45/19, 46/20, 47/13, 47/14, 47/21, 48/6, 51/7, 51/21, 52/21, 56/1, 56/19  
 Donna 50/4, 50/7  
 door 21/10  
 drafted 59/2  
 drafting 51/8  
 during 65/16  
 duties 29/1, 31/21, 57/19

E

Easley 2/13  
 effected 13/4, 31/15  
 effective 19/4, 34/19, 34/20, 34/21  
 effectiveness 65/15  
 efficient 46/23  
 effort 67/25, 68/1  
 Electric 1/10, 1/12, 3/8, 5/24, 7/13, 46/19  
 eliminate 16/9  
 eliminating 38/3  
 emergency 15/23  
 enact 11/13, 36/25  
 enacted 6/25  
 enactment 39/16  
 enacts 65/19  
 encompass 57/23  
 encompasses 29/10  
 encourage 8/19  
 encourages 46/1  
 encouraging 57/3  
 ended 19/3  
 enforcement 29/3, 29/16, 57/22  
 engaging 63/24  
 entered 13/24, 14/1  
 escape 37/14  
 Esplanade 2/14  
 essence 25/14  
 evaluated 16/16, 16/23, 20/7, 37/21  
 event 59/23, 61/13  
 events 32/19  
 evidence 14/5, 14/15  
 exceed 6/24  
 exceeds 17/24  
 exception 23/20, 26/6, 26/9, 52/21  
 exceptions 9/21, 9/22, 11/20, 12/23, 44/4  
 excess 19/12  
 Exchange 1/7  
 exclude 51/4  
 excludes 51/20  
 exclusive 41/14, 63/12  
 Excuse 11/6, 13/16, 42/8  
 executive 18/14, 18/15, 35/15, 51/14  
 exercise 10/22, 29/7, 30/9, 50/20, 51/4  
 exercised 19/2, 58/22  
 Exhibit 4/5, 13/11, 13/14, 13/22, 14/4, 14/7, 14/13, 14/14  
 EXHIBITS 4/2, 14/7  
 exist 44/8, 62/7  
 existence 22/17  
 existing 8/11  
 expect 56/24  
 expense 56/18, 67/25, 68/1  
 expenses 56/3  
 expensive 16/2, 29/19, 34/25, 36/19, 47/5, 47/18  
 explanation 19/14, 21/23, 27/14, 27/15, 54/22  
 explicit 8/14, 36/2, 40/15, 57/9, 64/5  
 explicitly 53/13  
 express 10/8, 25/16, 36/16  
 expressed 9/10, 22/6, 64/8

<p style="text-align: center;"><b>F</b></p> <p>F.A.C 1/5, 1/7, 1/8, 1/9, 1/10, 1/11, 1/13, 1/14, 1/15, 1/18, 1/19, 1/20, 1/21, 1/22  F.A.W 5/15, 56/16  face 40/20, 40/25, 58/17  fact 8/21, 28/7, 28/19, 46/1, 63/1, 67/22  facts 33/23, 34/2  fair 11/24, 24/19, 29/6, 31/3, 35/1, 37/1, 37/5  fall 7/3, 66/3  fashion 28/22, 31/13  feasible 37/12  field 25/17, 41/14, 59/13  file 67/7, 67/8  filed 30/13, 33/21  files 46/22  Filing 1/6, 1/11, 14/8, 15/16, 15/17, 15/19, 15/21, 19/10, 30/4, 30/7, 30/14, 31/1, 31/18, 47/10, 47/12  filings 13/13, 33/3, 66/22  financial 42/12  find 8/16, 15/17, 15/22, 16/3, 40/6, 64/1  finding 16/5  findings 64/11  fine 40/14, 41/2, 68/5  finger 21/12  finish 52/6  finished 28/10  firm 5/19, 5/23  fit 29/13, 61/10  fits 30/23  fleshed 45/6  flexibility 8/19, 28/24, 28/25, 30/19, 37/25, 57/4, 57/15, 59/3, 59/6  flexible 52/18  <b>FLORIDA</b> 1/1, 2/14, 3/4, 3/7, 3/9, 3/11, 5/11, 5/13, 5/20, 7/13, 30/6, 35/16, 35/17, 69/1, 69/5  Florida's 50/3  follow 6/6, 7/17, 8/6, 9/10, 25/7, 29/18, 32/1, 36/9, 49/2, 65/3, 65/5  followed 30/22, 59/22  follows 50/17  forwarded 7/5  found 29/14, 56/14  FPL 4/6, 14/10  FPL's 13/15, 13/17, 14/7  FPSC 2/17  frame 29/22  free 62/8  function 28/16, 57/13  fundamental 7/12, 59/15  Futrell 6/3  future 60/23, 62/4</p>	<p>holding 18/23  hour 67/10  hurricane 15/19</p> <p style="text-align: center;"><b>I</b></p> <p>ID 4/3  idea 22/5, 39/15  identification 14/4, 14/14, 61/18, 65/24  identified 17/15, 18/22, 19/10, 24/22, 25/3, 27/2, 27/7, 33/18, 34/1, 35/6, 35/7, 38/7, 49/7, 49/12  identifies 23/7, 23/8  identify 17/18, 66/2  identifying 35/21, 65/6  illustration 20/16, 63/2  impact 16/16, 23/22, 24/1, 25/10, 36/8  implement 20/25, 21/1, 23/19, 30/4, 43/23  implementation 18/25  implemented 18/6, 20/21  implementing 11/23, 15/10, 26/19  implication 43/21, 60/13  implicit 12/6, 60/6  implied 7/16, 8/14, 9/10, 10/6, 36/15  imply 11/25  impose 46/9  impossible 43/18  impractical 10/11  Imputation 1/21  in-Aid-of-Construction 1/22  inadequate 13/3  inconsistent 27/5, 49/19, 54/18  Increase 1/18, 45/22, 50/20  incumbent 64/2  incurred 56/3  independent 24/14, 54/1, 62/17  independently 64/9  index 15/6  indicated 31/8, 42/19, 53/1  informal 6/6, 27/20  Information 1/16, 28/21, 45/8, 45/9, 45/15  ingredient 31/10  initial 61/20  initiate 11/11, 39/7  initiated 34/14, 59/21  Instructions 1/16  integral 57/24, 58/2  intensive 28/19  intent 32/4, 47/19, 52/9, 52/12, 52/15  Intercon 1/13  interim 65/16  interpret 10/19, 26/2, 32/20, 32/21, 55/18, 55/21, 56/4, 56/7  interpretation 14/23, 21/22, 25/12, 32/4, 36/5, 39/5, 45/2, 48/23, 55/9, 55/12, 55/15, 58/8, 58/19, 59/1, 62/15  interpreted 16/9, 43/16, 51/4  interpreting 26/2  interrupt 52/2  introductory 6/12, 21/25  invalid 13/1  Investor 1/10  ironic 16/3  issue 10/4, 18/9, 18/15, 20/20, 21/15, 24/7, 26/11  issued 5/12, 5/14  issues 14/22  issuing 53/5, 53/11</p>	<p>KIMBERLY 2/17, 69/3  knowledge 13/6  knows 47/23, 48/3  Kummer 6/3</p> <p style="text-align: center;"><b>L</b></p> <p>lack 17/19, 28/2, 54/14, 65/7  lacked 20/1  lacks 21/5, 21/6, 25/4  laid 6/7  language 7/20, 9/15, 10/3, 11/13, 11/22, 11/23, 15/2, 17/11, 18/8, 23/17, 39/21, 39/23, 41/23, 44/24, 45/2, 51/23, 55/15, 58/9  large 15/2  later 20/3, 28/4, 38/19  law 5/23, 18/6, 19/23, 21/20, 25/14, 26/15, 32/11, 42/2, 42/18, 44/25, 45/3, 49/23, 49/24, 51/16, 52/25, 53/12, 56/4, 63/3, 65/19  laws 29/16  lead 22/2, 23/2  leap 38/5  leave 60/22  left 22/10, 25/1, 59/3  legal 7/14, 14/22, 24/3, 60/15, 61/7, 64/6  legislation 6/25, 7/6, 47/16  legislative 13/2, 18/19, 32/1, 32/4  Legislature 6/20, 7/5, 7/7, 8/4, 8/18, 11/12, 12/13, 12/17, 16/4, 17/8, 21/16, 28/24, 29/10, 30/17, 36/21, 42/19, 43/13, 43/19, 51/6, 53/1, 55/19, 55/20, 56/5, 57/18, 58/25, 59/7, 59/17, 59/18, 64/14, 64/17, 65/10, 65/18  LEON 2/7, 69/2  letter 7/7  level 40/18, 40/20, 41/2  Light 3/5, 5/20, 7/13  limitation 58/13  limitations 32/21  limited 59/6  lines 40/14  list 7/4, 9/4, 11/12, 19/25, 20/1, 28/7, 36/9  listed 30/14, 30/21  listing 17/23  little 5/6, 36/4, 48/8, 55/6, 57/9, 68/10  load 45/18, 45/21  Local 1/6  logical 55/22  Loosening 50/2  lost 52/3</p>
<p style="text-align: center;"><b>G</b></p> <p>gallon 57/12  <b>GARCIA</b> 2/6, 5/3, 5/17, 6/5, 6/13, 13/9, 13/20, 13/25, 14/6, 14/12, 27/19, 27/24, 28/9, 28/12, 31/22, 36/11, 49/3, 49/9, 60/4, 60/19, 66/17, 67/12, 68/7  gas 57/11  goal 37/23  govern 6/20  Governor's 51/15  grandfather 66/5  grant 7/25, 9/18, 16/6, 18/3, 22/10, 34/9, 40/10, 41/21, 42/9, 43/9, 44/10, 49/8, 49/14, 50/24, 54/2, 58/10, 60/1, 60/3, 60/5, 60/6, 61/2  granted 25/5, 38/17, 39/25, 42/7, 60/24, 62/10, 63/13, 63/15  granting 10/6, 25/23, 42/13  grounds 24/14  guess 6/8, 10/15, 10/24, 12/4, 23/21, 32/14, 32/17, 35/13, 39/16, 40/23, 46/24, 48/14, 52/12, 54/24, 58/5, 60/7, 66/4, 66/17, 68/9  guidance 26/1  guide 31/1  Guidelines 1/22  guys 52/3, 52/11, 64/1</p>	<p style="text-align: center;"><b>J</b></p> <p><b>JACOBS</b> 2/7, 24/16, 24/19, 24/25, 25/11, 25/18, 25/25, 26/10, 27/11, 31/24, 32/14, 39/2, 39/14, 40/1, 40/11, 41/17, 42/15, 42/24, 44/12, 58/4, 64/13, 65/8, 66/16  <b>JAMES</b> 3/6, 5/22  JAPC 6/23, 7/4, 7/8, 9/4, 39/6  <b>JOE</b> 2/6  John 6/2  <b>JOHNSON</b> 2/7, 5/6, 52/2, 52/10, 54/24, 56/11  Joint 6/22, 19/10, 33/21  judgment 29/7  <b>JULIA</b> 2/7  July 13/17  June 13/15  jurisdiction 30/9  justified 40/19  justifies 64/9, 66/13  justify 30/16, 40/22  justifying 33/24</p>	<p style="text-align: center;"><b>M</b></p> <p>maintain 62/6  majority 67/22  manner 43/7  March 5/15, 5/16  Mark 6/3, 13/19  marked 13/23, 14/4, 14/14  Matt 29/12, 31/8  Matter 1/3, 8/23, 41/21, 50/25, 61/15, 65/24  <b>MATTHEW</b> 3/2, 5/19  McMullen 3/6, 5/23  measure 57/12  meet 39/10, 61/2, 62/8  meets 47/1  member 18/14  members 19/1  memo 55/3  memory 66/2  mention 40/2, 43/20  met 37/24  method 23/12  MFR 30/2, 30/21, 31/14, 38/9, 43/12, 48/12  MFRs 34/24, 43/14, 43/17, 43/19, 43/20, 44/13, 44/14, 44/16, 44/18, 44/24, 45/3, 45/4, 45/15, 47/25, 48/1  microphone 49/10  middle 40/8  mind 41/1, 55/19, 61/23  Minimum 1/6, 1/10, 30/3, 30/14, 31/1, 31/17  minute 18/13, 33/12  mistaken 64/15  moment 40/24  Monroe 3/3  <b>MOORE</b> 3/9, 5/25  morning 5/3  move 67/3  <b>MR. BEASLEY</b> 5/22, 14/16, 28/12, 28/13, 34/24, 36/14, 38/8, 57/10, 68/11  <b>MR. CHILDS</b> 5/18, 6/8, 13/9, 13/10, 14/8, 14/10, 14/16, 24/18, 24/24, 25/1, 26/10, 26/17, 27/13, 28/9, 28/11, 32/10, 33/1, 36/14, 49/3, 49/5, 49/9, 49/11,</p>
<p style="text-align: center;"><b>H</b></p> <p>half 15/6, 36/10, 67/10  hard 55/11, 55/22  hardship 10/18, 10/22  hat 26/12  head 49/11  hearings 15/13  Hector 3/2, 5/19  held 5/9  Hewitt 6/2  historically 22/12, 22/13  history 33/7, 63/20</p>	<p style="text-align: center;"><b>K</b></p> <p>key 31/21  killed 67/5</p>	

49/22, 50/7, 50/12, 51/8, 51/14, 51/25, 53/7, 53/8, 58/20, 59/7, 60/7, 60/21, 61/5, 62/11, 62/23, 63/1, 63/18, 64/21, 65/20, 68/14  
 Mr. Childs' 28/14, 68/11  
 Mr. Roads 51/12  
 Ms. Blanton 50/16, 51/7, 52/8, 52/20, 53/1  
 Ms. Blanton's 53/6, 53/12  
 Ms. Helton 50/17  
 MS. MOORE 5/9, 5/25, 6/11, 6/14, 9/20, 10/8, 10/15, 10/25, 11/3, 11/6, 11/10, 11/18, 12/3, 12/8, 13/20, 13/21, 14/3, 25/16, 25/22, 26/3, 26/14, 27/22, 27/25, 36/12, 38/6, 39/7, 39/21, 40/8, 41/11, 42/1, 42/18, 43/2, 44/1, 44/19, 45/5, 45/12, 45/24, 46/7, 47/2, 47/7, 47/15, 48/7, 48/18, 48/24, 49/1, 49/21, 49/25, 50/9, 51/5, 51/11, 51/23, 52/4, 52/7, 52/15, 54/25, 55/11, 56/10, 56/13, 66/21

**N**

49/22, 50/7, 50/12, 51/8, 51/14, 51/25, 53/7, 53/8, 58/20, 59/7, 60/7, 60/21, 61/5, 62/11, 62/23, 63/1, 63/18, 64/21, 65/20, 68/14  
 Mr. Childs' 28/14, 68/11  
 Mr. Roads 51/12  
 Ms. Blanton 50/16, 51/7, 52/8, 52/20, 53/1  
 Ms. Blanton's 53/6, 53/12  
 Ms. Helton 50/17  
 MS. MOORE 5/9, 5/25, 6/11, 6/14, 9/20, 10/8, 10/15, 10/25, 11/3, 11/6, 11/10, 11/18, 12/3, 12/8, 13/20, 13/21, 14/3, 25/16, 25/22, 26/3, 26/14, 27/22, 27/25, 36/12, 38/6, 39/7, 39/21, 40/8, 41/11, 42/1, 42/18, 43/2, 44/1, 44/19, 45/5, 45/12, 45/24, 46/7, 47/2, 47/7, 47/15, 48/7, 48/18, 48/24, 49/1, 49/21, 49/25, 50/9, 51/5, 51/11, 51/23, 52/4, 52/7, 52/15, 54/25, 55/11, 56/10, 56/13, 66/21

**O**

49/22, 50/7, 50/12, 51/8, 51/14, 51/25, 53/7, 53/8, 58/20, 59/7, 60/7, 60/21, 61/5, 62/11, 62/23, 63/1, 63/18, 64/21, 65/20, 68/14  
 Mr. Childs' 28/14, 68/11  
 Mr. Roads 51/12  
 Ms. Blanton 50/16, 51/7, 52/8, 52/20, 53/1  
 Ms. Blanton's 53/6, 53/12  
 Ms. Helton 50/17  
 MS. MOORE 5/9, 5/25, 6/11, 6/14, 9/20, 10/8, 10/15, 10/25, 11/3, 11/6, 11/10, 11/18, 12/3, 12/8, 13/20, 13/21, 14/3, 25/16, 25/22, 26/3, 26/14, 27/22, 27/25, 36/12, 38/6, 39/7, 39/21, 40/8, 41/11, 42/1, 42/18, 43/2, 44/1, 44/19, 45/5, 45/12, 45/24, 46/7, 47/2, 47/7, 47/15, 48/7, 48/18, 48/24, 49/1, 49/21, 49/25, 50/9, 51/5, 51/11, 51/23, 52/4, 52/7, 52/15, 54/25, 55/11, 56/10, 56/13, 66/21

**P**

49/22, 50/7, 50/12, 51/8, 51/14, 51/25, 53/7, 53/8, 58/20, 59/7, 60/7, 60/21, 61/5, 62/11, 62/23, 63/1, 63/18, 64/21, 65/20, 68/14  
 Mr. Childs' 28/14, 68/11  
 Mr. Roads 51/12  
 Ms. Blanton 50/16, 51/7, 52/8, 52/20, 53/1  
 Ms. Blanton's 53/6, 53/12  
 Ms. Helton 50/17  
 MS. MOORE 5/9, 5/25, 6/11, 6/14, 9/20, 10/8, 10/15, 10/25, 11/3, 11/6, 11/10, 11/18, 12/3, 12/8, 13/20, 13/21, 14/3, 25/16, 25/22, 26/3, 26/14, 27/22, 27/25, 36/12, 38/6, 39/7, 39/21, 40/8, 41/11, 42/1, 42/18, 43/2, 44/1, 44/19, 45/5, 45/12, 45/24, 46/7, 47/2, 47/7, 47/15, 48/7, 48/18, 48/24, 49/1, 49/21, 49/25, 50/9, 51/5, 51/11, 51/23, 52/4, 52/7, 52/15, 54/25, 55/11, 56/10, 56/13, 66/21

philosophically 67/13  
 pick 49/6  
 PLACE 2/13, 37/10, 60/23, 64/16, 69/5  
 point 18/9, 19/7, 21/3, 23/21, 33/20, 40/12, 40/13, 49/6, 54/23, 55/13, 59/20, 64/7, 64/10, 64/21, 66/7, 66/11, 67/3, 67/11  
 pointed 15/4, 21/12, 29/5, 29/12  
 points 34/24, 54/9  
 Policy 1/23  
 portion 17/23, 38/3  
 position 9/14, 15/9, 16/13, 40/24, 67/14, 68/9  
 possession 67/23  
 Post 3/6  
 posthearing 66/22, 67/7  
 potential 15/12  
 Power 3/4, 5/20, 7/13, 35/20, 53/17  
 preach 28/15  
 precase 31/15  
 predictability 13/6  
 predictable 56/24  
 prefer 51/5, 52/19  
 prehearing 6/7  
 preliminary 61/18  
 prescribe 29/1, 30/7, 57/20  
 prescribes 43/5  
 prescription 30/23  
 presentation 6/10, 28/10  
 pretty 8/4, 25/9, 57/13  
 prevent 47/10, 47/12  
 primary 28/2  
 problem 8/21, 12/22, 15/18, 15/20, 15/24, 54/7, 54/8, 61/24  
 procedural 20/5, 26/3, 27/10, 66/21  
 procedure 6/6, 6/19, 7/9, 14/24, 25/23, 26/8, 26/25, 27/4, 27/6, 30/1, 35/11, 36/18, 48/21, 50/3, 51/15, 64/23, 65/23  
 Procedures 6/23, 7/18, 9/7, 17/22, 19/11, 33/21, 36/23  
 proceed 41/10, 66/15  
 proceeding 67/20  
 PROCEEDINGS 2/4, 28/18, 29/23, 29/24, 69/7, 69/9  
 process 20/2, 20/9, 27/2, 29/19, 29/22, 29/25, 39/10, 58/24, 61/16, 66/1, 66/20  
 produced 16/6  
 promulgate 25/20  
 Proof 1/18  
 propose 28/5, 67/4  
 Proposed 1/4, 15/1, 15/7, 17/5, 24/15, 24/21, 41/12  
 proposes 64/3  
 proposing 6/16, 26/24  
 provide 9/21, 17/22, 38/18, 54/22, 57/4, 64/25  
 provides 8/8, 9/6, 66/22  
 provision 15/8, 16/14, 16/15, 16/17, 16/18, 16/20, 20/14, 21/11, 23/24, 25/16, 27/8, 31/8, 35/23, 37/22, 38/23, 39/12, 41/24, 44/2, 47/25, 48/17, 49/19, 50/3, 56/16, 62/2, 62/10, 62/16, 62/17, 62/19, 66/5  
 Provisions 1/19, 6/17, 8/10, 8/11, 8/13, 8/16, 8/20, 10/9, 11/19, 12/16, 12/18, 12/24, 15/10, 19/16, 19/20, 21/6, 21/20, 22/21, 22/24, 23/16, 26/23, 29/11, 29/14, 30/5, 31/5, 31/12, 31/20, 32/13, 36/17, 37/20, 38/1, 38/8, 38/22, 39/4, 39/19, 40/18, 40/22, 41/4, 42/3, 44/6, 46/8, 46/25, 55/10, 57/7, 57/16, 57/24, 58/2, 59/10, 60/22, 60/24, 62/6, 64/18, 65/5, 65/9  
 PSC 8/5, 8/21, 51/7, 52/17  
 PUBLIC 1/1, 3/9, 5/25, 18/13, 18/18, 35/17, 50/21, 54/16, 63/22, 69/5  
 published 5/12, 5/15  
 pump 57/12  
 purpose 20/21, 36/6, 38/18, 50/18, 56/22  
 purposes 10/23, 57/1  
 pursue 62/2  
 pursued 67/5  
 pursuing 53/23  
 put 8/20, 11/19, 12/18, 12/23, 13/11, 15/8, 16/1, 19/25, 20/1, 44/3, 48/4, 62/1, 63/13, 65/12, 65/13  
 puts 67/15  
 putting 30/17

**Q**

49/22, 50/7, 50/12, 51/8, 51/14, 51/25, 53/7, 53/8, 58/20, 59/7, 60/7, 60/21, 61/5, 62/11, 62/23, 63/1, 63/18, 64/21, 65/20, 68/14  
 Mr. Childs' 28/14, 68/11  
 Mr. Roads 51/12  
 Ms. Blanton 50/16, 51/7, 52/8, 52/20, 53/1  
 Ms. Blanton's 53/6, 53/12  
 Ms. Helton 50/17  
 MS. MOORE 5/9, 5/25, 6/11, 6/14, 9/20, 10/8, 10/15, 10/25, 11/3, 11/6, 11/10, 11/18, 12/3, 12/8, 13/20, 13/21, 14/3, 25/16, 25/22, 26/3, 26/14, 27/22, 27/25, 36/12, 38/6, 39/7, 39/21, 40/8, 41/11, 42/1, 42/18, 43/2, 44/1, 44/19, 45/5, 45/12, 45/24, 46/7, 47/2, 47/7, 47/15, 48/7, 48/18, 48/24, 49/1, 49/21, 49/25, 50/9, 51/5, 51/11, 51/23, 52/4, 52/7, 52/15, 54/25, 55/11, 56/10, 56/13, 66/21

**R**  
 raise 40/17  
 raised 40/5  
 raises 21/2, 26/10, 58/6  
 Rate 1/6, 1/17, 1/19, 1/20, 29/23, 43/11, 43/15, 45/21, 46/22, 47/23, 48/3  
 rates 31/3  
 rationale 17/5, 17/7, 21/4, 21/7, 21/18, 22/6, 24/1, 36/3, 64/8  
 reach 22/25, 51/19  
 reached 49/18  
 reaching 37/23  
 reaction 33/2, 34/11, 35/20, 61/20  
 read 5/7, 18/1, 18/8, 21/25, 22/18, 23/14, 24/11, 24/13, 33/7, 40/3, 40/4, 55/2, 62/13  
 reading 22/22, 55/6, 65/9  
 reads 22/19, 49/13  
 reason 16/10, 16/12, 24/6, 28/2, 28/8, 41/10, 41/13, 50/12, 50/23, 62/7, 64/3  
 reasonable 11/24, 29/6, 31/3, 32/2, 32/6, 32/11, 32/19, 37/1, 37/5, 58/24  
 reasons 17/2  
 recall 30/21, 50/11  
 receive 14/21  
 received 14/5, 14/15  
 reckless 24/22  
 recommendation 50/5, 50/6, 66/25  
 recommended 10/4  
 recommending 46/6  
 reconsider 31/7  
 record 13/24, 17/3  
 reference 22/17, 33/19  
 referenced 49/23, 63/3  
 refine 53/4, 53/10  
 Regulated 1/6, 13/3, 23/25  
 regulation 43/11, 43/15  
 regulations 15/11, 29/2, 57/21  
 regulatory 28/15  
 relate 15/3  
 related 59/14  
 relates 60/15, 60/16  
 relied 33/11, 37/22  
 remedial 16/4, 16/8, 19/8, 22/11, 51/19, 54/4, 54/11, 54/15  
 repeal 6/16, 7/2, 11/5, 11/8, 11/9, 11/10, 11/11, 15/7, 17/5, 25/8, 26/24, 28/8, 39/4, 39/8, 41/12, 46/6, 60/22, 64/3, 65/4, 65/17  
 repealed 10/5, 24/21  
 repealing 10/25, 20/2, 48/10  
 repeals 41/10  
 report 6/22  
 REPORTED 2/17, 69/7  
 Reporter 2/17, 4/8, 13/23, 69/1, 69/3  
 reports 30/7  
 request 13/15, 13/16, 25/7, 34/15  
 requesting 45/21  
 requests 26/21, 56/17  
 require 6/22, 30/7, 36/25, 43/17, 44/23, 45/3, 45/7, 45/15, 51/21  
 Required 1/16, 7/1, 18/6, 20/17, 20/19, 37/10, 45/12, 45/19, 46/18, 56/25, 66/1, 66/2  
 requirement 15/16, 15/17, 15/20, 33/25, 34/2, 37/14, 39/7, 39/11, 54/21, 63/16  
 Requirements 1/6, 1/11, 8/1, 9/7, 20/5, 22/2, 30/4, 30/14, 30/22, 31/1, 31/18, 34/25, 37/24, 38/11, 38/13, 38/15, 42/10, 42/11, 43/12, 44/25, 46/10, 46/11, 47/4, 48/8, 48/11, 49/15, 53/18, 53/19, 53/20, 55/5, 58/11, 58/12, 61/3, 61/4, 62/9  
 requires 20/6, 39/9, 45/4, 52/5, 52/14, 65/23, 67/24  
 requiring 37/4  
 respect 21/20, 24/2, 52/11, 55/3  
 respond 39/15, 55/8  
 response 32/1, 39/3, 43/1, 52/4  
 responsible 42/7  
 restatement 25/14  
 restriction 58/14  
 result 23/2, 34/12, 50/25, 59/8, 61/15  
 results 22/3  
 retain 62/15  
 Return 1/6, 43/11, 43/15  
 reversal 12/14  
 review 42/2, 42/19, 49/23, 49/24, 51/15, 51/16, 52/25, 53/12, 61/12, 63/3  
 reviewing 39/10  
 revision 35/14, 66/8  
 revisions 14/23, 15/1, 17/20, 34/15, 34/21, 35/11, 41/7, 51/9, 61/16, 64/23, 64/25  
 revisit 31/12  
 rewrite 6/18  
 rigid 8/22, 38/12, 52/16, 52/22  
 rigidly 52/17  
 rigorous 29/18

rises 40/20  
risk 62/1  
road 61/24  
Roads 50/4  
Robert  
role 28/24, 30/18  
roll 67/23  
Room 2/13  
RPR 2/17, 69/3  
RULE 2/4, 6/15, 8/23, 9/15, 9/17, 9/19, 10/1, 10/9, 11/16, 11/17, 11/22, 12/5, 12/7, 12/16, 12/23, 13/4, 14/20, 15/17, 16/13, 16/15, 16/16, 16/20, 16/22, 17/14, 17/23, 18/5, 18/11, 19/7, 20/3, 20/21, 21/8, 21/13, 22/2, 22/24, 23/1, 23/12, 23/23, 24/5, 24/10, 25/8, 27/3, 27/4, 27/9, 27/25, 28/3, 30/2, 30/15, 33/18, 33/25, 34/8, 34/10, 35/2, 35/21, 37/9, 37/13, 37/21, 38/3, 38/4, 38/9, 38/19, 41/25, 43/22, 43/25, 45/4, 46/9, 46/18, 46/21, 47/21, 48/2, 48/16, 51/22, 53/4, 53/10, 53/16, 59/16, 60/3, 60/5, 60/8, 60/21, 61/2, 62/10, 62/18, 62/19, 62/20, 63/14, 63/19, 64/3, 65/4, 67/4, 69/4  
Rulemaking 5/11, 6/24, 11/11, 17/24, 18/4, 20/4, 29/10, 33/17, 39/8, 64/4  
Rules 1/4, 1/14, 6/17, 6/20, 6/24, 7/1, 7/4, 7/6, 7/9, 7/17, 7/24, 8/1, 8/2, 8/7, 8/11, 9/3, 9/21, 9/23, 10/2, 11/8, 11/11, 11/20, 11/23, 12/11, 12/16, 13/7, 15/4, 15/6, 15/8, 16/5, 17/6, 17/19, 18/10, 18/24, 19/11, 19/18, 19/19, 19/20, 20/9, 20/12, 20/13, 20/24, 22/14, 23/8, 23/18, 24/21, 25/3, 25/21, 25/23, 26/4, 26/6, 26/7, 26/18, 26/19, 26/24, 27/5, 27/7, 27/8, 28/5, 28/23, 29/2, 29/11, 29/13, 30/3, 31/6, 31/7, 31/9, 31/10, 31/12, 32/5, 35/9, 35/18, 35/19, 36/25, 37/4, 37/12, 37/19, 37/23, 38/2, 38/13, 39/10, 39/22, 41/20, 41/22, 42/11, 42/14, 44/8, 45/8, 45/25, 46/3, 46/12, 48/9, 48/16, 48/21, 49/15, 49/16, 49/20, 50/22, 50/24, 50/25, 51/1, 52/17, 54/6, 56/22, 57/8, 57/11, 57/20, 57/25, 58/1, 58/3, 58/12, 59/11, 60/11, 60/17, 60/25, 61/13, 61/17, 61/18, 62/1, 62/16, 63/13, 64/18, 65/6, 65/15, 66/2, 66/6  
ruling 31/25  
running 5/6

S

saw 29/13, 61/10  
schedules 38/10, 48/12  
Scope 1/5, 1/8, 1/9, 1/15, 26/1, 26/7, 34/7, 41/7  
second 9/17, 52/3  
Section 5/10, 6/20, 6/21, 7/8, 7/15, 7/20, 7/24, 8/2, 8/3, 8/6, 9/1, 9/11, 11/13, 12/10, 17/10, 17/17, 17/18, 17/20, 17/25, 18/1, 19/4, 22/19, 23/7, 23/15, 28/2, 29/20, 30/5, 37/15, 39/8, 40/3, 40/4, 40/5, 48/20, 49/16, 49/17, 50/18, 53/13, 55/4, 58/13, 59/8  
Sections 11/5, 23/7  
seek 7/6, 62/18  
sense 45/19, 46/20, 47/14, 55/2, 55/11, 55/22, 56/1, 56/7, 56/19  
sent 9/4  
sentence 21/25, 22/18, 23/13, 49/7, 49/13, 49/18, 51/20, 62/15  
separate 7/16, 9/9, 22/7, 27/9, 41/15, 57/16  
serious 36/7  
serves 48/5  
SERVICE 1/1, 1/12, 1/23, 3/9, 6/1, 18/13, 18/18, 35/18, 46/19, 47/24, 48/1, 50/21, 54/16, 63/22, 69/5  
session 11/13, 32/8  
set 29/10, 29/19, 30/12  
Setting 1/21  
short 14/9  
showings 20/19  
Shumard 3/10  
side 68/1  
significance 7/14, 64/5  
site 42/8  
situation 9/23  
situations 46/17  
size 30/23  
Slemkewicz 6/3  
small 45/17  
smaller 46/2  
sole 41/9  
sort 23/1, 31/14, 32/10  
sought 42/20, 53/2, 63/6, 63/7  
South 3/3  
Staff 1/19, 1/20, 3/12, 6/2, 6/4, 6/8, 6/9, 13/10, 14/1, 21/21, 22/16, 23/7, 23/8, 25/13, 27/15, 27/21, 28/4, 33/13, 36/18, 49/4, 50/6, 54/20, 58/6, 62/14, 63/2, 66/18, 67/15, 67/16, 68/9  
stand 58/1  
standard 10/7, 10/14, 53/16, 53/24  
Standards 1/13, 7/18, 7/23, 9/22, 9/24, 10/5, 10/9, 10/12, 12/24, 13/3, 13/6, 38/25, 44/3, 44/9, 46/2, 53/5, 53/11, 56/21, 56/23, 57/4, 63/4

standpoint 47/14  
start 21/10, 38/2  
started 5/4, 5/7, 18/12, 19/8, 20/10, 66/14  
starting 40/14, 40/15  
state 28/17, 69/1  
statement 33/23, 34/2, 52/6  
statements 29/5, 36/13, 55/1  
states 54/4  
status 32/11  
statute 7/15, 7/20, 8/7, 8/10, 9/5, 9/25, 10/12, 11/10, 16/8, 17/11, 20/15, 20/20, 20/22, 20/23, 22/7, 22/11, 22/21, 23/16, 33/7, 34/13, 34/17, 34/19, 36/5, 36/24, 37/11, 38/15, 40/16, 40/17, 41/19, 41/24, 42/4, 42/5, 42/6, 42/13, 42/14, 42/16, 42/25, 43/5, 44/13, 44/16, 44/17, 45/7, 46/1, 47/16, 51/6, 51/18, 51/24, 52/5, 52/9, 52/13, 52/20, 52/21, 53/18, 53/19, 53/25, 54/10, 54/15, 54/18, 54/22, 55/6, 56/4, 59/4, 59/5, 65/5, 65/13, 65/22, 66/8  
Statutes 5/11, 8/12, 8/15, 12/11, 21/1, 23/20, 25/17, 26/4, 30/6, 40/19, 41/16, 42/23, 57/7, 63/10  
statutory 9/16, 23/2, 29/9, 33/25, 34/2, 35/10, 39/22, 41/15, 48/17, 51/9, 51/22, 52/12, 53/5, 53/11, 57/15, 58/19, 58/23, 59/14, 61/19, 64/19  
Steel 3/2, 5/19  
strenuously 69/7  
step 65/7, 66/20  
stick 39/17  
strange 22/13  
Street 3/3  
strict 22/1  
strikes 55/17  
structured 20/14  
study 45/18, 45/21, 46/19, 47/24, 48/1  
subject 16/21, 20/5, 41/21, 62/18  
subjective 11/25  
submit 28/6, 64/17  
submitted 7/4  
Subsection 5/10, 8/8, 18/2  
substance 36/23  
substantive 11/19, 21/8, 21/13, 23/23, 27/8, 27/9, 41/16, 42/4, 42/23, 60/3  
substantively 53/4, 53/10  
sufficient 18/5, 19/24, 24/10  
Suite 3/3  
summary 6/12, 27/14  
supersede 62/21  
supersedes 43/25  
supplement 53/4, 53/10  
supplemental 8/9, 22/19, 23/15  
support 26/15, 28/13, 64/19  
supported 39/18  
supporting 41/10  
Supreme 35/17  
surprise 53/16  
surviving 7/16  
sweep 31/11  
sweeping 31/20  
swept 31/6

T

talk 23/10  
talked 34/24  
talking 24/3, 48/9, 52/8, 53/13  
Tallahassee 2/14, 3/3, 3/7, 3/11  
Tampa 3/8, 5/24, 7/13  
technical 14/22, 42/11  
template 31/2  
term 37/1  
Terms 1/12, 30/10, 32/5, 33/2, 35/25, 63/24  
TERRY 2/6  
tested 57/12  
text 42/18  
Thank 14/16, 27/12, 28/13, 37/16, 68/7, 68/13, 68/14  
Thereupon 68/15  
they've 46/10, 67/17  
thumbing 65/21  
Thursday 2/9  
TIME 2/11, 16/3, 18/20, 19/17, 21/16, 27/16, 29/18, 29/22, 35/20, 36/19, 47/6, 55/11, 55/23, 56/18, 60/23, 66/6, 67/24, 68/1, 69/5  
timely 28/21, 31/15, 31/17  
times 14/20, 37/11  
title 14/9  
Tomoka 18/22, 31/25, 58/22, 59/9, 59/19  
topic 26/7  
touch 40/13  
track 38/16  
transcribed 50/14, 69/8  
transcript 66/24, 69/8  
transcription 69/9  
true 69/8  
tuning 41/2

turn 49/10  
turned 49/11  
two 17/3  
type 42/25, 45/17, 45/18, 46/18

U

un 10/10  
unavailable 30/1  
uncertainty 41/6  
underlying 24/23, 39/18, 61/13  
unfair 22/3  
Uniform 7/9, 7/24, 9/8, 23/8, 25/23, 26/4, 26/6, 26/7, 26/18, 27/5, 32/5, 48/21, 61/3  
uniformly 22/2, 54/6  
unobtainable 29/21  
unreasonable 10/10, 10/17, 10/21, 22/3  
update 65/22  
urge 31/19, 57/25  
Utilities 1/17, 46/2, 46/19, 46/21, 48/13  
Utility 1/10, 30/25, 45/16, 45/17, 45/20, 47/10

V

valid 19/18, 19/20, 38/4  
variance 6/16, 7/21, 7/23, 8/9, 8/15, 8/20, 12/21, 22/20, 22/23, 23/16, 25/24, 38/15, 38/23, 38/25, 39/4, 39/11, 39/19, 40/22, 42/2, 49/2, 50/2, 53/5, 53/11, 56/15  
variances 6/21, 7/25, 12/18, 25/14, 25/15, 38/17, 39/24, 40/10, 42/6, 42/9, 42/20, 49/8, 49/14, 53/2, 58/10  
vary 53/17, 53/19, 53/20, 55/5, 63/4  
varying 38/20  
vein 55/21  
view 20/4, 34/14, 36/1  
voluntarily 58/1  
vote 67/16, 67/20, 67/21, 68/3  
voted 28/5

W

wait 18/13  
waive 7/17, 8/7, 10/1, 10/2, 11/17, 12/1, 12/7, 42/13, 43/8, 43/14, 43/19, 44/16, 44/24, 45/22, 46/16, 57/8, 57/15, 63/20  
waived 37/16, 44/14  
Waiver 1/9, 6/16, 7/18, 7/21, 7/22, 8/10, 8/11, 8/16, 8/20, 9/3, 9/15, 10/1, 10/9, 12/16, 12/20, 12/23, 15/8, 15/9, 16/6, 16/13, 16/15, 16/17, 16/18, 16/20, 17/6, 17/11, 19/15, 19/20, 20/14, 20/22, 21/5, 21/6, 21/11, 21/20, 22/9, 22/10, 22/20, 22/23, 23/12, 23/16, 23/24, 26/21, 26/23, 27/8, 29/11, 29/14, 29/25, 31/5, 31/8, 31/12, 31/20, 32/13, 35/23, 37/20, 37/22, 38/1, 38/15, 38/25, 39/12, 41/24, 42/3, 43/23, 44/2, 44/6, 44/11, 44/25, 46/8, 47/1, 47/25, 48/16, 49/1, 49/20, 50/3, 50/24, 51/21, 53/5, 53/11, 54/2, 56/15, 57/24, 58/2, 58/11, 60/1, 60/5, 60/6, 60/9, 60/10, 60/22, 60/23, 60/24, 61/2, 62/2, 62/3, 62/6, 62/9, 62/16, 62/17, 62/18, 63/7, 63/12, 63/15  
Waivers 1/8, 6/21, 8/1, 9/6, 9/18, 10/6, 12/18, 15/3, 16/2, 22/8, 22/14, 25/24, 29/20, 32/23, 38/16, 39/24, 40/10, 41/21, 42/7, 42/9, 42/20, 44/3, 44/8, 49/8, 49/14, 53/2, 54/7, 57/3, 62/21  
waiving 38/20  
walks 55/9  
warranted 30/16  
Wastewater 1/17  
Water  
wear 26/13  
week 66/24  
Weekly 5/13  
weeks 66/23  
weigh 28/22  
white 48/2  
wonder 21/24  
wondering 41/9  
word 58/5  
worded 31/7, 57/19  
wording 23/5, 23/6, 23/11  
words 10/11, 10/13, 15/2, 24/9, 53/6  
work 31/10, 67/15  
worked 51/8  
Workshop 4/6, 13/16, 13/18, 14/8, 14/11, 50/1, 50/8, 50/14, 52/9  
worrying 41/1  
written 55/7  
wrong 27/20, 49/12, 61/21  
wrote 53/1

X

X 4/1, 63/15

Y

year 19/4, 36/9  
years 15/19, 18/3, 22/13

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 980569-PU EXHIBIT NO. 1

COMPANY: *8678*

WITNESS: *8678*

DATE: *00 8-18-99*

IN RE: DOCKET NO. 980569-PU - PROPOSED  
AMENDMENTS TO RULE 25-4.002, F.A.C.,  
APPLICATION AND SCOPE; 25-4.141, MINIMUM  
FILING REQUIREMENTS FOR RATE OF RETURN  
REGULATED LOCAL EXCHANGE COMPANIES;  
COMMISSION DESIGNEE; 25-4.202,  
CONSTRUCTION AND WAIVERS; 25-24.555,  
SCOPE AND WAIVER; 25-6.002, APPLICATION  
AND SCOPE; 25-6.043, INVESTOR-OWNED  
ELECTRIC UTILITY MINIMUM FILING  
REQUIREMENTS; COMMISSION DESIGNEE; 25-  
6.0438, NON-FIRM ELECTRIC SERVICE - TERMS  
AND CONDITIONS; 25-17.087,  
INTERCONNECTION AND STANDARDS; 25-30.010,  
RULES FOR GENERAL APPLICATION; 25-30.011,  
APPLICATION AND SCOPE; 25-30.436, GENERAL  
INFORMATION AND INSTRUCTIONS REQUIRED OF  
CLASS A AND B WATER AND WASTEWATER  
UTILITIES IN AN APPLICATION FOR RATE AND  
INCREASE; 25-30.450, BURDEN OF PROOF AND  
AUDIT PROVISIONS; 25-30.455, STAFF  
ASSISTANCE IN RATE CASES; 25-30.456,  
STAFF ASSISTANCE IN ALTERNATIVE RATE  
SETTING; 25-30.570, IMPUTATION OF  
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION; AND  
25-30.580, GUIDELINES FOR DESIGNING  
SERVICE AVAILABILITY.



1

THE FLORIDA PUBLIC SERVICE COMMISSION  
RULE HEARING  
AUGUST 12, 1999

DOCKET NO. 980569-PU

COMPOSITE EXHIBIT NO. 1

IN RE: DOCKET NO. 980569-PU - PROPOSED AMENDMENTS TO RULE 25-4.002, F.A.C., APPLICATION AND SCOPE; 25-4.141, MINIMUM FILING REQUIREMENTS FOR RATE OF RETURN REGULATED LOCAL EXCHANGE COMPANIES; COMMISSION DESIGNEE; 25-4.202, CONSTRUCTION AND WAIVERS; 25-24.555, SCOPE AND WAIVER; 25-6.002, APPLICATION AND SCOPE; 25-6.043, INVESTOR-OWNED ELECTRIC UTILITY MINIMUM FILING REQUIREMENTS; COMMISSION DESIGNEE; 25-6.0438, NON-FIRM ELECTRIC SERVICE - TERMS AND CONDITIONS; 25-17.087, INTERCONNECTION AND STANDARDS; 25-30.010, RULES FOR GENERAL APPLICATION; 25-30.011, APPLICATION AND SCOPE; 25-30.436, GENERAL INFORMATION AND INSTRUCTIONS REQUIRED OF CLASS A AND B WATER AND WASTEWATER UTILITIES IN AN APPLICATION FOR RATE INCREASE; 25-30.450, BURDEN OF PROOF AND AUDIT PROVISIONS; 25-30.455, STAFF ASSISTANCE IN RATE CASES; 25-30.456, STAFF ASSISTANCE IN ALTERNATIVE RATE SETTING; 25-30.570, IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION; AND 25-30.580, GUIDELINES FOR DESIGNING SERVICE AVAILABILITY.

1. FLORIDA ADMINISTRATIVE WEEKLY NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED MAY 22, 1998.
2. ORDER NO. PSC-98-1716-NOR-PU, NOTICE OF RULEMAKING, ISSUED DECEMBER 18, 1998.
3. STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES;  
  
STATEMENT ON FEDERAL STANDARDS;  
  
STATEMENT OF ESTIMATED REGULATORY COST MEMORANDUM;  
  
AS PROVIDED TO THE JOINT ADMINISTRATIVE PROCEDURES COMMITTEE ON DECEMBER 24, 1998.
4. FLORIDA ADMINISTRATIVE WEEKLY NOTICE OF RULEMAKING PUBLISHED DECEMBER 31, 1998.
5. FLORIDA POWER & LIGHT COMPANY'S REQUEST FOR HEARING FILED JANUARY 14, 1999.

6. TAMPA ELECTRIC COMPANY'S REQUEST FOR HEARING FILED JANUARY 14, 1999.
7. NOTICE OF HEARING DATE ISSUED MARCH 17, 1999, AND PUBLISHED IN THE FLORIDA ADMINISTRATIVE WEEKLY MARCH 26, 1999.
8. ORDER NO. PSC-99-0968-PCO-PU, ESTABLISHING PROCEDURES, ISSUED MAY 13, 1999.
9. WRITTEN COMMENTS ON PROPOSED RULE CHANGES BY TAMPA ELECTRIC COMPANY, FILED JUNE 24, 1999.
10. WRITTEN COMMENTS ON PROPOSED RULE CHANGES BY FLORIDA POWER & LIGHT COMPANY, FILED JUNE 24, 1999.
11. FLORIDA PUBLIC SERVICE COMMISSION STAFF COMMENTS, FILED JULY 15, 1999.
12. FLORIDA POWER & LIGHT COMPANY'S REPLY COMMENTS FILED AUGUST 5, 1999
13. TAMPA ELECTRIC COMPANY'S REPLY COMMENTS FILED AUGUST 5, 1999.

(c) Pursuant to House Bill 1545, (Section 240.124, F.S.), each student enrolled in a course more than twice, beginning with the Fall 1997 Semester, shall be assessed the full cost of instruction.

(d) Pursuant to House Bill 1545, (Section 240.177, F.S.); each student enrolled in a college-preparatory class, beginning with the Fall 1997 Semester, more than once shall pay 100 percent of the full cost of instruction.

Specific Authority 240.209(1),(3)(e)(r) FS. Law Implemented 240.209(3)(e)(h), 240.235(1), 240.124, 240.277 FS., Conference Committee Report on Senate Bill 2400, 1997. History-Adopted 4-8-79, Renumbered 12-16-74, Amended 6-28-76, 7-4-78, 8-6-79, 9-28-81, 12-14-83, 7-25-84, 10-2-84, 10-7-85, Formerly 6C-7.01, Amended 12-25-86, 11-16-87, 10-19-88, 10-17-89, 10-15-90, 9-15-91, 1-8-92, 11-9-92, 7-22-93, 8-1-94, 11-29-94, 4-16-96, 8-12-96, 9-30-97, 12-15-97.

**PUBLIC SERVICE COMMISSION**

DOCKET NO.: 980569-PU

RULE TITLES:

Application and Scope

Minimum Filing Requirements for Rate-of-Return

Regulated Local Exchange Companies;

Commission Designee

Construction and Waivers

PURPOSE AND EFFECT: The purpose of these rule amendments is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in Section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: The repeal of waiver and variance rule provisions no longer authorized by statute.

SPECIFIC AUTHORITY: 350.127, 350.127(2) FS.

LAW IMPLEMENTED: 364.01, 364.05(4), 364.052, 364.337 FS.

IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 1:00 p.m., Tuesday, June 23, 1998

PLACE: Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL 32399-0850

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE TO: Commission's Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mary Anne Helton, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least five calendar

days prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

25-4.002 Application and Scope.

(1) No change.

~~(2) In any case where compliance with any of these rules introduces unusual hardship, or if unreasonable difficulty is involved in immediate compliance with any particular rule, written application may be made to the Commission for modification of the rule or for temporary exemption from its requirements.~~

(3) through (4) renumbered (2) through (3) No change.

Specific Authority 350.127 FS. Law Implemented 364.01, 364.337 FS. History-Revised 12-1-68, Formerly 25-4.02, Amended 2-23-87, 1-8-95.

25-4.141 Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designee.

(1) through (3) No change.

~~(4) Waiver of MFR Requirements. The Commission may grant a waiver with respect to specific data or the number of copies required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.~~

Specific Authority 350.127(2) FS. Law Implemented 364.05(4) FS. History-New 5-4-81, Amended 7-29-85, 6-11-86, 2-3-88, 3-10-96.

25-4.202 Construction and Waivers.

(1) through (2) No change.

~~(3) When compliance with a Commission imposed requirement would result in unreasonable hardship on a small local exchange company, would not be cost-effective, or would not be in the public interest, the small local exchange company may apply for a temporary rule waiver pursuant to Rule 25-4.002(2), petition the Commission to amend or repeal its rule pursuant to Rule 25-22.012, or seek similar relief as appropriate.~~

Specific Authority 350.127(2) FS. Law Implemented 364.052 FS. History-New 3-10-96, Amended

**PUBLIC SERVICE COMMISSION**

DOCKET NO: 980569-PU

RULE TITLES:

Application and Scope

Investor-Owned Electric Utility Minimum Filing

Requirements; Commission Designee

Non-Firm Electric Service - Terms and Conditions

RULE NOS.:

25-6.002

25-6.043

25-6.0438

**PURPOSE AND EFFECT:** The purpose of these rule amendments is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in Section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes.

**SUBJECT AREA TO BE ADDRESSED:** The repeal of waiver and variance rule provisions no longer authorized by statute.

**SPECIFIC AUTHORITY:** 350.127(2), 366.05(1),(2), 366.06(3) FS.

**LAW IMPLEMENTED:** 366.03, 366.04, 366.041, 366.05, 366.05(1), 366.06(1),(2),(3),(4), 366.04(2)(f), 366.071 FS.

**IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:**

**TIME AND DATE:** 1:00 p.m., Tuesday, June 23, 1998

**PLACE:** Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL 32399-0850

**THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE TO:** Commission's Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS:** Mary Anne Helton, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least five calendar days prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

25-6.002 Application and Scope.

(1) No change.

~~(2) In any case where compliance with any of these rules introduces unusual hardship, or if unreasonable difficulty is involved in immediate compliance with any particular rule, application may be made to the Commission for modification of the rule or for temporary exemption from its requirements, provided that the utility shall submit with such application a full and complete statement of reason therefor.~~

~~(2)(3) No change.~~

~~(4) The adoption of these rules shall in no way preclude the Commission, upon complaint, upon its own motion, or upon the application of any utility from altering or amending~~

~~them, in whole or in part, or from requiring any other or additional service, equipment, facility or standard, or from making such modification with respect to their application as may be found necessary to meet exceptional conditions.~~

~~(3)(5) No change.~~

Specific Authority 366.05(1) FS. Law Implemented 366.05(1) FS. History-New 7-29-69, Formerly 25-6.02, Amended \_\_\_\_\_

25-6.043 Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee.

(1) through (2) No change.

~~(3) Waiver of Minimum Filing Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.~~

Specific Authority 366.05(1),(2), 366.06(3) FS. Law Implemented 366.06(1),(2),(3),(4), 366.04(2)(f), 366.071 FS. History-New 5-27-81, Formerly 25-6.43, Amended 7-5-90, \_\_\_\_\_

25-6.0438 Non-Firm Electric Service - Terms and Conditions.

(1) through (8) No change.

~~(9) The Commission may waive any provision of this rule if it determines that such waiver is consistent with the purpose and intent of this rule after notice to all affected customers.~~

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.03, 366.04, 366.041, 366.05 FS. History-New 8-21-86, Amended 9-4-91, \_\_\_\_\_

## PUBLIC SERVICE COMMISSION

DOCKET NO: 980569-PU

RULE TITLE:

Interconnection and Standards

RULE NO.:

25-17.087

**PURPOSE AND EFFECT:** The purpose of this rule amendment is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in Section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes.

**SUBJECT AREA TO BE ADDRESSED:** The repeal of waiver and variance rule provisions no longer authorized by statute.

**SPECIFIC AUTHORITY:** 366.051, 350.127(2) FS.

**LAW IMPLEMENTED:** 366.04(2)(c),(5), 366.051 FS.

**IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:**

**TIME AND DATE:** 1:00 p.m., Tuesday, June 23, 1998

**PLACE:** Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL 32399-0850

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE TO: Commission's Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mary Anne Helton, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least five calendar days prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-17.087 Interconnection and Standards.

(1) No change.

~~(2) Nothing in this rule shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and modifying the general standards specified in this rule to reflect the result of such an evaluation.~~

~~(3) Where a utility refuses to interconnect with a qualifying facility or attempts to impose unreasonable standards pursuant to subsection (2) of this rule, the qualifying facility may petition the Commission for relief. The utility shall have the burden of demonstrating to the Commission why interconnection with the qualifying facility should not be required or that the standards the utility seeks to impose on the qualifying facility pursuant to subsection (2) are reasonable.~~

(4) through (11) renumbered (2) through (9) No change.

Specific Authority 366.051, 350.127(2) FS. Law Implemented 366.04(2)(c),(5), 366.051 FS. History--New 9-4-83, Formerly 25-17.87, Amended 10-25-90, 5-6-93.

PUBLIC SERVICE COMMISSION

DOCKET NO: 980569-PU

RULE TITLE:

Scope and Waiver

RULE NO.:

25-24.455

PURPOSE AND EFFECT: The purpose of this rule amendment is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in Section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: The repeal of waiver and variance rule provisions no longer authorized by statute.

SPECIFIC AUTHORITY: 350.127(2) FS.

LAW IMPLEMENTED: 364.01, 364.337 FS.

IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 1:00 p.m., Tuesday, June 23, 1998

PLACE: Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL 32399-0850

THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE TO: Commission's Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Mary Anne Helton, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least five calendar days prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-24.455 Scope and Waiver.

(1) through (3) No change.

~~(4) An interexchange company may petition for a waiver of any provision of this Part. The Commission may grant a waiver to the extent that it determines that it is consistent with the public interest to do so. The Commission may grant the petition in whole or part, may limit the waiver to certain geographic areas and/or may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission may consider:~~

~~(a) The factors enumerated in Section 364.337(2), Fla. Statutes;~~

~~(b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived; and~~

~~(c) Alternative regulatory requirements for the company which may serve the purposes of this Part.~~

(4)(5) No change.

Specific Authority 350.127(2) FS. Law Implemented 364.01, 364.337 FS. History--New 2-23-87, Amended

**PUBLIC SERVICE COMMISSION**

DOCKET NO: 980569-PU

RULE TITLES:	RULE NOS.:
Rules for General Application	25-30.010
Application and Scope	25-30.011
General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase	25-30.436
Burden of Proof and Audit Provisions	25-30.450
Staff Assistance in Rate Cases	25-30.455
Staff Assistance in Alternative Rate Setting	25-30.456
Imputation of Contributions-in-Aid- of-Construction	25-30.570
Guidelines for Designing Service Availability Policy	25-30.580

**PURPOSE AND EFFECT:** The purpose of these rule amendments is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in Section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes.

**SUBJECT AREA TO BE ADDRESSED:** The repeal of waiver and variance rule provisions no longer authorized by statute.

**SPECIFIC AUTHORITY:** 367.101, 367.0814, 367.121, 350.127(2), 367.121(1) FS.

**LAW IMPLEMENTED:** 367.081, 367.101, 367.0814, 367.083, 367.121, 367.121(1) FS.

**IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:**

**TIME AND DATE:** 1:00 p.m., Tuesday, June 23, 1998  
**PLACE:** Betty Easley Conference Center, Room 152, 4075 Esplanade Way, Tallahassee, FL 32399-0850

**THE WORKSHOP REQUEST MUST BE SUBMITTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE TO:** Commission's Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS:** Mary Anne Helton, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862

Any person requiring some accommodation at this workshop because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least five calendar days prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

**25-30.010 Rules for General Application.**

The rules hereinafter set forth are for general application and are subject to such changes and modifications, permitted by law, as the Commission from time to time may determine advisable. ~~The rules are subject to such exceptions as the Commission may consider just and reasonable in individual cases.~~ The rules are supplementary to the Water and Wastewater System Regulatory Law, Chapter 367, Florida Statutes.

Specific Authority 367.121 FS. Law Implemented 367.121 FS. History—Amended 2-3-70, 9-12-74, Formerly 25-10.01, 25-10.001, Amended 11-9-86,

**25-30.011 Application and Scope.**

(1) through (3) No change.

~~(4) The adoption of these rules shall in no way preclude the Commission, upon complaint, upon its own motion or upon the application of any utility, from altering or amending them, in whole or in part, or from requiring any other or additional service, equipment, facility or standard, or from making such modification with respect to their application as may be found necessary to meet exceptional conditions:~~

(5) through (6) renumbered (4) through (5) No change.

Specific Authority 367.121 FS. Law Implemented 367.121(1) FS. History—Amended 9-12-74, Formerly 25-10.14, 25-10.014, Amended 11-9-86,

**25-30.436 General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase.**

(1) through (5) No change.

~~(6) Waiver of MFR Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that the production of the data would be impractical or impose an excessive economic burden upon the applicant. All requests for waiver of specific portions of the minimum filing requirements shall be made as early as practicable:~~

~~(6)(7) No change.~~

Specific Authority 350.127(2), 367.121 FS. Law Implemented 367.081, 367.083, 367.121 FS. History—New 11-9-86, Amended 6-25-90, 11-30-93,

**25-30.450 Burden of Proof and Audit Provisions.**

In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc. supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial

and accounting system and, in addition, verify amounts to the appropriate schedules. ~~Utilities may request a waiver of specific parts of the above rule from the Commission by submitting a written statement setting forth the reason, in detail, why the waiver should be granted.~~

Specific Authority 367.121 FS. Law Implemented 367.081 FS. History--New 6-10-75, Formerly 25-10.177, Amended 11-9-86, \_\_\_\_\_

25-30.455 Staff Assistance in Rate Cases.

(1) through (10) No change.

~~(11) A petitioner may request a waiver of any of the guidelines set out in subsection (8) of this rule.~~

(12) through (15) renumbered (11) through (14) No change.

Specific Authority 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History--New 12-8-80, Formerly 25-10.180, Amended 11-9-86, 8-6-91, 11-30-93, \_\_\_\_\_

25-30.456 Staff Assistance in Alternative Rate Setting.

(1) through (10) No change.

~~(11) An applicant may request a waiver of any of the guidelines set out in subsection (8) of this rule.~~

(12) through (20) renumbered (11) through (19) No change.

Specific Authority 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History--New 11-30-93, Amended \_\_\_\_\_

25-30.570 Imputation of Contributions-in-Aid-of-Construction.

(1) No change.

~~(2) In any case where the provisions of subsection (1) introduces unusual hardship or unreasonable difficulty, and the Commission, utility or interested party shows that it is not in the best interests of the customers of the utility, the Commission may waive the applicability of the rule to the utility.~~

Specific Authority 367.121(1), 367.101 FS. Law Implemented 367.101 FS. History--New 6-14-83, Formerly 25-30.57, Amended \_\_\_\_\_

25-30.580 Guidelines for Designing Service Availability Policy.

(1) No change.

~~(2) In any case where compliance with the guidelines of subsection (1) introduces unusual hardship or unreasonable difficulty, and the Commission, utility, or interested party shows that it is not in the best interests of the customers of the utility to require compliance, the Commission may exempt the utility from the guidelines.~~

Specific Authority 367.121(1), 367.101 FS. Law Implemented 367.101 FS. History--New 6-14-83, Formerly 25-30.58, Amended \_\_\_\_\_

DEPARTMENT OF CORRECTIONS

RULE TITLE: Admissible Reading Material  
 RULE NO.: 33-3.012

PURPOSE AND EFFECT: The purpose of the proposed amendments is to clarify the types of facilities to which the rule is applicable, to provide additional review time for the translation of foreign language publications, to provide a broader interpretation of the "publishers only" provision, and to clarify application of the hardcover book prohibition. The effect of the proposed amendments is to exclude application of the rule to community correctional centers and facilities under contract with the Correctional Privatization Commission, to allow inmates to receive materials from wholesale or mail order distributors or bookstores as well as from publishers, and to prohibit hardcover books for inmates at the Florida State Prison main unit and inmates in close management status at any facility.

SUBJECT AREA TO BE ADDRESSED: Admissible reading materials.

SPECIFIC AUTHORITY: 944.09, 944.11 FS.

LAW IMPLEMENTED: 944.11 FS.

IF REQUESTED AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., June 10, 1998

PLACE: Law Library Conference Room, Bureau of Legal Services, Room B-404, 2601 Blair Stone Road, Tallahassee, Florida

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT IS: Perri Dale

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

33-3.012 Admissible Reading Material.

(1) No change.

(2) Inmates shall be permitted to receive publications except when the publication is found to be detrimental to the security, order or disciplinary or rehabilitative interests of any institution or community facility of the department, or any privately operated institution under contract with the department or the Correctional Privatization Commission, or when it is determined that the publication might facilitate criminal activity. Publications shall be rejected when one of the following criteria is met:

(a) through (k) No change.

(3) through (4) No change.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2

In re: Proposed Amendments to Rule 25-4.002, F.A.C., Application and Scope; 25-4.141, Minimum Filing Requirements for Rate of Return Regulated Local Exchange Companies; Commission Designee; 25-4.202, Construction and Waivers; 25-24.555, Scope and Waiver; 25-6.002, Application and Scope; 25-6.043, Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee; 25-6.0438, Non-Firm Electric Service - Terms and Conditions; 25-17.087, Interconnection and Standards; 25-30.010, Rules for General Application; 25-30.011, Application and Scope; 25-30.436, General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase; 25-30.450, Burden of Proof and Audit Provisions; 25-30.455, Staff Assistance in Rate Cases; 25-30.456, Staff Assistance in Alternative Rate Setting; 25-30.570, Imputation of Contributions-in-Aid-of-Construction; and 25-30.580, Guidelines for Designing Service Availability

DOCKET NO. 980569-PU  
ORDER NO. PSC-98-1716-NOR-PU  
ISSUED: December 18, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.



ORDER NO. PSC-98-1716-NOR-PU  
DOCKET NO. 980569-PU  
PAGE 2

NOTICE OF RULEMAKING

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to amend Rules 25-4.141, 25-4.202, 25-6.002, 25-6.043, 25-6.0438, 25-17.087, 25-24.555, 25-30.010, 25-30.011, 25-30.436, 25-30.450, 25-30.455, 25-30.456, 25-30.570, and 25-30.580, Florida Administrative Code, relating to rule waiver provisions.

The attached Notice of Rulemaking will appear in the December 24, 1998 edition of the Florida Administrative Weekly.

If requested within 21 days of the date of this notice, a hearing will be scheduled and announced in the Florida Administrative Weekly.

Written requests for hearing and written comments or suggestions on the rules must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than January 14, 1999.

By ORDER of the Florida Public Service Commission, this 18th day of December, 1998.

BLANCA S. BAYÓ, Director  
Division of Records & Reporting

By: /s/ Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

( S E A L )

CTM

Rules 25-4.002, 25-4.141,  
25-4.202, 25-24.455, 25-  
6.002, 25-6.043, 25-6.0438,  
25-17.087, 25-30.010, 25-  
30.011, 25-30.436, 25-  
30.450, 25-30.455, 25-  
30.456, 25-30.570, and 25-  
30.580  
Docket No. 980569-PU

**STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE**

In 1996, the Legislature substantially amended Chapter 120, Florida Statutes, the "Administrative Procedure Act" (APA). Among the changes to the APA was the adoption of section 120.542, Florida Statutes, governing rule waivers and variances, and section 120.536, requiring agencies to report to the Joint Administrative Procedures Committee (JAPC) its rules that exceed its rulemaking authority, and repeal those for which authorizing legislation does not exist. On September 9, 1997, the Commission approved the list of rules for which it lacked specific statutory authority. On September 25, 1997, by letter from Chairman Johnson, the Commission submitted its list to the JAPC. The Commission did not seek legislation to authorize the identified rules that provide generally for waivers and variances from the rules, because, as stated in the letter, specific authority is now contained in section 120.542, Florida Statutes, and specific uniform rules to implement the statute had been adopted by the Administration Commission.

**STATEMENT ON FEDERAL STANDARDS**

There is no federal standard on the same subject.

MEMORANDUM

November 17, 1998

98 NOV 17 PM 2:55

TO: DIVISION OF APPEALS (MOORE)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *CBH PD AMW*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR DOCKET NO. 980569-PU, PROPOSED REPEAL OF RULE PROVISIONS AUTHORIZING WAIVERS OR VARIANCES TO COMMISSION RULES

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Currently, many Commission rules contain provisions to allow waivers or variances on a case-by-case basis. The 1996 changes to Section 120.542, Florida Statutes, removed rulemaking authority for waivers and variances. All rule waivers and variances must now comply with Section 120.542, F.S. The proposed repeal of rule provisions for waivers and variances would make Commission rules compliant with Section 120.542, F.S.

Regulated companies that want a waiver or variance from Commission rules would have to make a request in accordance with Section 120.542, F.S., but that process should not be significantly more costly than the current petitioning process.

The Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, since there should be no significant additional costs or negative impacts on utilities, small businesses, small cities, or small counties, a SERC will not be prepared for the proposed rule change.

Please keep my name on the CASR.

CBH:tf/e-w&v

cc: Mary Andrews Bane  
Hurd Reeves  
Ann Shelfer  
Mark Futrell  
Connie Kummer  
Bill Lowe  
Dale Mailhot

THE FULL TEXT OF THE PROPOSED RULES IS:

6A-10.013 Leave Provisions for Exempt Employees, Department of Education.

Specific Authority 229.053(1) FS. Law Implemented 20.15, 229.512, 229.75 FS. History--New 2-20-71, Reprmulgated 12-5-74, Amended 5-5-75, Formerly 6A-10.13, Repealed.

6A-10.020 Environmental Education.

Specific Authority 229.053(1) FS. Law Implemented 229.8055(6) FS. History--New 2-18-74, Reprmulgated 12-5-74, Formerly 6A-10.20, Repealed.

6A-10.021 Environmental Education Grants.

Specific Authority 229.053(1), 229.8055(3)(4) FS. Law Implemented 120.53(1)(a)(b), 229.8055 FS. History--New 2-18-74, Reprmulgated 12-5-74, Amended 12-26-77, 6-6-78, Formerly 6A-10.21, Repealed.

6A-10.037 Regional Centers of Excellence in Mathematics, Science, Computers, and Technology.

Specific Authority 228.086(2), 229.053(1) FS. Law Implemented 228.086 FS. History--New 5-24-84, Formerly 6A-10.37, Amended 1-29-86, 10-18-94, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne V. Pierson, Deputy Commissioner, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Frank T. Brogan, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 18, 1998

DEPARTMENT OF EDUCATION

State Board of Education

RULE TITLE: Delegation of Authority to the Commissioner RULE NO.: 6A-16.004

PURPOSE AND EFFECT: This rule is to be repealed. Section 20.15, Florida Statutes, now provides that the Commissioner of Education is the agency head and gives to the Commissioner the authority to conduct matters otherwise delegated by Rule 6A-16.004, FAC. This change by the Legislature eliminates the need to retain this rule as part of the Florida Administrative Code.

SUMMARY: This rule is to be repealed.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of the notice.

SPECIFIC AUTHORITY: 20.15 FS.

LAW IMPLEMENTED: 20.15 FS.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 a.m., February 9, 1999

PLACE: Room LL03, The Capitol, Tallahassee, Florida  
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Wayne V. Pierson, Deputy Commissioner, Room 1702, The Capitol, Tallahassee, FL 32399-0400, (850)413-0555

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-16.004 Delegation of Authority to the Commissioner.

Specific Authority 229.053(1) FS. Law Implemented 20.05(1)(b), 20.15(1), 229.012, 229.053(1), 229.512 FS., Article IV, Section 4(g), Florida Constitution. History--Formerly 6A-10.09, New 4-11-70, Reprmulgated 12-5-74, Amended 10-23-79, 6-5-80, 7-23-80, Reprmulgated 9-24-80, Formerly 6A-16.04, Amended 6-10-92, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne V. Pierson, Deputy Commissioner, Department of Education

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Frank T. Brogan, Commissioner of Education

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 18, 1998

PUBLIC SERVICE COMMISSION

DOCKET NO. 980569-PU

RULE TITLES: RULE NOS.:

Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designee 25-4.141  
Construction and Waivers 25-4.202

PURPOSE AND EFFECT: To repeal provisions authorizing rule waivers that have been superseded by section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, which provide specific standards and procedures to be followed in granting rule waivers and variances.

SUMMARY: Repeals rule waiver provisions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2) FS.

LAW IMPLEMENTED: 364.05(4), 364.052 FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850)413-6245

THE FULL TEXT OF THE PROPOSED RULES IS:

25-4.141 Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designee.

(1) General Filing Instructions.

(a) through (c) No change.

(d) Each page of the filing shall be numbered and on 8 1/2 x 11 inch paper. Each witness' prefiled testimony shall be double-spaced with 25 numbered lines on numbered pages, and Exhibits shall be on numbered pages and all exhibits shall be attached to the proponent's testimony and shall also comply with Rule 25-22.048, Evidence. Each set of the filing, consisting of the petition and its supporting attachments, testimony, and exhibits, shall be bound in order of appearance in this rule in standard three ring binders, with each schedule indexed and tabbed.

(e) through (i) No change.

(2) through (3) No change.

~~(4) Waiver of MFR Requirements. The Commission may grant a waiver with respect to specific data or the number of copies required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.~~

Specific Authority 350.127(2) FS. Law Implemented 364.05(4) FS. History—New 5-4-81, Amended 7-29-85, 6-11-86, 2-3-88, 3-10-96, \_\_\_\_\_.

25-4.202 Construction and Waivers.

(1) through (2) No change.

~~(3) When compliance with a Commission imposed requirement would result in unreasonable hardship on a small local exchange company, would not be cost effective, or would not be in the public interest, the small local exchange company may apply for a temporary rule waiver pursuant to Rule 25-4.002(2), petition the Commission to amend or repeal its rule pursuant to Rule 25-22.012, or seek similar relief as appropriate.~~

Specific Authority 350.127(2) FS. Law Implemented 364.052 FS. History—New 3-10-96, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mary Anne Helton

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission  
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 15, 1998

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 24, No. 21, May 22, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

PUBLIC SERVICE COMMISSION

DOCKET NO. 980569-PU

RULE TITLES:

RULE NOS.:

Application and Scope

25-6.002

Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee

25-6.043

Non-Firm Electric Service - Terms and Conditions

25-6.0438

PURPOSE AND EFFECT: To repeal provisions authorizing rule waivers that have been superseded by section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, which provide specific standards and procedures to be followed in granting rule waivers and variances.

SUMMARY: Repeals rule waiver provisions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.05(1),(2), 366.06(3) FS.

LAW IMPLEMENTED: 366.05(1), 366.06(1),(2),(3),(4), 366.04(2)(f), 366.071, 366.03, 366.04, 366.041, 366.05 FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULES MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862

THE FULL TEXT OF THE PROPOSED RULES IS:

25-6.002 Application and Scope.

(1) No change.

~~(2) In any case where compliance with any of these rules introduces unusual hardship, or if unreasonable difficulty is involved in immediate compliance with any particular rule, application may be made to the Commission for modification of the rule or for temporary exemption from its requirements, provided that the utility shall submit with such application a full and complete statement of reason therefor.~~

~~(2)(3) No change.~~

~~(4) The adoption of these rules shall in no way preclude the Commission, upon complaint, upon its own motion, or upon the application of any utility from altering or amending them, in whole or in part, or from requiring any other or additional service, equipment, facility or standard, or from making such modification with respect to their application as may be found necessary to meet exceptional conditions.~~

~~(3)(5) No change.~~

Specific Authority 366.05(1) FS. Law Implemented 366.05(1) FS. History-New 7-29-69, Formerly 25-6.02, Amended \_\_\_\_\_.

25-6.043 Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee.

(1) through (2) No change.

~~(3) Waiver of Minimum Filing Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.~~

Specific Authority 366.05(1),(2), 366.06(3) FS. Law Implemented 366.06(1),(2),(3),(4), 366.04(2)(f), 366.071 FS. History-New 5-27-81, Formerly 25-6.43, Amended 7-5-90, \_\_\_\_\_.

25-6.0438 Non-Firm Electric Service - Terms and Conditions.

(1) through (8) No change.

~~(9) The Commission may waive any provision of this rule if it determines that such waiver is consistent with the purpose and intent of this rule after notice to all affected customers.~~

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.03, 366.04, 366.041, 366.05 FS. History-New 8-21-86, Amended 9-4-91, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mary Anne Helton

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 15, 1998

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Vol. 24, No. 21, May 22, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

PUBLIC SERVICE COMMISSION

DOCKET NO. 980569-PU

RULE TITLE:

RULE NO.:

Interconnection and Standards

25-17.087

PURPOSE AND EFFECT: To repeal provisions authorizing rule waivers that have been superseded by section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, which provide specific standards and procedures to be followed in granting rule waivers and variances.

SUMMARY: Repeals rule waiver provisions.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.051 FS.

LAW IMPLEMENTED: 366.04(2)(c)&(5), 366.051 FS.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862

**THE FULL TEXT OF THE PROPOSED RULE IS:**

25-17.087 Interconnection and Standards.

(1) No change.

~~(2) Nothing in this rule shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and modifying the general standards specified in this rule to reflect the result of such an evaluation.~~

~~(2)(3)~~ Where a utility refuses to interconnect with a qualifying facility or attempts to impose unreasonable standards pursuant to subsection (2) of this rule, the qualifying facility may petition the Commission for relief. The utility shall have the burden of demonstrating to the Commission why interconnection with the qualifying facility should not be required or that the standards the utility seeks to impose on the qualifying facility pursuant to subsection (2) are reasonable.

(4) through (11) renumbered (3) through (10) No change.

Specific Authority 366.051, 350.127(2) FS. Law Implemented 366.04(2)(c),(5), 366.051 FS. History—New 9-4-83, Formerly 25-17.87, Amended 10-25-90, 5-6-93.

**NAME OF PERSON ORIGINATING PROPOSED RULE:**  
Mary Anne Helton

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Florida Public Service Commission  
**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** December 15, 1998

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** Vol. 24, No. 21, May 22, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**PUBLIC SERVICE COMMISSION**

**DOCKET NO. 980569-PU**

**RULE TITLE:**

Scope and Waiver

**RULE NO.:**

25-24.555

**PURPOSE AND EFFECT:** To repeal provisions authorizing rule waivers that have been superseded by section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, which provide specific standards and procedures to be followed in granting rule waivers and variances.

**SUMMARY:** Repeals rule waiver provisions.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.**

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 350.127(2) FS.

**LAW IMPLEMENTED:** 364.01, 364.339 FS.

**WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.**

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.**

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862

**THE FULL TEXT OF THE PROPOSED RULE IS:**

25-24.555 Scope and Waiver.

(1) through (3) No change.

~~(4) A shared tenant service company may petition for a waiver of any provision of this part. The Commission may grant a waiver to the extent that it determines that it is in the public interest to do so. The Commission may grant the petition in whole or part and may impose reasonable alternative regulatory requirements on the petitioning company. In disposing of a petition, the Commission shall consider:~~

~~(a) The factors enumerated in section 364.339(4), Florida Statutes;~~

~~(b) The extent to which competitive forces may serve the same function as, or prevent the necessity for, the provision sought to be waived; and~~

~~(c) Alternative regulatory requirements for the company which may serve the purposes of this part.~~

~~(5) Any statutory exemptions granted or rule waivers granted prior to the adoption of this rule are void, and to the extent not covered in this rule, must be renewed.~~

Specific Authority 350.127(2) FS. Law Implemented 364.01, 364.339 FS. History—New 1-28-91, Amended 7-29-97.

**NAME OF PERSON ORIGINATING PROPOSED RULE:**  
Mary Anne Helton

**NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:** Florida Public Service Commission  
**DATE PROPOSED RULE APPROVED BY AGENCY HEAD:** December 15, 1998

**DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:** Vol. 24, No. 21, May 22, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**PUBLIC SERVICE COMMISSION**

DOCKET NO. 980569-PU

RULE TITLES:	RULE NOS.:
Rules for General Application	25-30.010
Application and Scope	25-30.011
General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase	25-30.436
Burden of Proof and Audit Provisions	25-30.450
Staff Assistance in Rate Cases	25-30.455
Staff Assistance in Alternative Rate Setting	25-30.456
Imputation of Contributions-in-Aid-of-Construction	25-30.570
Guidelines for Designing Service Availability Policy	25-30.580

**PURPOSE AND EFFECT:** To repeal provisions authorizing rule waivers that have been superseded by section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, which provide specific standards and procedures to be followed in granting rule waivers and variances.

**SUMMARY:** Repeals rule waiver provisions.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 350.127(2), 367.121, 367.0814, 367.101 FS.

**LAW IMPLEMENTED:** 367.121(1), 367.081, 367.083, 367.121, 367.0814, 367.101 FS.

**WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.**

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.**

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862

**THE FULL TEXT OF THE PROPOSED RULES IS:**

**25-30.010 Rules for General Application.**

The rules hereinafter set forth are for general application and are subject to such changes and modifications, permitted by law, as the Commission from time to time may determine advisable. ~~The rules are subject to such exceptions as the Commission may consider just and reasonable in individual cases.~~ The rules are supplementary to the Water and Wastewater System Regulatory Law, Chapter 367, Florida Statutes.

Specific Authority 367.121 FS. Law Implemented 367.121 FS. History--Amended 2-3-70, 9-12-74, Formerly 25-10.01, 25-10.001, Amended \_\_\_\_\_.

**25-30.011 Application and Scope.**

(1) No change.

~~(2) In any case where compliance with any of these rules introduces unusual hardship, or if unreasonable difficulty is involved in immediate compliance with any particular rule, application may be made to the Commission for modification of the rule or for temporary exemption from its requirements, provided that the utility shall submit with such application a full and complete statement of reason therefor.~~

~~(2)(3) No change.~~

~~(4) The adoption of these rules shall in no way preclude the Commission, upon complaint, upon its own motion or upon the application of any utility, from altering or amending them, in whole or in part, or from requiring any other or additional service, equipment, facility or standard, or from making such modification with respect to their application as may be found necessary to meet exceptional conditions.~~

~~(3)(5) It is not intended that any rule or regulation contained herein shall supersede or conflict with an applicable regulation of the Department of Health and Rehabilitative Services (DHRS) or the Department of Environmental Protection Regulation (DEPR). Compliance by a utility with the regulations of the DHRS or DEPR on a particular subject matter shall constitute compliance with such of these rules as relate to the same subject matter except as otherwise ordered by the Commission.~~

~~(4)(6) No change.~~

Specific Authority 367.121 FS. Law Implemented 367.121(1) FS. History--Amended 9-12-74, Formerly 25-10.14, 25-10.014, Amended \_\_\_\_\_.



25-30.436 General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase.

(1) through (5) No change.

~~(6) Waiver of MFR Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that the production of the data would be impractical or impose an excessive economic burden upon the applicant. All requests for waiver of specific portions of the minimum filing requirements shall be made as early as practicable.~~

~~(6)(7)~~ No change.

Specific Authority 350.127(2), 367.121 FS. Law Implemented 367.081, 367.083, 367.121 FS. History-New 11-9-86, Amended 6-25-90, 11-30-93.

25-30.450 Burden of Proof and Audit Provisions.

In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc. supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to track to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules. ~~Utilities may request a waiver of specific parts of the above rule from the Commission by submitting a written statement setting forth the reason, in detail, why the waiver should be granted.~~

Specific Authority 367.121 FS. Law Implemented 367.081 FS. History-New 6-10-75, Formerly 25-10.177, Amended.

25-30.455 Staff Assistance in Rate Cases.

(1) through (4) No change.

(5) Within 30 days of receipt of the completed application, the committee shall evaluate the application and determine the petitioner's eligibility for staff assistance.

(a) through (b) No change.

(c) All recommendations of ineligibility shall be in writing and shall state the deficiencies in the application with reference to guidelines set out in subsection (8) of this rule ~~or with reference to subsection (11) of this rule.~~

(6) through (10) No change.

~~(11) A petitioner may request a waiver of any of the guidelines set out in subsection (8) of this rule.~~

(12) through (15) renumbered (11) through (14) No change.

Specific Authority 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History-New 12-8-80, Formerly 25-10.180, Amended 11-9-86, 8-26-91, 11-30-93.

25-30.456 Staff Assistance in Alternative Rate Setting.

(1) through (4) No change.

(5) Within 30 days of receipt of the completed application, the Division of Water and Wastewater shall evaluate the application and determine the petitioner's eligibility for staff assistance.

(a) through (b) No change.

(c) All recommendations of ineligibility shall be in writing and shall state the deficiencies in the application with reference to guidelines set out in subsection (8) of this rule ~~or with reference to subsection (11) of this rule.~~

(6) through (10) No change.

~~(11) An applicant may request a waiver of any of the guidelines set out in subsection (8) of this rule.~~

(12) through (14) renumbered (11) through (13) No change.

~~(14)(15)~~ A substantially affected person may file a petition to protest the Commission's PAA. Order regarding a staff assisted alternative rate setting application within 21 days of issuance of the Notice of Proposed Agency Action as set forth in Rule ~~28-106.201 25-22.036~~, F.A.C.

(16) through (20) renumbered (15) through (19) No change.

Specific Authority 367.0814, 367.121 FS. Law Implemented 367.0814 FS. History-New 11-30-93, Amended.

25-30.570 Imputation of Contributions-in-Aid-of-Construction.

~~(1)~~ No change.

~~(2) In any case where the provisions of subsection (1) introduce unusual hardship or unreasonable difficulty, and the Commission, utility or interested party shows that it is not in the best interests of the customers of the utility, the Commission may waive the applicability of the rule to the utility.~~

Specific Authority 367.121(1), 367.101 FS. Law Implemented 367.101 FS. History-New 6-14-83, Formerly 25-30.57, Amended.

25-30.580 Guidelines for Designing Service Availability Policy.

~~(1)~~ A utility's service availability policy shall be designed in accordance with the following guidelines:

~~(1)(a)~~ No change.

~~(2)(b)~~ No change.

~~(2) In any case where compliance with the guidelines of subsection (1) introduces unusual hardship or unreasonable difficulty, and the Commission, utility, or interested party shows that it is not in the best interests of the customers of the utility to require compliance, the Commission may exempt the utility from the guidelines.~~

Specific Authority 367.121(1), 367.101 FS. Law Implemented 367.101 FS. History-New 6-14-83, Formerly 25-30.58, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE:  
Mary Anne Helton

NAME OF SUPERVISOR OR PERSON WHO APPROVED  
THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY  
HEAD: December 15, 1998

DATE NOTICE OF PROPOSED RULE DEVELOPMENT  
PUBLISHED IN FAW: Vol. 24, No. 21, May 22, 1998

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of Records and Reporting at (850)413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1(800)955-8771 (TDD).

**REGIONAL PLANNING COUNCILS**

**South Florida Regional Planning Council**

RULE CHAPTER TITLE:	RULE CHAPTER NO.:
Practice and Procedure	29J-2
RULE TITLES:	RULE NOS.:
General	29J-2.001
Developments of Regional Impact (DRI)	29J-2.003
Intergovernmental Coordination and Review Procedures	29J-2.004

**PURPOSE AND EFFECT:** The purpose of this amendment is to revise obsolete rules governing South Florida Regional Planning Council practice and procedures and to bring them into compliance with the provisions of Chapter 120.536, F.S. The effect will be to streamline and update the rule and reduce duplication.

**SUMMARY:** This rule amendment addresses the general practice and procedure of the South Florida Regional Planning Council concerning the Development of Regional Impact and Intergovernmental Coordination and Review processes in order to revise obsolete provisions, reduce needless duplication, streamline, and update the rule.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 120.536, 186.505 FS.

**LAW IMPLEMENTED:** 120.536 FS.

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW.**

**TIME AND DATE:** 10:30 a.m., February 1, 1999

**PLACE:** South Florida Regional Planning Council, 3440 Hollywood Boulevard, Suite 140, Hollywood, FL 33021

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS:** Carolyn A. Dekle, Executive Director, South Florida Regional Planning Council, 3440 Hollywood Boulevard, Suite 140, Hollywood, Florida 33021

**THE FULL TEXT OF THE PROPOSED RULES IS:**

**29J-2.001 General.**

The rules of this chapter provide the practices and procedures to be followed by all persons when dealing with the South Florida Regional Planning Council. These rules are in addition to all practices, procedures and definitions imposed by applicable statutes, regulations, and rules including, but not limited to, the following: Florida Statutes, Chapters 23, 120, 163, 186, and 380, and Florida Administrative Code, Chapters 22 and 28, and the United States Office of Management and Budget Circular A-95, Revised.

Specific Authority 120.54, 120.53(4), 163.01, 186.501 FS. Law Implemented 120.54, 120.53(4), 163.01(5)(b), 186.505 FS. History—New 8-6-75. Formerly 29J-2.01, Amended \_\_\_\_\_.

(Substantial rewording of Rule 29J-2.003 follows. See Florida Administrative Code for present text.)

**29J-2.003 Developments of Regional Impact (DRI).**

The South Florida Regional Planning Council coordinates the multi-agency, intergovernmental review of Developments of Regional Impact (DRI), including Florida Quality Developments, and Areawide and Downtown DRIs, and amendments to same in accordance with Chapter 380.06, FS, and Chapter 9J-2, FAC, as amended, and the Strategic Regional Policy Plan for South Florida (Chapter 29J-2.009, FAC).

Specific Authority 120.54, 186.505 FS. Law Implemented 120.54, 186.505 FS. History—New 8-6-75, Amended 7-6-81, 9-1-81, Formerly 29J-2.03, Amended 6-2-86, 11-9-86, 5-3-87, 11-30-87, 12-26-88, \_\_\_\_\_.

29J-2.004 Intergovernmental Coordination and Review Procedures A-95 Procedures and Policy.

(1) The South Florida Regional Planning Council has been designated as the Regional Clearinghouse (RCH) areawide planning and development clearinghouse pursuant to United States Office of Management and Budget Circular A-95, Revised, for substate district 11, 10 which includes Broward, Miami-Dade, Martin, and Monroe, Palm Beach and St. Lucie counties, to exercise the responsibilities pursuant to the Florida Office of Planning and Budgeting's Intergovernmental Coordination and Review Process.

(2) The ~~areawide clearinghouse~~ functions which the South Florida Regional Planning Council ~~shall~~ is mandated to perform include:

(a) Evaluating the significance of proposed Federal and federally assisted projects to state, areawide, or local plans and programs.

(b) Receiving and disseminating project notifications and providing liaison between applicants and appropriate units of government and agencies.

(c) Providing agencies charged with enforcing and furthering the objectives of state and local environmental standards with the opportunity to review and comment on the environmental significance of Federal assistance projects.

(d) Providing agencies charged with enforcing and furthering the objectives of state and local civil rights laws with the opportunity to review and comment on the civil rights aspects of federal assistance projects.

(e) Providing liaison between Federal agencies contemplating direct Federal development projects and state and areawide or local agencies or governments having plans or projects which might be affected by the proposed project.

(3) When evaluating the project or program, ~~Comments~~ by the South Florida Regional Planning Council ~~in reviewing an application for federal assistance~~ are to include information about:

(a) The extent to which the project is consistent with comprehensive planning for the area.

(b) The extent to which the project duplicates or needs to be coordinated with other projects or programs.

(c) The extent to which it might be revised to increase its effectiveness or efficiency.

(d) The extent to which the project meets areawide objectives relating to natural and human resources, and economic and community development.

(e) The extent to which the project impacts the natural environment.

(f) The project impact on balanced patterns of settlement and the delivery of services to all sectors of the area population, including minority groups.

(4) The authority of the Council to take appropriate action on applications is hereby delegated to the Executive Director, in the following manner:

(a) Application is determined by staff not to be of regional interest, the Executive Director shall so comment to the appropriate Federal agency on behalf of the Council.

(b) When an application is determined to be of regional interest but which is either consistent with or not inconsistent with regional plans or policies, completed or in progress, or which is modified during the review period to be so classified, the Executive Director shall so comment to the appropriate Federal agency on behalf of the Council.

(c) When an application is determined to be inconsistent with regional plans or ~~of~~ policies, completed or in progress, and it is recommended by staff to receive adverse comment, the Executive Director shall submit the application and recommended adverse comments to the Council for its consideration and action.

(5) The Executive Director shall provide a monthly ~~A-95~~ report to the Council indicating the status of all ~~A-95~~ applications currently being reviewed by the Council's staff.

Specific Authority ~~120.54 120.53(4), 163.01, 186.505~~ FS. Law Implemented ~~120.54 120.53(4), 163.01, 186.505~~ FS. History—New 8-6-75, Formerly 29J-2.04, Amended

NAME OF PERSON ORIGINATING PROPOSED RULE: Carolyn A. Dekle, Executive Director, South Florida Regional Planning Council

NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE: South Florida Regional Planning Council

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 2, 1996

DATE NOTICE OF DEVELOPMENT OF PROPOSED RULE PUBLISHED IN FAW: December 24, 1998

**DEPARTMENT OF THE LOTTERY**

RULE TITLE: State Owed Debts

RULE NO.: 53-1.018

PURPOSE AND EFFECT: The purpose and effect of the proposed repeal of Rule 53-1.018, is to comply with subsection 120.536(2), F.S. and repeal a rule which may exceed the rulemaking authority permitted by the "map-tack" provision of subsection 120.536(1), F.S.

SUMMARY: The Department of the Lottery is repealing a rule regarding state owed debts that may exceed rulemaking authority.

SPECIFIC AUTHORITY: 24.105(10)(j) FS.

LAW IMPLEMENTED: 24.115(4) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., February 5, 1999

5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed amendments to Rules	)	DOCKET NO. 980569-PU
25-4.002, F.A.C., Application and Scope;	)	DATE: JANUARY 14, 1999
25-4.141, F.A.C., Minimum Filing	)	
Requirements for Rate of Return	)	
Regulated Local Exchange Companies;	)	
Commission Designee; 25-4.202, F.A.C.,	)	
Construction and Waivers; 25-24.455,	)	
F.A.C., Scope and Waiver; 25-6.002,	)	
F.A.C., Application and Scope; 25-6.043,	)	
F.A.C., Investor-Owned Electric Utility	)	
Minimum Filing Requirements; Commission	)	
Designee; 25-6.0438, F.A.C., Non-Firm	)	
Electric Service - Terms and Conditions;	)	
25-17.087, F.A.C., Interconnection and	)	
Standards; 25-30.010, F.A.C., Rules for	)	
General Application; 25-30.011, F.A.C.,	)	
Application and Scope; 25-30.436, F.A.C.,	)	
General Information and Instructions	)	
Required of Class A and B Water and	)	
Wastewater Utilities in an Application	)	
for Rate Increase; 25-30.450, F.A.C.,	)	
Burden of Proof and Audit Provisions;	)	
25-30.455, F.A.C., Staff Assistance in	)	
Rate Cases; 25-30.456, F.A.C., Staff	)	
Assistance in Alternative Rate Setting;	)	
25-30.570, F.A.C., Imputation of	)	
Contributions-in-Aid-of-Construction;	)	
and 25-30.580, F.A.C., Guidelines	)	
for Designing Service Availability Policy)	)	

REQUEST FOR HEARING

Florida Power & Light Company ("FPL") pursuant to the Notice of Rulemaking contained in Order No. PSC-98-1716-NOR-PU and Section 120.54(3), Florida Statutes, hereby requests that a hearing be scheduled and held to give FPL an opportunity to present evidence

and argument and for other permissible purposes. In support of this Request for Hearing FPL states:

1. FPL is a public utility subject to the jurisdiction of this Commission pursuant to Chapter 366, Florida Statutes.

2. Various specific rules among those proposed to be amended in this Docket apply to FPL. These include Chapter 25-6 and Chapter 25-17, Fla. Admin. Code. (The Rules that apply specifically to electric utilities are: 25-6.002(2), F.A.C., Application and Scope; 25-6.043(3), F.A.C., Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee; 25-6.0438(9), F.A.C., Non-Firm Electric Service - Terms and Conditions; 25-17.087(2), F.A.C., Interconnection and Standards). The proposed repeal will affect FPL and FPL is an affected person within the meaning of Section 120.54, Fla. Stats.

The proposed amendments affect FPL by making substantive rules (that is, rules that are not purely procedural) applicable to FPL without the "variance, waiver or deferral of that application" available under these current rules. Stated differently, the proposed repeal of the "variance, waiver or deferral" procedures proposed by the Commission in this rule amendment proceeding is substantive rulemaking that directly affects FPL and was not noticed.

WHEREFORE, FPL hereby requests that a hearing be scheduled and held to give FPL an opportunity to present evidence and argument and for other permissible purposes.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP  
Suite 601  
215 South Monroe Street  
Tallahassee, FL 32301  
Attorneys for Florida Power  
& Light Company

By:   
Matthew M. Childs, P.A.

6

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule )  
 25-4.002, F.A.C., Application and Scope; )  
 25-4.141, Minimum Filing Requirements )  
 for Rate of Return Regulated Local )  
 Exchange Companies; Commission )  
 Designee; 25-4.202, Construction and )  
 Waivers; 25-24.455, Scope and Waiver; )  
 25-6.002, Application and Scope; 25-6.043, )  
 Investor-Owned Electric Utility Minimum )  
 Filing Requirements; Commission Designee; )  
 25-6.0438, Non-Firm Electric Service – Terms )  
 and Conditions; 25-17.087, Interconnection )  
 and Standards; 25-30.010, Rules for General )  
 Application; 25-30.011, Application and Scope; )  
 25-30.436, General Information and Instructions )  
 Required of Class A and B Water and Wastewater )  
 Utilities in an Application for Rate Increase; )  
 25-30.450, Burden of Proof and Audit Provisions; )  
 25-30.455, Staff Assistance in Rate Cases; )  
 25-30.456, Staff Assistance in Alternative Rate )  
 Setting; 25-30.570, Imputation of Contributions- )  
 In-Aid-of-Construction; and 25-30.580, )  
 Guidelines for Designing Service Availability. )  
 \_\_\_\_\_ )

DOCKET NO. 980569-PU  
 FILED: January 14, 1999

**TAMPA ELECTRIC COMPANY'S  
REQUEST FOR HEARING**

Pursuant to Section 120.54, Florida Statutes, and Fla. Admin. Code Rule 25-22.029(4) and Fla. Admin. Code Rule 28-106.111, Tampa Electric Company ("Tampa Electric" or "the company") files this its Request for Hearing asking that a hearing be convened pursuant to Section 120.57, Florida Statutes, and as grounds therefor, says:

DOCUMENT NUMBER - DATE

00536 JAN 14 89

FPSC-RECORDS/REPORTING

1. The name, address, telephone number and facsimile number of the Petitioner are:

Tampa Electric Company  
Post Office Box 111  
Tampa, FL 33602  
(813) 228-4111  
(813) 228-1770

2. The name, address, telephone number and facsimile number of the attorney and qualified representatives of the Petitioner are:

Lee L. Willis  
James D. Beasley  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302

Angela L. Llewellyn  
Administrator, Regulatory Coordination  
Tampa Electric Company  
Post Office Box 111  
Tampa, FL 33602

3. Tampa Electric is a Commission regulated electric utility company providing retail electric service to customers in Hillsborough and portions of Polk, Pinellas and Pasco Counties in Florida. On December 18, 1998 the Commission entered its Notice of Rulemaking Order No. PSC-98-1716-NOR-PU, proposing to repeal and amend various portions of the Commission's rules set forth in the Florida Administrative Code. The proposed repeals pertain to rule variances and waivers as well as general provisions for exceptions and for rule waivers.

4. Of particular concern to Tampa Electric is the proposed repeal of the following rule provisions:

- (a) Rule 25-6.002(2) and (4). The subsections in question provide for modification or exemption from rule requirements in cases of unusual hardship or difficulty or under exceptional conditions.

- (b) Rule 25-6.043(3). This subsection states that the Commission will waive the Commission's Minimum Filing Requirement ("MFR") rule for investor-owned electric



utilities upon a showing that data production would be impractical or impose an excessive economic burden on the utility.

(c) Rule 25-6.0438(9). This subsection provides that the Commission may waive any provision of its rule concerning non-firm electric service after notice to all affected customers.

5. Repeal of the above-listed rule provisions by definition would adversely affect the substantial interests of Tampa Electric and other Commission regulated investor-owned utilities. Repeal of Rule 25-6.002(2) and (4) would mandate an investor-owned utility's compliance with a rule even in cases of unusual hardship or difficulty or when exceptional conditions would otherwise warrant a modification or exemption of the rule requirement. Repeal of Rule 25-6.043(3) would require an investor-owned electric utility to produce MFR data even in situations where it would be impractical or when such production would impose an excessive economic burden on the utility. Finally, repeal of Rule 25-6.0438(9) would disallow waivers of the Commission's non-firm electric service rule even in situations where the same might be shown to be clearly justified. All of these results would adversely impact Tampa Electric, drive up its cost of providing electric service and, in the process, be harmful to Tampa Electric's customers.

6. Tampa Electric believes that repeal of the above-referenced rule provision is not necessary or required by the new rulemaking standard in Section 120.536, Florida Statutes. The company also asserts that Section 120.542, Florida Statutes, does not require all requests for variances and waivers to comply with the provision of that statute.

7. Repeal of the above rule provisions will destroy the flexibility in the existing rules and along with it the Commission's ability to avoid having the investor-owned electric utilities it regulates suffer hardships, impracticalities and excessive economic burdens. Such effect would

be harsh indeed as well as inconsistent with the legislative intent to encourage flexibility in the application of rules.

8. Tampa Electric received the Notice of Rulemaking order in this docket electronically on January 7, 1999. The Notice calls for requests for hearing and written comments no later than January 14, 1999.

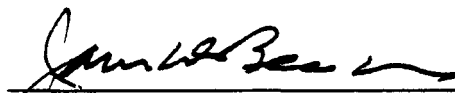
9. There are or may be disputed issues of material fact concerning the economic impact the proposed repeal of the above-referenced rule provisions will have on Tampa Electric, other electric investor-owned electric utility companies and the customers they serve.

10. The ultimate facts alleged are that it would be inappropriate for the Commission to repeal the above-referenced provisions of the Commission rules given the hardship and adverse economic impact such repeal would have on Tampa Electric and its customers.

WHEREFORE, Tampa Electric opposes the repeal of the above-referenced Commission rule provisions and requests that a hearing on the proposed repeals be convened pursuant to Section 120.57, Florida Statutes.

DATED this 14<sup>th</sup> day of January, 1999.

Respectfully submitted,



---

LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF HEARING

DOCKET NO. 980569-PU

The Public Service Commission notifies all interested persons that a hearing has been requested in the above docket and the date of the hearing will be August 12, 1999. The proposed rule changes were published in the December 31, 1998 Florida Administrative Weekly, Volume 24, Number 53.

An order will be issued establishing prehearing and hearing procedures to be followed. Persons who intend to participate in this rulemaking proceeding should file a notice of intent to participate with the Division of Records and Reporting by April 15, 1999 in order to receive the prehearing order.

The hearing will be held at the following time and place:

9:30 a.m. Thursday, August 12, 1999  
Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, FL 32399-0862.

PERSON TO BE CONTACTED: Christiana Moore  
Division of Appeals  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0852  
(850) 413-6098.

By ORDER of the Florida Public Service Commission, this 17th day of March, 1999.

BLANCA S. BAYÓ, Director  
Division of Records & Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 980569-PU  
PAGE 2

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 980569-PU

RULE TITLE	RULE NUMBER
Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designee	25-4.141
Construction and Waivers	25-4.202
Application and Scope	25-6.002
Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee	25-6.043
Non-Firm Electric Service - Terms and Conditions	25-6.0438
Interconnection and Standards	25-17.087
Scope and Waiver	25-24.555
Rules for General Application	25-30.010
Application and Scope	25-30.011
General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase	25-30.436
Burden of Proof and Audit Provisions	25-30.450
Staff Assistance in Rate Cases	25-30.455
Staff Assistance in Alternative Rate Setting	25-30.456
Imputation of Contributions-in-Aid-of-Construction	25-30.570
Guidelines for Designing Service Availability Policy	25-30.580

NOTICE OF HEARING

The Public Service Commission notifies all interested persons that a hearing has been requested in the above docket and

DOCKET NO. 980569-PU  
PAGE 3

the date of the hearing will be August 12, 1999. The proposed rule changes were published in the December 31, 1998 Florida Administrative Weekly, Volume 24, Number 53.

An order will be issued establishing prehearing and hearing procedures to be followed. Persons who intend to participate in this rulemaking proceeding should file a notice of intent to participate with the Division of Records and Reporting by April 15, 1999 in order to receive the prehearing order.

The hearing will be held at the following time and place:

DATE AND TIME: 9:30 a.m. Thursday, August 12, 1999

PLACE: Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, FL 32399-0862.

PERSON TO BE CONTACTED: Christiana Moore, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0852, (850) 413-6098.

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0870

efore DATE AND TIME: Wednesday, May 5, 1999, 9:30 a.m.  
 nd - PLACE: Room 152, Betty Easley Conference Center, 4075  
 Esplanade Way, Tallahassee, Florida  
 PURPOSE: A notice of rulemaking was published in the  
 February 19, 1999, edition of the Florida Administrative  
 Weekly, which offered a rulemaking hearing upon request. A  
 rulemaking hearing was requested and was held on March 15,  
 1999. This rulemaking proceeding will be continued on May 5,  
 1999. This continuance will enable interested persons to  
 participate in the staff workshop in Docket No. 990188-EI -  
 Generic Investigation into Requirement for Individual Electric  
 Metering by Investor-Owned Electric Utilities Pursuant to  
 Rule 25-6.049(5)(a), F.A.C., prior to closing the record for the  
 rulemaking hearing in Docket No. 981104-EU. In addition, the  
 continuance should allow all participants to address the  
 concerns raised in the hearing request filed by Valencia  
 Condominium Association and Point Management, Inc.  
 If any person decides to appeal any decision of the  
 Commission with respect to any matter considered at the  
 rulemaking hearing, a record of the hearing is necessary. The  
 appellant must ensure that a verbatim record, including  
 testimony and evidence forming the basis of the appeal is  
 made. The Commission usually makes a verbatim record of  
 rulemaking hearings.  
 Any person requiring some accommodation at this hearing  
 because of a physical impairment should call the Division of  
 Records and Reporting, (850)413-6770, at least 48 hours prior  
 to the hearing. Any person who is hearing or speech impaired  
 should contact the Florida Public Service Commission by  
 using the Florida Relay Service, which can be reached at:  
 1(800)955-8771 (TDD).

DOCKET NO. 980569-PU

RULE TITLES:	RULE NOS:
Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designee	25-4.141
Construction and Waivers	25-4.202
Application and Scope	25-6.002
Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee	25-6.043
Non-Firm Electric Service - Terms and Conditions	25-6.0438
Interconnection and Standards	25-17.087
Scope and Waiver	25-24.555
Rules for General Application	25-30.010
Application and Scope	25-30.011
General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase	25-30.436

Florida Administrative Weekly

Burden of Proof and Audit Provisions	25-30.450
Staff Assistance in Rate Cases	25-30.455
Staff Assistance in Alternative Rate Setting	25-30.456
Imputation of Contributions-in- Aid-of-Construction	25-30.570
Guidelines for Designing Service Availability Policy	25-30.580

NOTICE OF HEARING

The Public Service Commission notifies all interested persons that a hearing has been requested in the above docket and the date of the hearing will be August 12, 1999. The proposed rule changes were published in the December 31, 1998 Florida Administrative Weekly, Vol. 24, No. 53.

An order will be issued establishing prehearing and hearing procedures to be followed. Persons who intend to participate in this rulemaking proceeding should file a notice of intent to participate with the Division of Records and Reporting by April 15, 1999 in order to receive the prehearing order.

The hearing will be held at the following time and place:  
 DATE AND TIME: Thursday, August 12, 1999, 9:30 a.m.

PLACE: Betty Easley Conference Center, Room 148, 4075 Esplanade Way, Tallahassee, FL 32399-0862

PERSON TO BE CONTACTED: Christiana Moore, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0852, (850)413-6098.

EXECUTIVE OFFICE OF THE GOVERNOR

The Executive Office of the Governor announces a Board Meeting of the Florida Black Business Investment Board which has been scheduled as follows. All interested persons are invited.

DATE AND TIME: April 9, 1999, 10:00 a.m. - 2:00 p.m.

PLACE: The Doubletree Hotel, 101 South Adams Street, Tallahassee, FL

PURPOSE: To further discuss the Board's business plan to identify areas for future Board priorities and approve actions taken by the Executive Director and Chairman under delegated authority.

A copy of the agenda may be obtained by contacting: Gregory

9

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule 25-4.002, F.A.C., Application and Scope; 25-4.141, Minimum Filing Requirements for Rate of Return Regulated Local Exchange Companies; Commission Designee; 25-4.202, Construction and Waivers; 25-24.555, Scope and Waiver; 25-6.002, Application and Scope; 25-6.043, Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee; 25-6.0438, Non-Firm Electric Service - Terms and Conditions; 25-17.087, Interconnection and Standards; 25-30.010, Rules for General Application; 25-30.011, Application and Scope; 25-30.436, General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase; 25-30.450, Burden of Proof and Audit Provisions; 25-30.455, Staff Assistance in Rate Cases; 25-30.456, Staff Assistance in Alternative Rate Setting; 25-30.570, Imputation of Contributions-in-Aid-of-Construction; and 25-30.580, Guidelines for Designing Service Availability.

DOCKET NO. 980569-PU  
ORDER NO. PSC-99-0968-PCO-PU  
ISSUED: May 13, 1999

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ORDER ESTABLISHING PROCEDURES TO BE FOLLOWED  
AT RULEMAKING HEARING

I. Background

The Commission has proposed amendments to Rules 25-4.002, 25-4.141, 25-4.202, 25-24.555, 25-6.002, 25-6.043, 25-6.0438, 25-17.087, 25-30.010, 25-30.011, 25-30.436, 25-30.450, 25-30.455,

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-99-0968-PCO-PU  
DOCKET NO. 980569-PU  
PAGE 2

25-30.456, 25-30.570, and 25-30.580, F.A.C., to remove general provisions providing for waivers or exemptions from certain Commission rules. The rule proposal was published in the Florida Administrative Weekly on December 31, 1998, in Volume 24, Number 53. Florida Power & Light Company ("FPL") and Tampa Electric Company ("TECO") filed requests for hearing on January 14, 1999.

## II. Rulemaking Hearing

A rulemaking hearing is scheduled before the Commission at the following time and place:

9:30 a.m., Thursday, August 12, 1999  
Room 148, Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida

The rulemaking hearing shall be governed by section 120.54(3)(c), Florida Statutes, and by Rule 28-103.004, Florida Administrative Code.

## III. Prehearing Procedures and Deadlines

FPL, TECO, and other interested persons who are or will be requesting the Commission to adopt changes to the rules as proposed in the December 31, 1998, Florida Administrative Weekly shall prefile comments or testimony no later than June 24, 1999. Any person may then prefile comments or testimony responding to the comments and testimony that are filed on June 24, 1999. The responsive comments and testimony must be filed no later than July 15, 1999. Rebuttal comments or testimony must be filed no later than August 5, 1999.

Prefiled comments and testimony shall be typed on 8-1/2-inch by 11-inch transcript-quality paper, double-spaced, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches). If testimony is filed, each line shall be numbered.

All alternative rule proposals must be made in writing, with copies attached to prefiled comments or testimony. Changes or additions to the proposed rule text must be shaded, and explanations of those changes or additions with cross-references to page numbers of prefiled comments or testimony should be included in footnotes to the rule text.

ORDER NO. PSC-99-0968-PCO-PU  
DOCKET NO. 980569-PU  
PAGE 3

Each exhibit intended to support prefiled comments or testimony shall be attached to that person's comments or testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1.

An original and 15 copies of all comments, testimony, and exhibits must be filed with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m. on the date due. Service on the following persons is required:

Matthew M. Childs, Esquire, Steel Hector & Davis LLP, 215 South Monroe Street, Suite 601, Tallahassee, FL 32308 (Attorney for Florida Power & Light Company)

William G. Walker III, Florida Power & Light Company, 215 South Monroe Street, Suite 810, Tallahassee, FL 32308

James D. Beasley and Lee L. Willis, Esquires, Ausley & McMullen, P. O. Box 391, Tallahassee, FL 32302 (Attorneys for Tampa Electric Company)

Richard A. Zambó, Esquire, 598 S.W. Hidden River Avenue, Palm City, FL 34990 (Attorney for Florida Industrial Cogeneration Association)

Christiana T. Moore, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0862

#### IV. Hearing Procedures

The Commission staff will present a summary of the proposed rule amendments.

The first exhibit introduced into the record will be a composite exhibit prepared by staff, which will consist of the following documents: Florida Administrative Weekly notice and proposed rules; materials provided to the Joint Administrative Procedures Committee, which include the statement of facts and circumstances justifying the rules, statement on federal standards, and notice of rulemaking; a memorandum regarding a statement of estimated regulatory costs; and any material, including prefiled comments and attachments, that may be submitted pursuant to section 120.54, Florida Statutes. It shall not be necessary for participants to insert their prefiled comments and testimony into



ORDER NO. PSC-99-0968-PCO-PU  
DOCKET NO. 980569-PU  
PAGE 4

the record at the hearing. Copies of the first exhibit will be available the day before the hearing.

Following the staff presentation, interested persons will have the opportunity to present comments, evidence, and argument. It may be necessary to impose time limits for presentations, depending upon the number of participants. Persons with similar presentations should combine to make one presentation. Persons making presentations will be subject to questions from other persons. Such questions shall be limited only to those necessary to clarify and understand the presenter's position.

Persons who wish to participate at the hearing must register at the beginning of the hearing. The general order of presentation will be as follows:

Members of the Public  
Florida Power & Light Company  
Tampa Electric Company  
Florida Industrial Cogeneration Association  
Other Utilities  
Office of the Public Counsel

The specific order of presentation will be determined by the presiding officer the morning of the hearing.

V. Posthearing Procedures

A transcript of the proceedings will be made available to the public on or about August 19, 1999, at cost.

Participants may file posthearing comments no later than September 2, 1999, subject to change announced at the hearing. Posthearing comments shall be typed on 8-1/2-inch by 11-inch transcript-quality paper, double-spaced, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

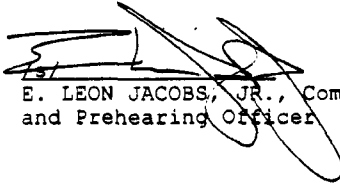
An original and 15 copies of all posthearing comments shall be filed with the Director, Division of Records and Reporting, by the close of business which is 5:00 p.m. on the date due.

Based on the foregoing, it is

ORDER NO. PSC-99-0968-PCO-PU  
DOCKET NO. 980569-PU  
PAGE 5

ORDERED that this order shall govern the conduct of these proceedings, as set forth above, unless modified by the Commission.

BY ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 13th day of May, 1999.

  
E. LEON JACOBS, JR., Commissioner  
and Prehearing Officer

(S E A L)

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ORDER NO. PSC-99-0968-PCO-PU  
DOCKET NO. 980569-PU  
PAGE 6

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule )  
 25-4.002, F.A.C., Application and Scope; )  
 25-4.141, Minimum Filing Requirements )  
 for Rate of Return Regulated Local )  
 Exchange Companies; Commission )  
 Designee; 25-4.202, Construction and )  
 Waivers; 25-24.455, Scope and Waiver; )  
 25-6.002, Application and Scope; 25-6.043, )  
 Investor-Owned Electric Utility Minimum )  
 Filing Requirements; Commission Designee; )  
 25-6.0438, Non-Firm Electric Service – Terms )  
 and Conditions; 25-17.087, Interconnection )  
 and Standards; 25-30.010, Rules for General )  
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 25-30.436, General Information and Instructions )  
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 25-30.450, Burden of Proof and Audit Provisions; )  
 25-30.455, Staff Assistance in Rate Cases; )  
 25-30.456, Staff Assistance in Alternative Rate )  
 Setting; 25-30.570, Imputation of Contributions- )  
 In-Aid-of-Construction; and 25-30.580, )  
 Guidelines for Designing Service Availability. )  
 \_\_\_\_\_ )

DOCKET NO. 980569-PU  
 FILED: June 24, 1999

**TAMPA ELECTRIC COMPANY'S  
 WRITTEN COMMENTS ON PROPOSED RULE CHANGES**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to the Order Establishing Procedures dated May 13, 1999,<sup>1</sup> submits the following written comments relative to the proposed rule changes in this docket:

**General Comments**

1. The Legislature's recent amendments to the Administrative Procedure Act specifically state that strict application of uniformly applicable rule requirements can lead to

unreasonable, unfair and unintended results in particular instances and that in such cases it is appropriate to have a procedure for agencies to provide relief to persons subject to regulation. This Commission has traditionally recognized the need for flexibility in its regulatory requirements so as to avoid uneconomic, unfair, and undesirable results. These comments are submitted in recognition of the benefits inherent in regulatory flexibility.

2. Of the rule proposals set forth in the Notice of Rulemaking in this docket, Tampa Electric's principle concerns have to do with proposed repeal of the following rule provisions:

(a) Rule 25-6.002(2) and (4). The subsections in question provide for modification or exemption from rule requirements in cases of unusual hardship or difficulty or under exceptional conditions.

(b) Rule 25-6.043(3). This subsection states that the Commission will waive the Commission's Minimum Filing Requirement ("MFR") rule for investor-owned electric utilities upon a showing that data production would be impractical or impose an excessive economic burden on the utility.

(c) Rule 25-6.0438(9). This subsection provides that the Commission may waive any provision of its rule concerning non-firm electric service after notice to all affected customers.

3. Repeal of the above-listed rule provisions by definition would adversely affect the substantial interests of Tampa Electric and other Commission regulated investor-owned utilities. Repeal of Rule 25-6.002(2) and (4) would mandate an investor-owned utility's compliance with a rule even in cases of unusual hardship or difficulty or when exceptional conditions would otherwise warrant a modification or exemption of the rule requirement. Repeal of Rule 25-6.043(3) would require an investor-owned electric utility to produce MFR data even in situations

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<sup>1</sup> Order No. PSC-99-0968-PCO-EU

where it would be impractical or when such production would impose an excessive economic burden on the utility. Finally, repeal of Rule 25-6.0438(9) would disallow waivers of the Commission's non-firm electric service rule even in situations where the same might be shown to be clearly justified. All of these results would adversely impact Tampa Electric, drive up its cost of providing electric service and, in the process, be harmful to Tampa Electric's customers. Set forth below are Tampa Electric's specific comments regarding each of the three proposed rule revisions in question.

#### **Repeals Unnecessary**

4. At the outset the Commission should consider whether any action is dictated by the 1996 amendments to the Administrative Procedure Act and the adoption of the Uniform Rules of Procedure. Each of the waiver/modification provisions identified in paragraph 2 is a substantive provision of the rule in which it appears, and may be applied uniformly to all who are subject to the rule. Anyone desiring to demonstrate why the otherwise applicable provisions of the rule should not be applicable in a given situation is free to avail itself of the opportunity, and that opportunity was afforded when the rules were adopted.

5. The 1996 Amendment to the Administrative Procedure Act reflected in Section 120.542, Florida Statutes, appears to be intended to allow for variances and waivers with respect to rules not containing such substantive provisions. This does not appear to require any repeal of the substantive waiver provisions contained in the rules identified in paragraph 2 above.

#### **Proposed Repeal of Rule 25-6.002(2) and (4)**

6. The proposed repeal of Rule 25-6.002(2) does not appear to be necessary or required by the new rulemaking standard in Section 120.536, Florida Statutes. Subsection (2) does not effect a waiver or variance but simply states the Commission's willingness to entertain

requests for modification of a rule or for temporary exemption from its requirements. Any party should at any time be authorized to petition for the modification or amendment of a rule. Nowhere in the revised APA is there a prohibition against any affected person petitioning an agency to modify a rule.

7. Subsection (2), likewise, does not offend the provisions of Section 120.542 concerning the procedures for obtaining variances and waivers. Subsection (2) simply states that a temporary exemption can be available. Read along side Section 120.542, Florida Statutes, this would mean that a temporary exemption can be available provided the requesting party complies with uniform procedures contained in Chapter 28-104, Florida Administrative Code. In summary, there is no demonstrated need to repeal Subsection (2) of Rule 25-6.002.

8. The same can be said for Subsection (4) of this rule. That subsection authorizes the Commission to alter or amend rules in whole or in part upon request made or upon its own motion. Again, the APA does not preclude the Commission from altering or amending rules provided that the proper procedures are followed. Subsection (4) of the rule does not require or condone the pursuit of improper procedures for altering or amending a rule.

9. Subsection (4) of the rule also allows the Commission to require "any other or additional service, equipment, facility, or standard, or for making such modification with respect to their application as may be found necessary to meet exceptional conditions." Given the nature of the provision of electric service, this type of flexibility is inherently essential. Rules should not stand in the way of safety or reliability.

#### **Proposed Repeal of Rule 25-6.043(3)**

10. Repeal of Rule 25-6.043(3) would require an investor-owned electric utility to produce MFR data even in situations where it would be impractical or when such production

would impose an excessive economic cost on the utility without any improvement to the regulatory process.

11. There is a way to amend the MFR rule to preserve the Commission's regulatory flexibility and yet avoid conflicts with Chapter 28-104 concerning procedures relative to a variance or waiver. Attached hereto is a markup of the existing Rule 25-6.043 showing in legislative format the changes that can be made in order to ensure that the appropriate MFR schedules are completed by a particular electric utility applicant. This would be an improvement over the existing rule in that it would prescribe a procedure for determining which MFR schedules are truly applicable and necessary for a particular utility.

12. The effect of Tampa Electric's proposed changes to Rule 25-6.043, Florida Administrative Code, would be as follows:

(a) The changes would ensure a uniform process, applicable to each investor-owned electric utility, for fine tuning the appropriate MFR schedules for each utility. This would avoid the delay and burdening nature of the waiver and variance requirements of the uniform rules.

(b) These changes would provide a process to ensure that necessary and applicable MFR schedules are included in a utility's filing and that unnecessary, inapplicable or superfluous schedules are omitted from the outset.

(c) The proposed changes would avoid unnecessary regulatory efforts by all involved.

13. The existing rule recognizes that MFRs need to be "custom fit" for each new proceeding and that the appropriateness of schedules may be affected by the utility's last case as well as more recent proceedings of other utilities where the structure and content of MFRs has



been more refined. Tampa Electric's proposed revision to the rule will provide the flexibility needed to facilitate a balancing of the appropriateness of the schedules used in the utility's most recent case with the scope and content of schedules used in more recent cases of other utilities to ensure that an adequate and user friendly set of MFR schedules is presented.

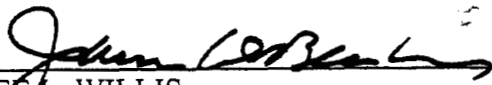
**Proposed Repeal of Rule 25-6.0438(9)**

14. Tampa Electric does not oppose the repeal of subsection (9) of Rule 25-6.0438 provided the underscored language below is added to subsection (8) of the rule. This additional language will clarify the availability of tariff provisions of the type already approved by the Commission.

(8) Minimum Notice to Transfer from Non-Firm to Firm Service. Each utility that offers non-firm service shall include a specific provision in its tariff that requires a customer to provide the utility with at least five years advance written notice in order for the customer to be eligible to transfer from interruptible to firm service. A utility may apply to the Commission for approval of a different minimum notice requirement if it can demonstrate that a different notice requirement is necessary or appropriate, either for all or any individual non-firm service offerings. The utility may file tariff provisions that allow transfers from non-firm to firm service on less than the required notice period if the transferring party pays an appropriate compensating penalty and the utility determines that such early transfer will not harm its ability to provide adequate and reliable service to its general body of ratepayers.

DATED this 24<sup>th</sup> day of June, 1999.

Respectfully submitted,



LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Comments, filed on behalf of Tampa Electric Company, has been forwarded by U. S. Mail or hand delivery(\*) on this 24<sup>th</sup> day of June 1999 to the following:

Ms. Christiana Moore\*  
Staff Counsel  
Division of Appeals  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

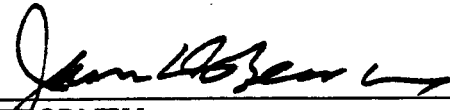
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\_\_\_\_\_  
ATTORNEY

**25-6.043 Investor-Owned Electric Utility Minimum Filing Requirements;  
Commission Designee.**

(1) General Filing Instructions

(a) The petition under section 366.06 and Section 366.071, Florida Statutes, for adjustment of rates must include or be accompanied by:

1. All schedules ~~The information required by~~ listed in Commission Form PSC/EAG/11 ( ), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities" (the "MFR Form") that are applicable to the utility, which MFR Form is incorporated into this rule by reference.

The MFR Form may be obtained from the Commission's Division of Electric and Gas.

2. The exact name of the applicant and the address of the applicant's principal place of business.
3. Copies of prepared direct testimony and exhibits for each witness testifying on behalf of the Company.

(b) In determining which of the items listed in the MFR Form are applicable to the utility and in compiling the required such schedules, a company shall follow the policies,

procedures and guidelines prescribed by the Commission in relevant rules and in the company's last rate case or in a more recent rate case involving a comparable utility. These schedules shall be identified appropriately (e.g., Schedule B-1 would be designated Company Schedule B-1 – Company basis). Prior to completing the applicable schedules from the MFR Form, the utility shall furnish the Commission's Staff a list of the schedules from the MFR Form and from utility's last rate case and any subsequent cases of other comparable utilities that the utility considers applicable to its filing. The Staff will thereafter review the utility's supplied list and notify the company as to whether (a) the Staff agrees with the utility, (b) the Staff feels that additional schedules not identified by the utility are applicable and necessary, or (c) the Staff identifies the schedules listed by the utility that the Staff believes are not applicable or necessary. If the Staff and the utility cannot after due diligence reconcile the appropriate list, they shall present the matter to the prehearing officers for resolution.

(c) Each schedule shall be cross-referenced to identify related schedules as either supporting schedules and/or recap schedules.

(d) Each page of the filing shall be numbered on 8 ½ x 11 inch paper. Each witness' prefiled testimony and exhibits shall be on numbered pages and all exhibits shall be attached to the proponent's testimony.

(e) Except for handwritten official company records, all data in the petition, testimony, exhibits and minimum filing requirements shall be typed.

(f) Each schedule shall indicate the name of the witness responsible for its presentation.

(g) All schedules involving investment data shall be completed on an average investment basis. Unless a specific schedule requests otherwise, average is defined as the average of thirteen (13) monthly balances.

(h) Twenty-one (21) copies of the filing, consisting of the petition and its supporting attachments, testimony, and exhibits, shall be filed with the Division of Records and Reporting.

(i) Whenever the company proposes any corrections, updates or other changes to the originally filed data, twenty-one (21) copies shall be filed with the Division of Records and Reporting with copies also served on all parties at the same time.

(2) Commission Designee: The Director of the Division of Electric and Gas shall be the designee of the Commission for purposes of determining whether the utility has met the minimum filing requirements imposed by this rule.

~~(3) Waiver of Minimum Filing Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.~~

**Specific Authority: 366.05(1),(2), 366.06(3), F.S.**

**Law Implemented: 366.06(1), (2), (3), (4), 366.04(2) (f), 366.071, F.S.**

**History: New 5/27/81, formerly 25-6.43, AMENDED 7/5/90.**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed amendments to Rules	)	DOCKET NO. 980569-PU
25-4.002, F.A.C., Application and Scope;	)	DATE: JUNE 24, 1999
25-4.141, F.A.C., Minimum Filing	)	
Requirements for Rate of Return	)	
Regulated Local Exchange Companies;	)	
Commission Designee; 25-4.202, F.A.C.,	)	
Construction and Waivers; 25-24.455,	)	
F.A.C., Scope and Waiver; 25-6.002,	)	
F.A.C., Application and Scope; 25-6.043,	)	
F.A.C., Investor-Owned Electric Utility	)	
Minimum Filing Requirements; Commission	)	
Designee; 25-6.0438, F.A.C., Non-Firm	)	
Electric Service - Terms and Conditions;	)	
25-17.087, F.A.C., Interconnection and	)	
Standards; 25-30.010, F.A.C., Rules for	)	
General Application; 25-30.011, F.A.C.,	)	
Application and Scope; 25-30.436, F.A.C.,)	)	
General Information and Instructions	)	
Required of Class A and B Water and	)	
Wastewater Utilities in an Application	)	
for Rate Increase; 25-30.450, F.A.C.,	)	
Burden of Proof and Audit Provisions;	)	
25-30.455, F.A.C., Staff Assistance in	)	
Rate Cases; 25-30.456, F.A.C., Staff	)	
Assistance in Alternative Rate Setting;	)	
25-30.570, F.A.C., Imputation of	)	
Contributions-in-Aid-of-Construction;	)	
and 25-30.580, F.A.C., Guidelines	)	
for Designing Service Availability Policy)	)	

PRE-FILED COMMENTS OF  
FLORIDA POWER & LIGHT COMPANY

Florida Power & Light Company ("FPL") a public utility subject to the jurisdiction of this Commission under Chapter 366, Florida Statutes, hereby files this its pre-filed comments as directed by



Commission Order No. PSC-99-0968-PCO-PU issued by the Commission on May 13, 1999. FPL understands that it will have the ability to participate at the hearing and offer comments and arguments if appropriate at that time. In addition, once FPL has received a list of materials, if any, recognized by the Commission in this rulemaking proceeding, then, FPL may need the opportunity to examine and offer comments or rebuttal as authorized by in section 120.54(1)(h), Florida Statutes.

The Rules Proposed At Issue For Florida Power & Light Company

This docket addresses many rules. FPL, however, only wishes to participate as to those rules which apply to it as a public utility under Section 366 of the Florida Statutes. These rules, a copy of which are attached to these comments, are:

1. Rule 25-6.002, Application and Scope (Proposed repeal of subsections (2) and (4)).
2. Rule 25-6.043, Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee (Proposed repeal of subsection (3)).
3. Rule 25-6.0438, Non-Firm Electric Service - Terms and Conditions (Proposed repeal of subsection (9)).
4. Rule 25-17.087, Interconnection and Standards (Proposed repeal of subsection (2) and conforming changing thereafter to reflect eliminate subsection (2)).

Absence of Rationale Supporting Commission Rule Proposal

The following is a listing of the only explanations of which FPL is aware that have been provided by the Commission in connection with this proposed repeal of rules in this docket. They are:

1. The Notice of Proposed Rule Development dated May 1, 1998 and the Amended Notice of Proposed Rule Development dated May 8, 1998 wherein, in the amended notice, the following was stated:

PURPOSE AND EFFECT: The purpose of these rule amendments is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with section 120.542, Florida Statutes.

SUBJECT AREA TO BE ADDRESSED: The repeal of waiver and variance rule provisions no longer authorized by Statute.

2. The Notice of Proposed Rulemaking published in the Florida Administrative Weekly, 24 Fla. Admin. Weekly 2773, May 22, 1998, was consistent with the above explanations.

3. In its December 18, 1998 Notice of Rulemaking in this docket, the following was stated as an explanation of the proposed repeal of rules:

PURPOSE AND EFFECT: To repeal provisions authorizing rule waivers that have been superseded by section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, which provides specific standards and procedures to be followed in granting rule waivers and variances.

4. The Statement of Facts and Circumstances justifying rule submitted to Mr. Carroll Webb of the Joint Administrative Procedures Committee on December 24, 1998:

In 1996, the Legislature substantially amended Chapter 120, Florida Statutes, the "Administrative Procedure Act" (APA). Among the changes to the APA was the adoption of section 120.542, Florida Statutes, governing rule waivers and variances, and section 120.536, requiring agencies to report to the Joint Administrative Procedures Committee (JAPC) its rules that exceed its rulemaking authority, and repeal those for which authorizing legislation does not exist. On September 9, 1997, the Commission approved the list of rules for which it lacked specific statutory authority. On September 25, 1997, by letter from Chairman Johnson, the Commission submitted its list to the JAPC. The Commission did not seek legislation to authorize the identified rules that provide generally for waivers and variances from the rules, because, as stated in the letter, specific authority is now contained in section 120.542, Florida Statutes, and specific uniform rules to implement the statute had been adopted by the Administration Commission.

#### Lack of Rationale

As can be seen from a review of the above statements by the Commission, the limited explanation presented is not consistent. It is not clear because of changes to the explanation from time to time whether reliance is based on section 120.542 and 120.536, Florida Statutes, or whether reliance is based on only one of these subsections. Moreover, the "explanations" are really just bare assertions because no support for the conclusion chosen has been given.

For instance without reference to any particular words of sections 120.542 and 120.536 relied upon, if any, to simply assert that rule waiver provisions "have been superseded" cannot be helpful. Attached to these comments, as an Appendix, is a copy of section 120.542 and 120.536, Florida Statutes. Neither of those Statutes say, directly or indirectly, that the Commission's rules at issue here are not valid or need to be repealed. No basis for reliance upon section 120.542 is supported by identification of any rules of statutory construction or interpretation that may or may not have been applied by the Commission in this instance.

In addition, there is no attempt to explain why the statutes (120.542 and 120.536) that the Commission identifies as applying to "variances" or "waivers" are not likewise applicable to the substantive rules to which the waivers and variances apply.

As it now stands, the lack of explanation puts FPL in the position of attempting to guess at the rationale and then "prove a negative". FPL cannot address whether the Commission's rationale is correct because no rationale has been presented. There is some apparent basis for the Commission's action. That basis has not been identified or provided. Therefore, FPL submits, any action the Commission takes in this docket must of necessity be arbitrary and capricious and not supported by competent substantial evidence.

In addition to the lack of support for the repeal of the rules proposed by the Commission, FPL submits that the Commission's

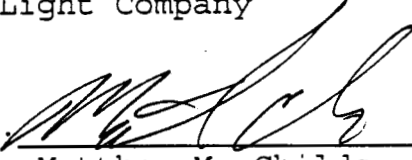
action involves more than a rule repeal. The effect of the Commission's action is quite clearly a rule adoption which has been neither noticed nor supported. For instance, the action in this docket would eliminate subsection (2) of Rule 25-6.002 so that no "electric public utility" could maintain that compliance with any portion of Chapter 25-6 of the Commission's rules would "[introduce] unusual hardship" or be "unreasonably difficult" so as to support Commission action permitting temporary exemption from the rule's requirements. FPL is attaching to its comments the index of the various rules contained in Chapter 25-6 for which subsection (2) of Rule 25-6.002 is applicable.

If, the rationale for elimination of Rule 25-6.002 (2) is that there has been no grant of authority to permit a waiver or variance as required by section 120.536 then FPL would maintain that there are very few of the substantive rules in Chapter 25-6 that have sufficient authority. Most importantly, however, when the various rules in Chapter 25-6 were adopted, they were all subject to the "unusual hardship" or "unreasonable difficulty" basis for Commission ruling that compliance was temporarily exempted. The effect of the elimination of this basis for this temporary exemption, and the change of the standard and the procedures associated therewith, changes the substantive rules to which 25-6.002 (2) would otherwise apply.

WHEREFORE, FPL respectfully submits these pre-filed comments in association with the Commission's consideration of whether to repeal the various rules to which FPL is subject and which have been identified in this docket and that, the Commission consider and provide some rationale so that FPL may have an opportunity to be informed and provide meaningful evidence, comment and argument to the Commission.

Respectfully submitted,

STEEL HECTOR & DAVIS LLP  
Suite 601  
215 South Monroe Street  
Tallahassee, FL 32301  
Attorneys for Florida Power  
& Light Company

By   
Matthew M. Childs, P.A.

APPENDIX 1

(R. 11/97)  
25-6.002

PUBLIC SERVICE COMMISSION

V. 12, p. 158

- 25-6.059 Meter Test by Request.
- 25-6.060 Meter Test — Referee.
- 25-6.061 Relocation of Poles.
- 25-6.062 Inspection of Wires and Equipment.
- 25-6.063 Temporary Service. (Repealed)
- 25-6.064 Extension of Facilities; Contribution in Aid of Construction.

PART V RULES FOR RESIDENTIAL ELECTRIC UNDERGROUND EXTENSIONS

- 25-6.074 Applicability.
- 25-6.075 Definitions.
- 25-6.076 Rights of Way and Easements.
- 25-6.077 Installation of Underground Distribution Systems Within New Subdivisions.
- 25-6.078 Schedule of Charges.
- 25-6.079 Connection to Supply System. (Repealed)
- 25-6.080 Advances by Applicant.
- 25-6.081 Construction Practices.
- 25-6.082 Records and Reports.
- 25-6.083 Special Conditions. (Repealed)

PART VI CUSTOMER RELATIONS

- 25-6.093 Information to Customers.
- 25-6.094 Complaints and Service Requests.
- 25-6.095 Initiation of Service.
- 25-6.096 Termination of Service by Customer. (Repealed)
- 25-6.097 Customer Deposits.
- 25-6.098 Interest on Deposits. (Repealed)
- 25-6.099 Meter Readings.
- 25-6.100 Customer Billings.
- 25-6.101 Delinquent Bills.
- 25-6.102 Conjunctive Billing.
- 25-6.103 Adjustment of Bills for Meter Error.
- 25-6.104 Unauthorized Use of Energy.
- 25-6.105 Refusal or Discontinuance of Service by Utility.
- 25-6.106 Underbillings and Overbillings of Energy.
- 25-6.109 Refunds.

PART VII UNDERGROUND ELECTRIC DISTRIBUTION FACILITY CHARGES

- 25-6.115 Facility Charges for Providing Underground Facilities of Public Distribution Facilities Excluding New Residential Subdivisions.

PART IX RESIDENTIAL CONSERVATION SERVICE (Transferred)

PART X

Subpart A Accounting Reports

- 25-6.135 Annual Reports.
- 25-6.1351 Diversification Reports.
- 25-6.1352 Earnings Surveillance Report.
- 25-6.1353 Forecasted Earnings Surveillance Report.

Subpart B Revenue Requirements

- 25-6.140 Test Year Notification; Proposed Agency Action Notification.

*Library References: Significant recent decisions in public utility law, Lee L. Willis, Ben E. Girtman, James A. McGee, 54 Fla. Bar J. 389, 393 (May 1980).*

PART I GENERAL PROVISIONS

25-6.001 Authorization of Rules.

*Specific Authority 366.05(1) FS. Law Implemented 366.05(1) FS. History—New 7-29-69, Formerly 25-6.01, Repealed 5-4-97.*

ANNOTATIONS

*Cost of service*

*Public Service Commission in setting new electricity rate structure did not err merely because it considered factors other than actual cost of service differences, since regulatory statute does not specify that particular consideration. International Minerals and Chemical Corporation v. Mayo, 336 So. 2d 548 (1976).*

*Territorial disputes*

*Court affirmed Public Service Commission's order entitling one power company to provide electric power to project and prohibiting another power company from doing so, where no factual or equitable distinction existed in favor of either company, and territorial dispute was thus properly resolved in favor of privately owned utility; court disagreed, however, with Commission's alternative finding that its more extensive jurisdiction over privately owned utilities was additional consideration supportive of policy decision in favor of private utility. Escambia River Electric Cooperative, Inc. v. Florida Public Service Commission, 421 So. 2d 1384 (1982).*

25-6.002 Application and Scope.

(1) These rules and regulations shall apply to all electric public utilities operating under the jurisdiction of the Florida Public Service Commission. They are intended to define and promote good utility practices and procedures, adequate and efficient service to the public at reasonable costs, and to establish the rights and responsibilities of both the utility and the customer.

(2) In any case where compliance with any of these rules introduces unusual hardship, or if unreasonable difficulty is involved in immediate



compliance with any particular rule, application may be made to the Commission for modification of the rule or for temporary exemption from its requirements, provided that the utility shall submit with such application a full and complete statement of reason therefor.

(3) No deviation from these rules shall be permitted unless authorized in writing by the Commission.

(4) The adoption of these rules shall in no way preclude the Commission, upon complaint, upon its own motion, or upon the application of any utility from altering or amending them, in whole or in part, or from requiring any other or additional service, equipment, facility or standard, or from making such modification with respect to their application as may be found necessary to meet exceptional conditions.

(5) The adoption of these rules shall not in any way relieve any utility from any of its duties under the laws of the State.

*Specific Authority 366.05(1) FS. Law Implemented 366.05(1) FS. History—New 7-29-69, Formerly 25-6.02.*

#### ANNOTATIONS

##### *Foreign cooperatives*

*Where Florida rural electric cooperatives enjoyed power of eminent domain, foreign cooperative meeting F. S. A. § 425.27 requirements was also entitled to exercise this power in order to construct electrical transmission line over appellants' land, and no abuse of discretion was found in that choice of locations; further, since F. S. A. § 425.04(4) authorized rural electric cooperatives to serve up to ten percent non-rural areas, and cooperative had not violated "central station" provisions, foreign corporation's service to four municipalities did not deprive it of its "rural" character. Alabama Electric Cooperative, Inc. v. First National Bank of Akron, Ohio, 684 F. 2d 789 (11th Cir. 1982).*

##### *Municipal utilities*

*While Commission had no jurisdiction to set rates for municipal utility, it had authority over "rate structure" of all electric utilities in state; city's differential charges to customers within and without its corporate limits constituted classification system and therefore were matter of "rate structure" subject to jurisdiction of Public Service Commission. City of Tallahassee v. Mann, 411 So. 2d 162 (1982).*

##### *State policy*

*Florida cities' claim involving electricity transmission services arose under state "Little FTC Act," Section 501.204, F.S., so was dismissed without prejudice for reassertion in state proceedings. Federal court refused to determine state policy by interpreting scope of regulated business exemption to that statute. City of Gainesville v. Florida Power & Light Company, 488 F. Supp. 1258 (S. D. Fla. 1980).*

**25-6.003 Definitions.** Unless otherwise defined in Rule 25-6.003 below, Rule 25-6.075 or in adopted national codes, pursuant to Rule 25-6.034, the definition of the terms used in Chapter 25-6 shall be as stated in the IEEE Dictionary of Electrical and Electronic terms.

(1) "Commission." Unless a different intent clearly appears from the context, the word "Commission" shall be construed to mean the Florida Public Service Commission.

(2) "Customer." Any person, firm, partnership,

company, corporation, association, governmental agency or similar organization, who makes application for and is supplied with electric service by the utility for its ultimate use and not for use by, to, or through any other person or entity unless specifically authorized by the Commission.

(3) "Customer's Installation." Wires, enclosures, switches, appliances, and other apparatus, including the service entrance and service equipment, forming the customer's facilities utilizing service for any purpose on the customer's side of the point of delivery.

(4) "Meter." The word "meter," when used in these rules without other qualification, shall be construed to mean any device used for the purpose of measuring the service rendered to a customer by a utility.

(5) "Point of Delivery." The first point of attachment where the utility's service drop or service lateral is connected to the customer's service entrance conductors either at a riser, in a terminal box, or meter or other enclosure inside or outside the building wall.

(6) "Service." The supply by the utility of electricity to the customer, including the readiness to serve and availability of electrical energy at the customer's point of delivery at the standard available voltage and frequency whether or not utilized by the customer.

(7) "Service Conductors." The overhead conductors from the last pole or other aerial support to the point of delivery including the splices, if any, connecting the service drop to the service entrance conductors.

(8) "Service Drop." The overhead service conductors from the last pole or other aerial support to and including the splices, if any, connecting to the service entrance conductors at the building or other structure.

(9) "Service-Entrance Conductors, Underground System." The service conductors between the terminals of the service equipment and the point of connection of the service lateral.

(10) "Service Equipment." The customer's equipment, usually consisting of circuit-breaker or switch and fuses, and their accessories, connected to the supply conductors of a building.

(11) "Service Lateral." The underground conductors between the transformer(s) or transformer secondary, including any risers at a pole or other structure, and the point of delivery.

(12) "Utility." Unless a different intent clearly appears from the context, the word or words "utility" or "electric utility" as used in these rules shall have the same meaning as set out for "public utility" in § 366.02, F.S., and shall include all such utilities subject to Commission jurisdiction.

*Specific Authority 366.05(1) FS. Law Implemented 366.05(1) FS. History—New 7-29-69, Amended 4-13-80, Formerly 25-6.03.*

**25-6.004 Reference to Commission.** In the event of any dispute involving the interpretation of any of these rules and regulations, any party in interest may refer the matter to the Commission for adjudication.

APPENDIX 2

(R. 6/98)  
25-6.0435

PUBLIC SERVICE COMMISSION

V. 12, p. 174

subsection (5) the Commission will determine the level of sharing of prudent economic development costs and the future treatment of these expenses for surveillance purposes.

(4) Each utility shall report its total economic development expenses as a separate line item on its income statement schedules filed with the earnings surveillance report required by Rule 25-6.1352, Florida Administrative Code. Each utility shall make a line item adjustment on its income statement schedule to remove the appropriate percentage of economic development expenses incurred for the reported period consistent with subsections (2) and (3).

(5) Requests for changes relating to recovery of economic development expenses shall be considered only in the context of a full revenue requirements rate case or in a limited scope proceeding for the individual utility.

*Specific Authority 288.035(3), 350.127(2) FS. Law Implemented 288.035 FS. History—New 7-17-95, Amended 6-2-98.*

**25-6.043 Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee.**

**(1) General Filing Instructions**

(a) The petition under Section 366.06 and Section 366.071, Florida Statutes, for adjustment of rates must include or be accompanied by:

1. The information required by Commission Form PSC/EAG/11 (7/90), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities" which is incorporated into this rule by reference. The form may be obtained from the Commission's Division of Electric and Gas.

2. The exact name of the applicant and the address of the applicant's principal place of business.

3. Copies of prepared direct testimony and exhibits for each witness testifying on behalf of the company.

(b) In compiling the required schedules, a company shall follow the policies, procedures and guidelines prescribed by the Commission in relevant rules and in the company's last rate case or in a more recent rate case involving a comparable utility. These schedules shall be identified appropriately (e.g., Schedule B-1 would be designated Company Schedule B-1 — Company basis).

(c) Each schedule shall be cross-referenced to identify related schedules as either supporting schedules and/or recap schedules.

(d) Each page of the filing shall be numbered on 8 1/2 x 11 inch paper. Each witness' prefiled testimony and exhibits shall be on numbered pages, and all exhibits shall be attached to the proponent's testimony.

(e) Except for handwritten official company records, all data in the petition, testimony, exhibits and minimum filing requirements shall be typed.

(f) Each schedule shall indicate the name of the witness responsible for its presentation.

(g) All schedules involving investment data shall be completed on an average investment basis.

Unless a specific schedule requests otherwise, average is defined as the average of thirteen (13) monthly balances.

(h) Twenty-one (21) copies of the filing, consisting of the petition and its supporting attachments, testimony, and exhibits, shall be filed with the Division of Records and Reporting.

(i) Whenever the company proposes any corrections, updates or other changes to the originally filed data, twenty-one (21) copies shall be filed with the Division of Records and Reporting with copies also served on all parties at the same time.

(2) Commission Designee: The Director of the Division of Electric and Gas shall be the designee of the Commission for purposes of determining whether the utility has met the minimum filing requirements imposed by this rule.

(3) Waiver of Minimum Filing Requirements. The Commission may grant a waiver with respect to specific data required by this rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the company.

*Specific Authority 366.05(1), (2), 366.06(3) FS. Law Implemented 366.04(2)(f), 366.06, 366.071 FS. History—New 5-27-81, Formerly 25-6.43, Amended 7-5-90.*

**ANNOTATIONS**

**Rate base**

*Court said Commission neither violated essential requirements of law nor abused its discretion by allowing power company to include in its rate base unamortized cancellation charges as base rate or by adding ten basis points to company's return on equity in recognition of its energy conservation efforts. Gulf Power Company v. Cresse, 410 So. 2d 492 (1982).*

**Transition adjustment**

*Where public counsel petitioned Florida Supreme Court to review Public Service Commission order, which changed fuel adjustment clause procedure for electric utilities, and questioned legality of two-month transition adjustment which counsel argued would result in double recovery, or recovery of costs not previously recouped, Court found that order was supported by competent, substantial evidence. Citizens of State of Florida v. Florida Public Service Commission, 403 So. 2d 1332 (1981).*

**25-6.0435 Interim Rate Relief.**

(1) Each electric utility petitioning for interim rate relief pursuant to Section 366.071, F.S., shall file the data required in Schedules 2 through 14, 17, and 23 in Rule 25-6.043(1)(a). In addition, a schedule shall be submitted calculating the interim relief in accordance with § 366.07, F.S., and allocation factors by functional group approved in the company's last rate case.

(2)(a) Interim rates shall apply across the board based on base rate revenues for the test period less embedded fuel revenue by rate schedule. The resulting dollar amount shall be divided by base rate revenues per rate schedule to determine the percent increase applied to each rate schedule.

(b) In determining the interim increase, the following data shall be provided: KWH sales; base rate revenue less base fuel revenue; base fuel revenues; total base rate revenue; fuel adjustment revenue; total revenue. The interim increase shall

APPENDIX 3

**25-6.0437 Cost of Service Load Research.**

(1) Applicability. This rule shall apply to all investor owned electric utilities over which the Commission has jurisdiction and which had gross annual retail sales of 500 GWH or more in 1983.

(2) Purpose. The primary purpose of this rule is to require that load research that supports cost of service studies used in ratemaking proceedings is of sufficient precision to reasonably assure that tariffs are equitable and reflect the true costs of serving each class of customer. Load research data gathered and submitted in accordance with this rule will also be used by the Commission in evaluating proposed and operating conservation programs, for research, and for other purposes consistent with the Commission's responsibilities.

(3) Sampling Plan. All utilities subject to this rule shall, within 90 days of the effective date of this rule, submit to the Commission a proposed load research sampling plan. The plan shall provide for sampling all rate classes that account for more than 1 percent of a utility's annual retail sales. The plan shall provide that all covered rate classes shall be sampled within two years of the effective date of this rule. The sampling plan shall be designed to provide estimates of the summer and winter peak demand by class and the averages of the 12 monthly coincident peaks for each class within plus or minus 10 percent at the 90 percent confidence level. Any utility subject to this rule may apply to the Commission to waive the requirements hereof for any specific covered rate class.

(4) Review of Proposed Plan. Except where a utility has requested a formal ruling by the Commission, within 90 days after submission, the Commission's Electric and Gas Department shall review each utility's plan to determine whether it satisfies the criteria set forth in subsection (3) above and shall notify the utility in writing of its decision accepting or rejecting the proposed sampling plan. If a proposed plan is rejected, the written notice of rejection shall state clearly the reasons for rejecting the proposed plan. If a utility's proposed plan is rejected, the utility shall submit a revised sampling plan to the Commission within 60 days after receiving the notice of rejection. Where a utility has requested staff review of its sampling plan and the plan has been rejected, the utility may petition the Commission for approval of the plan. If a utility has not submitted a satisfactory sampling plan within 6 months following the submission of the initially proposed plan, the Commission may prescribe by order a sampling plan for the utility.

(5) Use of Approved Sampling Plan. The approved sampling plan shall be used for all load research performed for cost of service studies and other studies submitted to the Commission until a new sampling plan is approved by the Commission.

(6) Revised Sampling Plans. Each utility subject to this rule shall submit a current, revised sampling plan to the Commission no less than every two years after the initial sampling plan is approved. Any new or revised plan shall be developed using

data from the utility's most current load research to determine the required sampling plan to achieve the precision required in subsection (3) of this rule. New or revised plans shall be reviewed by the Commission pursuant to subsection (4) of this rule.

(7) Load Research Data to be Reported. Each utility subject to this rule shall perform a complete load research study in accordance with the specifications of this rule by December 31, 1985, and no less often than every two years thereafter. Each utility shall, within 120 days following completion of the study, submit to the Commission the results of each load research study completed after the effective date of this rule. This submission shall include the hourly load data described in subsection (8) for the residential class. The load research results of each study shall be submitted on a form prescribed by the Commission.

(8) Hourly Data to be Available Upon Request. Each utility subject to this rule shall make available within 90 days of a request by the Commission the estimated hourly demands by class for all 8760 hours in the year derived from this load research.

*Specific Authority 366.05(1), 350.127(2) FS. Law Implemented 350.117, 366.03, 366.04(2)(f), 366.05(1), 366.06(1), 366.82(3), (4) FS. History—New 3-11-84, Formerly 25-6.437.*

**25-6.0438 Non-Firm Electric Service — Terms and Conditions.**

(1) Applicability. This rule shall apply to all investor-owned electric utilities.

(2) Purpose. The purposes of this rule are: to define the character of non-firm electric service and various types thereof; to require a procedure for determining a utility's maximum level of non-firm load; and to establish other minimum terms and conditions for the provision of non-firm electric service.

(3) Definitions.

(a) "Non-firm electric service" means electric service that, in accordance with terms and conditions specified in the applicable tariff, can be limited or interrupted. Non-firm service includes interruptible, curtailable, load management, and other types of non-firm electric service offered by the utilities pursuant to tariffs approved by the Florida Public Service Commission.

(b) "Interruptible electric service" means electric service that can be limited or interrupted, either automatically or manually, solely at the option of the utility.

(c) "Cost effective" in the context of non-firm service shall be based on avoided costs. It shall be defined as the net economic deferral or avoidance of additional production plant construction by the utility or in other measurable economic benefits in excess of all relevant costs accruing to the utility's general body of ratepayers.

(d) "Curtailable electric service" means electric service that can be reduced or interrupted upon request of a utility but solely at the discretion of the customer.

(e) "Load management service" means electric service provided under an applicable firm rate

(R. 10/97)  
25-6.0439

PUBLIC SERVICE COMMISSION

V. 12, p. 180

schedule whereby electric service to specified components of the customer's electric load may be interrupted at the discretion of the utility in accordance with conditions specified in the utility's tariffs.

(4) Availability of Service.

(a) A utility may offer non-firm electric service to any customer or class of customers pursuant to tariffs or contracts approved by the Commission. Each utility that currently offers or proposes to offer non-firm electric service shall demonstrate, no later than its next rate case, that providing such service is cost effective.

(b) Each utility shall state in its tariff the terms and conditions under which non-firm electric service will be offered. If a utility believes that providing interruptible service or another type of non-firm service to a specific customer who otherwise qualifies for such service under the utility's tariff will not result in benefits accruing to its general body of ratepayers, that utility shall apply to the Commission for authorization to refuse non-firm service to that customer. The provision of non-firm service for standby and supplemental purposes shall be consistent with the Federal Energy Regulatory Commission rule, 18 C.F.R. Sec. 292.305.

(c) When a utility proposes to make a change in any of its non-firm electric service offerings, it must provide written notice to each customer who may be affected by the proposal.

(5) Methods of Determining Maximum Levels of Non-Firm Load. Each utility offering non-firm electric service shall have on file with the Commission a methodology approved by the Commission for determining the cost effectiveness of non-firm load over its generation planning horizon, pursuant to the definition of "cost effective" in Paragraph (3)(c). Specific consideration must be given to each type of non-firm electric service offered. A utility may petition the Commission to revise their methodology at any time.

(6) Maximum Levels of Non-Firm Load. Each utility shall attempt to maintain its subscribed non-firm loads at or below their maximum cost-effective levels, as determined by the utility's approved methodology utilizing its most current system expansion plans and approved rates. If, during a revenue or rate review, the Commission finds that a utility's efforts to maintain its subscribed non-firm loads at or below the maximum cost-effective level have not been prudent, the Commission may impute revenues at otherwise applicable rates for the amount of non-firm load in excess of cost effective levels.

(7) Reporting Requirements. Each utility offering non-firm electric service shall submit to the Commission on January 1 and July 1 of each year a report detailing the type of non-firm service offered and showing the amount of non-firm load on the utility's system as of the month ending one month prior to the reporting date. In addition, the report shall state the cost-effective levels of non-firm load determined by the utility's approved

methodology.

(8) Minimum Notice to Transfer from Non-Firm to Firm Service. Each utility that offers non-firm service shall include a specific provision in its tariff that requires a customer to provide the utility with at least five years advance written notice in order for the customer to be eligible to transfer from interruptible to firm service. A utility may apply to the Commission for approval of a different minimum notice requirement if it can demonstrate that a different notice requirement is necessary or appropriate, either for all or any individual non-firm service offerings.

(9) The Commission may waive any provision of this rule if it determines that such waiver is consistent with the purpose and intent of this rule after notice to all affected customers.

*Specific Authority 350.127(2), 366.05(1) F.S. Law Implemented 366.03, 366.04, 366.041, 366.05 F.S. History—New 8-21-86, Amended 9-3-91.*

ANNOTATIONS

*Methodology*

*Rule 25-6.0438(5)(a), F. A. C., does not apply only to nonfirm service which avoids or defers capacity. Language referring to "generation planning horizon" is time period for developing utility's maximum level of cost-effective nonfirm load of which curtailable load is part. In order to develop meaningful number, all types of nonfirm load must be measured over same time period. Rule 25-6.0438(5)(a), F. A. C., requires company to develop methodology for determining maximum amount of cost-effective curtailable service, and to apply that methodology to come up with annual target amounts over company's generation expansion planning horizon. Rule 25-6.0438(4)(a), F. A. C., prohibits Commission from closing curtailable tariff to existing customers should methodology provided for in Rule 25-6.0438(5)(a), F. A. C., indicate that curtailable rate does not offer any economic benefits to company's general body of ratepayers. Curtailable tariff could only be closed to existing customers in company's next rate case. Should methodology indicate no current benefit to ratepayers, Commission would be allowed to close curtailable rate schedules to new customers. Subsection (4)(a) is consistent with Subsection (5)(a) of Rule 25-6.0438, F. A. C. In re: Petition of Florida Power and Light Co., 87 FPSC 10:115 (1987).*

*Notice*

*Commission's primary concern in promulgating minimum transfer notice provision of Rule 25-6.0438, F. A. C., was to prevent any adverse impact on utility's generation expansion planning that might result from sudden transfers of large amounts of non-firm load to firm service. There was no adverse impact as result of utility's residential load management rate schedule because (1) transfer rate was very low and (2) individual customer's load under control is small relative to entire system. Thus, Rule 25-6.0438(7), F. A. C., was waived for residential schedule. There was adverse impact as result of utility's commercial load management program because few customers have fairly large load and transfer rate was high. Thus, waiver of Rule 25-6.0438(7), F. A. C., was denied. In re: Petition by Florida Power Corp., 87 FPSC 7:233 (1987).*

**25-6.0439 Territorial Agreements and Disputes for Electric Utilities — Definitions.**

(1) For the purpose of Rules 25-6.0440, 25-6.0441, and 25-6.0442, the following terms

APPENDIX 4

(R. 10/97)  
25-17.087

PUBLIC SERVICE COMMISSION

V. 12, p. 322

**25-17.086 Periods During Which Purchases Are Not Required.** Where purchases from a qualifying facility will impair the utility's ability to give adequate service to the rest of its customers or, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, or otherwise place an undue burden on the utility, the utility shall be relieved of its obligation under Rule 25-17.082 to purchase electricity from a qualifying facility. The utility shall notify the qualifying facility(ies) prior to the instance giving rise to those conditions, if practicable. If prior notice is not practicable, the utility shall notify the qualifying facility(ies) as soon as practicable after the fact. In either event the utility shall notify the Commission, and the Commission staff shall, upon request of the affected qualifying facility(ies), investigate the utility's claim. Nothing in this section shall operate to relieve the utility of its general obligation to purchase pursuant to Rule 25-17.082.

*Specific Authority 350.127(2) F.S. Law Implemented 366.04(5), 366.051 F.S. History—New 5-13-81, Amended 9-4-83, Formerly 25-17.86.*

**25-17.087 Interconnection and Standards.**

(1) Each utility shall interconnect with any qualifying facility which:

- (a) is in its service area;
- (b) requests interconnection;
- (c) agrees to meet system standards specified in this rule;
- (d) agrees to pay the cost of interconnection; and
- (e) signs an interconnection agreement.

(2) Nothing in this rule shall be construed to preclude a utility from evaluating each request for interconnection on its own merits and modifying the general standards specified in this rule to reflect the result of such an evaluation.

(3) Where a utility refuses to interconnect with a qualifying facility or attempts to impose unreasonable standards pursuant to subsection (2) of this rule, the qualifying facility may petition the Commission for relief. The utility shall have the burden of demonstrating to the Commission why interconnection with the qualifying facility should not be required or that the standards the utility seeks to impose on the qualifying facility pursuant to subsection (2) are reasonable.

(4) Upon a showing of credit worthiness, the qualifying facility shall have the option of making monthly installment payments over a period no longer than 36 months toward the full cost of interconnection. However, where the qualifying facility exercises that option the utility shall charge interest on the amount owing. The utility shall charge such interest at the 30-day commercial paper rate. In any event, no utility may bear the cost of interconnection.

(5) Application for Interconnection. A qualifying facility shall not operate electric generating equipment in parallel with the utility's electric system without the prior written consent of the utility. Formal application for interconnection shall

be made by the qualifying facility prior to the installation of any generation related equipment. This application shall be accompanied by the following:

- (a) Physical layout drawings, including dimensions;
- (b) All associated equipment specifications and characteristics including technical parameters, ratings, basic impulse levels, electrical main one-line diagrams, schematic diagrams, system protections, frequency, voltage, current and interconnection distance;
- (c) Functional and logic diagrams, control and meter diagrams, conductor sizes and length, and any other relevant data which might be necessary to understand the proposed system and to be able to make a coordinated system;
- (d) Power requirements in watts and vars;
- (e) Expected radio-noise, harmonic generation and telephone interference factor;
- (f) Synchronizing methods; and
- (g) Operating/instruction manuals.

Any subsequent change in the system must also be submitted for review and written approval prior to actual modification. The above mentioned review, recommendations and approval by the utility do not relieve the qualifying facility from complete responsibility for the adequate engineering design, construction and operation of the qualifying facility equipment and for any liability for injuries to property or persons associated with any failure to perform in a proper and safe manner for any reason.

(6) Personnel Safety. Adequate protection and safe operational procedures must be developed and followed by the joint system. These operating procedures must be approved by both the utility and the qualifying facility. The qualifying facility shall be required to furnish, install, operate and maintain in good order and repair, and be solely responsible for, without cost to the utility, all facilities required for the safe operation of the generation system in parallel with the utility's system.

The qualifying facility shall permit the utility's employees to enter upon its property at any reasonable time for the purpose of inspection and/or testing the qualifying facility's equipment, facilities, or apparatus. Such inspections shall not relieve the qualifying facility from its obligation to maintain its equipment in safe and satisfactory operating condition.

The utility's approval of isolating devices used by the qualifying facility will be required to ensure that these will comply with the utility's switching and tagging procedure for safe working clearances.

(a) Disconnect Switch. A manual disconnect switch, of the visible load break type, to provide a separation point between the qualifying facility's generation system and the utility's system, shall be required. The utility will specify the location of the disconnect switch. The switch shall be mounted separate from the meter socket and shall be readily accessible to the utility and be capable of being locked in the open position with a utility padlock.



The utility may reserve the right to open the switch (i.e., isolating the qualifying facility's generation system) without prior notice to the qualifying facility. To the extent practicable, however, prior notice shall be given.

Any of the following conditions shall be cause for disconnection:

1. Utility system emergencies and/or maintenance requirements;
2. Hazardous conditions existing on the qualifying facility's generating or protective equipment as determined by the utility;
3. Adverse effects of the qualifying facility's generation to the utility's other electric consumers and/or system as determined by the utility;
4. Failure of the qualifying facility to maintain any required insurance; or
5. Failure of the qualifying facility to comply with any existing or future regulations, rules, orders or decisions of any governmental or regulatory authority having jurisdiction over the qualifying facility's electric generating equipment or the operation of such equipment.

(b) Responsibility and Liability. The utility and the qualifying facility shall each be responsible for its own facilities. The utility and the qualifying facility shall each be responsible for ensuring adequate safeguards for other utility customers, utility and qualifying facility personnel and equipment, and for the protection of its own generating system. The utility and the qualifying facility shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage, or injury to persons or property of the other caused by, arising out of, or resulting from:

1. Any act or omission by a party or that party's contractors, agents, servants and employees in connection with the installation or operation of that party's generation system or the operation thereof in connection with the other party's system;
2. Any defect in, failure of, or fault related to a party's generation system;
3. The negligence of a party or negligence of that party's contractors, agents, servants or employees; or
4. Any other event or act that is the result of, or proximately caused by, a party.

For the purposes of this paragraph, the term party shall mean either utility or qualifying facility, as the case may be.

(c) Insurance. The qualifying facility shall deliver to the utility, at least fifteen days prior to the start of any interconnection work, a certificate of insurance certifying the qualifying facility's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of Florida naming the qualifying facility as named insured, and the utility as an additional named insured, which policy shall contain a broad form contractual endorsement specifically covering the liabilities accepted under this agreement arising out of the interconnection to the qualifying facility, or caused by operation of any of the qualifying facility's equipment or by the

qualifying facility's failure to maintain the qualifying facility's equipment in satisfactory and safe operating condition.

1. The policy providing such coverage for a standard offer contract shall provide public liability insurance, including property damage, in the amount of \$1,000,000 for each occurrence.

2. The policy providing such coverage for a negotiated contract shall provide public liability insurance, including property damage, in an amount not less than \$1,000,000 for each occurrence. The parties may negotiate the amount of insurance over \$1,000,000.

3. The above required policy shall be endorsed with a provision requiring the insurance company to notify the utility thirty days prior to the effective date of cancellation or material change in the policy.

4. The qualifying facility shall pay all premiums and other charges due on said policy and keep said policy in force during the entire period of interconnection with the utility.

(7) Protection and Operation. It will be the responsibility of the qualifying facility to provide all devices necessary to protect the qualifying facility's equipment from damage by the abnormal conditions and operations which occur on the utility system that result in interruptions and restorations of service by the utility's equipment and personnel. The qualifying facility shall protect its generator and associated equipment from overvoltage, undervoltage, overload, short circuits (including ground fault condition), open circuits, phase unbalance and reversal, over or under frequency condition, and other injurious electrical conditions that may arise on the utility's system and any reclose attempt by the utility.

The utility may reserve the right to perform such tests as it deems necessary to ensure safe and efficient protection and operation of the qualifying facility's equipment.

(a) Loss of Source: The qualifying facility shall provide, or the utility will provide at the qualifying facility's expense, approved protective equipment necessary to immediately, completely, and automatically disconnect the qualifying facility's generation from the utility's system in the event of a fault on the qualifying facility's system, a fault of the utility's system, or loss of source on the utility's system. Disconnection must be completed within the time specified by the utility in its standard operating procedure for its electric system for loss of a source on the utility's system.

This automatic disconnecting device may be of the manual or automatic reclose type and shall not be capable of reclosing until after service is restored by the utility. The type and size of the device shall be approved by the utility depending upon the installation. Adequate test data or technical proof that the device meets the above criteria must be supplied by the qualifying facility to the utility. The utility shall approve a device that will perform the above functions at minimal capital and operating costs to the qualifying facility.

(b) Coordination and Synchronization. The

(R. 10/97)  
25-17.087

PUBLIC SERVICE COMMISSION

V. 12, p. 324

qualifying facility shall be responsible for coordination and synchronization of the qualifying facility's equipment with the utility's electrical system, and assumes all responsibility for damage that may occur from improper coordination or synchronization of the generator with the utility's system.

(c) **Electrical Characteristics.** Single phase generator interconnections with the utility are permitted at power levels up to 20 KW. For power levels exceeding 20 KW, a three phase balanced interconnection will normally be required. For the purpose of calculating connected generation, 1 horsepower equals 1 kilowatt. The qualifying facility shall interconnect with the utility at the voltage of the available distribution or the transmission line of the utility for the locality of the interconnection, and shall utilize one of the standard connections (single phase, three phase, wye, delta) as approved by the utility.

The utility may reserve the right to require a separate transformation and/or service for a qualifying facility's generation system, at the qualifying facility's expense. The qualifying facility shall bond all neutrals of the qualifying facility's system to the utility's neutral, and shall install a separate driven ground with a resistance value which shall be determined by the utility and bond this ground to the qualifying facility's system neutral.

(d) **Exceptions.** A qualifying facility's generator having a capacity rating that can:

1. produce power in excess of 1/2 of the minimum utility customer requirements of the interconnected distribution or transmission circuit; or
2. produce power flows approaching or exceeding the thermal capacity of the connected utility distribution or transmission lines or transformers; or
3. adversely affect the operation of the utility or other utility customer's voltage, frequency or overcurrent control and protection devices; or
4. adversely affect the quality of service to other utility customers; or
5. interconnect at voltage levels greater than distribution voltages, will require more complex interconnection facilities as deemed necessary by the utility.

(8) **Quality of Service.** The qualifying facility's generated electricity shall meet the following minimum guidelines:

(a) **Frequency.** The governor control on the prime mover shall be capable of maintaining the generator output frequency within limits for loads from no-load up to rated output. The limits for frequency shall be 60 hertz (cycles per second), plus or minus an instantaneous variation of less than 1%.

(b) **Voltage.** The regulator control shall be capable of maintaining the generator output voltage within limits for loads from no-load up to rated output. The limits for voltage shall be the nominal operating voltage level, plus or minus 5%.

(c) **Harmonics.** The output sine wave distortion

shall be deemed acceptable when it does not have a higher content (root mean square) of harmonics than the utility's normal harmonic content at the interconnection point.

(d) **Power Factor.** The qualifying facility's generation system shall be designed, operated and controlled to provide reactive power requirements from 0.85 lagging to 0.85 leading power factor. Induction generators shall have static capacitors that provide at least 85% of the magnetizing current requirements of the induction generator field. (Capacitors shall not be so large as to permit self-excitation of the qualifying facility's generator field.)

(e) **DC Generators.** Direct current generators may be operated in parallel with the utility's system through a synchronous inverter. The inverter must meet all criteria in these rules.

(9) **Metering.** The actual metering equipment required, its voltage rating, number of phases, size, current transformers, potential transformers, number of inputs and associated memory is dependent on the type, size and location of the electric service provided. In situations where power may flow both in and out of the qualifying facility's system, power flowing into the qualifying facility's system will be measured separately from power flowing out of the qualifying facility's system.

The utility will provide, at no additional cost to the qualifying facility, the metering equipment necessary to measure capacity and energy deliveries to the qualifying facility. The utility will provide, at the qualifying facility's expense, the necessary additional metering equipment to measure energy deliveries by the qualifying facility to the utility.

(10) **Cost Responsibility.** The qualifying facility is required to bear all costs associated with the change-out, upgrading or addition of protective devices, transformers, lines, services, meters, switches, and associated equipment and devices beyond that which would be required to provide normal service to the qualifying facility if the qualifying facility were a non-generating customer. These costs shall be paid by the qualifying facility to the utility for all material and labor that is required. Prior to any work being done by the utility, the utility shall supply the qualifying facility with a written cost estimate of all its required materials and labor and an estimate of the date by which construction of the interconnection will be completed. This estimate shall be provided to the qualifying facility within 60 days after the qualifying facility supplies the utility with its final electrical plans. The utility shall also provide project timing and feasibility information to the qualifying facility.

(11) Each utility shall submit to the Commission, a standard agreement for interconnection by qualifying facilities as part of their standard offer contract or contracts required by Rule 25-17.0832(3).

*Specific Authority 366.051, 350.127(2) F.S. Law Implemented 366.04(2)(c), (5) 366.051 F.S. History—New*

5-13-81, Amended 9-4-83, Formerly 25-17.87, Amended 10-25-90, 5-10-93.

#### ANNOTATIONS

##### Indemnification

Public Service Commission concluded that the insurance requirements of Florida Power and Light's (FPL) standard interconnection agreement, which required the Qualifying Facility (QF) to procure insurance to cover FPL's liabilities, did not conform to Rule 25-17.087(6)(b), (c), F.A.C. FPL can require only that it be named as an additional insured on the QF's interconnection insurance policy. FPL's own applicable insurance policies must indemnify and hold QF harmless from FPL's actions. In re: Planning Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities, 91 FPSC 8:560 (1991).

##### Insurance

Rule 25-17.087(6)(c), F.A.C., does not set a maximum insurance amount that may be required. Nor does the rule prohibit the Commission from setting a maximum for a particular contract. PSC, being cognizant of the terms and conditions of a particular standard offer contract, as well as the size (in terms of energy and capacity) of the proposed project, is well able to determine a reasonable amount which the utility may require of the Qualifying Facility. Order No. 24989, which sets a maximum of \$1 million for this particular standard offer contract, does not conflict with the rule, but rather addresses an area which was not addressed by the rule. In Re: Planning Hearings on Load Forecasts, Generation Expansion Plans, and Cogeneration Prices for Florida's Electric Utilities, 92 FPSC 1:63 (1992).

##### Minimum standards for insurance provisions

PSC concluded that it did not need to prescribe further guidelines or standards for the insurance provisions to be included in negotiated QF power sales contracts. In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24 (Docket No. 910603-EQ, Order No. 25668) (1992).

PSC declined to impose a cap on the amount of insurance that a utility may require of a QF, concluding that insurance amounts should be negotiated by the parties based on the unique characteristics of the QF's facility. Id.

##### Negotiation relating to ownership of interconnection

PSC concluded that a Qualifying Facility may negotiate to own whatever portion of the interconnection it is required to pay for. In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24 (Docket No. 910603-EQ, Order No. 25668) (1992).

##### Sureties

Proposed requirement that qualifying facilities desiring to pay interconnect costs over 36 month period must put up some type of surety is logical implementation of rule. Proposal is not rule modification requiring administrative hearing. In re: Annual hearings on load forecasts, generation expansion plans and cogeneration prices for Peninsular Florida's electric utilities, 88 FPSC 1:435 (1988).

#### 25-17.088 Transmission Service for Qualifying Facilities.

Specific Authority 350.127(2), 366.051 FS. Law Implemented 366.051, 366.04(3), 366.055(3) FS. History—New 10-14-85, Formerly 25-17.88, Amended 2-3-87, Repealed 10-25-90.

#### 25-17.0882 Transmission Service Not Required for Self-Service.

Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 366.051, 366.04(3), 366.055(3) FS. History—New 10-14-85, Formerly 25-17.882, Repealed 10-25-90.

**25-17.0883 Conditions Requiring Transmission Service for Self-service.** Public utilities are required to provide transmission and distribution services to enable a retail customer to transmit electrical power generated at one location to the customer's facilities at another location when the provision of such service and its associated charges, terms, and other conditions are not reasonably projected to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers. The determination of whether transmission service for self service is likely to result in higher cost electric service may be made by using cost effectiveness methodology employed by the Commission in evaluating conservation programs of the utility, adjusted as appropriate to reflect the qualifying facility's contribution to the utility for standby service and wheeling charges, other utility program costs, the fact that qualifying facility self-service performance can be precisely metered and monitored, and taking into consideration the unique load characteristics of the qualifying facility compared to other conservation programs.

Specific Authority 366.051, 350.127(2) FS. Law Implemented 366.051 FS. History—New 10-25-90.

#### ANNOTATIONS

##### Cost-effective cogeneration

Requirement of Rule 25-17.0882, F. A. C., that utility should not be required to provide Self-Service Wheelings (SSWs) unless result would not increase rates for general ratepayers means that ratepayers should either incur benefits or should have cost exactly as before. This is cost-effective cogeneration. In re: Petition of W. R. Grace & Co., 87 FPSC 4:147 (1987).

##### Negotiations

Before bringing petition concerning Self-Service Wheelings (SSWs) to commission, evidence must be produced showing that reasonable efforts to find negotiated settlement have been made. The spirit if not letter of Rule demands this. In re: Petition of W. R. Grace & Co., 87 FPSC 4:147 (1987).

#### 25-17.0889 Transmission Service for Qualifying Facilities.

(1) Upon request by a qualifying facility, each electric utility in Florida shall provide, subject to the provisions of subsection (3) of this rule, transmission service to wheel as-available energy or firm energy and capacity produced by a Qualifying Facility from the Qualifying Facility to another electric utility.

(2) The rates, terms, and conditions for transmission services as described in subsection (1) and in Rule 25-17.0883 which are provided by an investor-owned utility shall be those approved by the Federal Energy Regulatory Commission.

(3) An electric utility may deny, curtail, or discontinue transmission service to a Qualifying

APPENDIX 5

commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.1962 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

(13) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(14) "Recommended order" means the official recommendation of an administrative law judge assigned by the division or of any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57.

(15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.
2. Statements, memoranda, or instructions to state agencies issued by the Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Comptroller.
3. Contractual provisions reached as a result of collective bargaining.
4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

(16) "Small city" means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(17) "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(18) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(19) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to

the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

*History.*—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 12, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-20; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299; s. 2, ch. 81-119; s. 1, ch. 81-180; s. 7, ch. 82-180; s. 1, ch. 83-78; s. 2, ch. 83-273; s. 10, ch. 84-170; s. 15, ch. 85-80; s. 1, ch. 85-168; s. 2, ch. 87-385; s. 1, ch. 88-367; s. 1, ch. 89-147; s. 1, ch. 91-46; s. 9, ch. 92-166; s. 50, ch. 92-279; s. 55, ch. 92-326; s. 3, ch. 96-159; s. 1, ch. 97-176; s. 2, ch. 97-286; s. 1, ch. 98-402.

#### 120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking;

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking; or

c. The agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement.

2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:

a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or

b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise.

(c) No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.

(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(e) No agency has inherent rulemaking authority, nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when estab-

lishing a penalty, specifically provides that the penalty applies to rules.

(l) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be enforced until the statute upon which they are based is effective.

(g) Each rule adopted shall contain only one subject.

(h) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i) A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes. No rule may be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

(j) A rule published in the Florida Administrative Code must be indexed by the Department of State within 90 days after the rule is filed. The Department of State shall by rule establish procedures for indexing rules.

#### (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a) Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Weekly before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development shall indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the specific legal authority for the proposed rule, and include the preliminary text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, if available.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. An agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development if requested in writing by any affected person, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule are available to explain the agency's proposal and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a rule development workshop shall be by publication in the Florida Administrative Weekly not less than 14 days prior to the date on which the workshop is scheduled to be held and shall indicate the subject area which will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Weekly a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to the provisions of this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. Nothing in this subparagraph is intended to affect the rights of an affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

#### (a) Notices.—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the specific rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific. The notice shall include a summary of the agency's statement of

the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2), and a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice. The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice shall include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Weekly not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) *Special matters to be considered in rule adoption.*—

1. *Statement of estimated regulatory costs.*—Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541.

2. *Small businesses, small counties, and small cities.*—

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 100 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of

the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best-management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the small business ombudsman of the Office of Tourism, Trade, and Economic Development not less than 28 days prior to the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the small business ombudsman and provided to the agency no later than 21 days after the ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the small business ombudsman, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, prior to rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days of the filing of such notice, the agency shall send a copy of such notice to the small business ombudsman.

(c) *Hearings.*—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking pro-



ceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

(d) *Modification or withdrawal of proposed rules.*—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material received on or before the date of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice with the committee, along with the reasons for such change, and provide the notice to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) *Filing for final adoption; effective date.*—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one

certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. Filings shall be made no less than 28 days nor more than 90 days after the notice required by paragraph (a). When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. The filing of a petition for an administrative determination under the provisions of s. 120.56(2) shall toll the 90-day period during which a rule must be filed for adoption until the administrative law judge has filed the final order with the clerk.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule not filed within the prescribed time limits; that does not satisfy all statutory rulemaking requirements; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute. If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.



(4) EMERGENCY RULES.—

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Weekly and provided to the committee. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include rules pertaining to perishable agricultural commodities.

(c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except during the pendency of a challenge to proposed rules addressing the subject of the emergency rule. However, the agency may take identical action by the rulemaking procedures specified in this chapter.

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(5) UNIFORM RULES.—

(a)1. By July 1, 1997, the Administration Commission shall adopt one or more sets of uniform rules of procedure which shall be reviewed by the committee and filed with the Department of State. Agencies must comply with the uniform rules by July 1, 1998. The uniform rules shall establish procedures that comply with the requirements of this chapter. On filing with the department, the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

2. An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal

law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exceptions shall be published in the Florida Administrative Weekly.

3. Agency rules that provide exceptions to the uniform rules shall not be filed with the department unless the Administration Commission has approved the exceptions. Each agency that adopts rules that provide exceptions to the uniform rules shall publish a separate chapter in the Florida Administrative Code that delineates clearly the provisions of the agency's rules that provide exceptions to the uniform rules and specifies each alternative chosen from among those authorized by the uniform rules. Each chapter shall be organized in the same manner as the uniform rules.

(b) The uniform rules of procedure adopted by the commission pursuant to this subsection shall include, but not be limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall include:

a. The identification of the petitioner.

- b. A statement of when and how the petitioner received notice of the agency's action or proposed action.
- c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.
- d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.
- e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.
- f. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action.
- g. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the proposed action.
5. Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements.
6. Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations.
7. Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to s. 120.542.
- (6) ADOPTION OF FEDERAL STANDARDS.— Notwithstanding any contrary provision of this section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law, in accordance with the following procedures:
- (a) The agency shall publish notice of intent to adopt a rule pursuant to this subsection in the Florida Administrative Weekly at least 21 days prior to filing the rule with the Department of State. The agency shall provide a copy of the notice of intent to adopt a rule to the committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the agency shall consider any written comments received within 14 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this subsection.
- (b) Any rule adopted pursuant to this subsection shall become effective upon the date designated in the rule by the agency; however, no such rule shall become effective earlier than the effective date of the substantively identical federal regulation.
- (c) Any substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the agency. The objection shall specify the portions of the proposed rule to which the person objects and the specific reasons for the objection. The agency shall not proceed pursuant to this subsection to adopt those portions of the proposed rule specified in an objection, unless the agency deems the objection to be

frivolous, but may proceed pursuant to subsection (3). An objection to a proposed rule, which rule in no material respect differs from the requirements of the federal regulation upon which it is based, is deemed to be frivolous.

(d) Whenever any federal regulation adopted as an agency rule pursuant to this subsection is declared invalid or is withdrawn, revoked, repealed, remanded, or suspended, the agency shall, within 60 days thereafter, publish a notice of repeal of the substantively identical agency rule in the Florida Administrative Weekly. Such repeal is effective upon publication of the notice. Whenever any federal regulation adopted as an agency rule pursuant to this subsection is substantially amended, the agency may adopt the amended regulation as a rule. If the amended regulation is not adopted as a rule within 180 days after the effective date of the amended regulation, the original rule is deemed repealed and the agency shall publish a notice of repeal of the original agency rule in the next available Florida Administrative Weekly.

(e) Whenever all or part of any rule proposed for adoption by the agency is substantively identical to a regulation adopted pursuant to federal law, such rule shall be written in a manner so that the rule specifically references the regulation whenever possible.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an existing rule which the agency has not adopted by the rulemaking procedures or requirements set forth in this chapter, the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Weekly that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) Within 30 days following the public hearing provided for by paragraph (b), if the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Weekly a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action, and of any changes it will make in the scope or application of the unadopted rule. The

agency shall file the statement with the committee. The committee shall forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

(8) RULEMAKING RECORD.—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

- (a) All notices given for the proposed rule.
- (b) Any statement of estimated regulatory costs for the rule.
- (c) A written summary of hearings on the proposed rule.
- (d) The written comments and responses to written comments as required by this section and s. 120.541.
- (e) All notices and findings made under subsection (4).
- (f) All materials filed by the agency with the committee under subsection (3).
- (g) All materials filed with the Department of State under subsection (3).
- (h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(6).

**History.**—s. 1, ch. 74-310; s. 3, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-276; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3; s. 3, ch. 79-299; s. 69, ch. 79-400; s. 5, ch. 80-391; s. 1, ch. 81-309; s. 2, ch. 83-351; s. 1, ch. 84-173; s. 2, ch. 84-203; s. 7, ch. 85-104; s. 1, ch. 86-30; s. 3, ch. 87-385; s. 36, ch. 90-302; ss. 2, 4, 7, ch. 92-166; s. 63, ch. 93-187; s. 758, ch. 95-147; s. 6, ch. 95-295; s. 10, ch. 96-159; s. 6, ch. 96-320; s. 9, ch. 96-370; s. 3, ch. 97-176; s. 3, ch. 98-200.

#### 120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the

agency requests an administrative law judge from the division, it shall so notify the division within 15 days after receipt of the petition or request. A request for a hearing shall be granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:

1. A statement of the time, place, and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

(d) The agency may refer a petition to the division for the assignment of an administrative law judge only if the petition is in substantial compliance with the requirements of paragraph (c).

(e) All pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or other paper and that, based upon reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

APPENDIX 6

(f) Each agency shall specify the location or locations where agency indexes, lists, and final orders that are required to be indexed or listed are maintained and shall specify the method or procedure by which the public may inspect or obtain copies of indexes, lists, and final orders.

(g) Each agency shall specify all systems in use by the agency to search and locate agency final orders that are required to be indexed or listed, including, but not limited to, any automated system. An agency shall make the search capabilities employed by the agency available to the public subject to reasonable terms and conditions, including a reasonable charge, as provided by s. 119.07. The agency shall specify how assistance and information pertaining to final orders may be obtained.

(h) Each agency shall specify the numbering system used to identify agency final orders.

(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.

(b) An agency may publish its official reporter or may contract with a publishing firm to publish its official reporter; however, if an agency contracts with a publishing firm to publish its reporter, the agency is responsible for the quality, timeliness, and usefulness of the reporter. The Department of State may publish an official reporter for an agency or may contract with a publishing firm to publish the reporter for the agency; however, if the department contracts for publication of the reporter, the department is responsible for the quality, timeliness, and usefulness of the reporter. A reporter that is designated by an agency as its official reporter and approved by the Department of State constitutes the official compilation of the administrative final orders for that agency.

(c) A reporter that is published by the Department of State may be made available by annual subscription, and each agency that designates an official reporter published by the department may be charged a space rate payable to the department. The subscription rate and the space rate must be equitably apportioned to cover the costs of publishing the reporter.

(d) An agency that designates an official reporter need not publish the full text of an agency final order that is rendered pursuant to s. 120.57(4) and that must be indexed pursuant to paragraph (1)(a), if the final order is preserved by the agency and made available for public inspection and copying and the official reporter indexes the final order and includes a synopsis of the order. A synopsis must include the names of the parties to the order; any rule, statute, or constitutional provision pertinent to the order; a summary of the facts, if included in the order, which are pertinent to the final disposition; and a summary of the final disposition.

(3) Agency orders that must be indexed or listed are documents of continuing legal value and must be

permanently preserved and made available to the public. Each agency to which this chapter applies shall provide, under the direction of the Department of State, for the preservation of orders as required by this chapter and for maintaining an index to those orders.

(4) Each agency must provide any person who makes a request with a written description of its organization and the general course of its operations.

*History.*—s. 1, ch. 74-310; s. 2, ch. 75-191; s. 2, ch. 76-131; s. 2, ch. 79-299; s. 1, ch. 81-296; s. 2, ch. 81-309; s. 8, ch. 83-92; s. 34, ch. 83-217; s. 3, ch. 83-273; s. 1, ch. 84-203; s. 77, ch. 85-180; s. 2, ch. 87-100; s. 2, ch. 88-384; s. 44, ch. 90-136; s. 35, ch. 90-302; s. 2, ch. 91-30; s. 79, ch. 91-45; s. 1, ch. 91-191; s. 1, ch. 92-166; s. 143, ch. 92-279; s. 55, ch. 92-326; s. 757, ch. 95-147; s. 5, ch. 96-159; s. 2, ch. 96-423; s. 2, ch. 97-176.

### 120.533 Coordination of indexing by Department of State.—The Department of State shall:

(1) Administer the coordination of the indexing, management, preservation, and availability of agency orders that must be indexed or listed pursuant to s. 120.53(1).

(2) Provide, by rule, guidelines for the indexing of agency orders. More than one system for indexing may be approved by the Department of State, including systems or methods in use, or proposed for use, by an agency. More than one system may be approved for use by a single agency as best serves the needs of that agency and the public.

(3) Provide, by rule, for storage and retrieval systems to be maintained by agencies for indexing, and making available, agency orders by subject matter. The Department of State may approve more than one system, including systems in use, or proposed for use, by an agency. Storage and retrieval systems that may be used by an agency include, without limitation, a designated reporter or reporters, a microfilming system, an automated system, or any other system considered appropriate by the Department of State.

(4) Determine which final orders must be indexed for each agency.

(5) Require each agency to report to the department concerning which types or categories of agency orders establish precedent for each agency.

*History.*—s. 9, ch. 91-30; s. 1, ch. 91-191; s. 7, ch. 96-159.

### 120.536 Rulemaking authority; listing of rules exceeding authority; repeal; challenge.—

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

(2) By October 1, 1997, each agency shall provide to the Administrative Procedures Committee a listing of each rule, or portion thereof, adopted by that agency

before October 1, 1996, which exceeds the rulemaking authority permitted by this section. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency shall also identify the language of the rule which exceeds this authority. The Administrative Procedures Committee shall combine the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 1999, the Administrative Procedures Committee shall submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding the rulemaking authority permitted by this section for which proceedings to repeal the rule have not been initiated. As of July 1, 1999, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(3) All proposed rules or amendments to existing rules filed with the Department of State on or after October 1, 1996, shall be based on rulemaking authority no broader than that permitted by this section. A rule adopted before October 1, 1996, and not included on a list submitted by an agency in accordance with subsection (2) may not be challenged before November 1, 1997, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section. A rule adopted before October 1, 1996, and included on a list submitted by an agency in accordance with subsection (2) may not be challenged before July 1, 1999, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section.

(4) Nothing in this section shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

History.—s. 9, ch. 96-159.

#### 120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking;

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking; or

c. The agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement.

2. Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:

a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or

b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within 180 days after the effective date of the act, unless the act provides otherwise.

(c) No statutory provision shall be delayed in its implementation pending an agency's adoption of implementing rules unless there is an express statutory provision prohibiting its application until the adoption of implementing rules.

(d) In adopting rules, all agencies must, among the alternative approaches to any regulatory objective and to the extent allowed by law, choose the alternative that does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(e) No agency has inherent rulemaking authority, nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules.

(f) An agency may adopt rules authorized by law and necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be enforced until the statute upon which they are based is effective.

(g) Each rule adopted shall contain only one subject.

(h) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of these materials and given a reasonable opportunity to examine them and offer written comments or written rebuttal.

(i) A rule may incorporate material by reference but only as the material exists on the date the rule is

CERTIFICATE OF SERVICE  
DOCKET NO. 980569-PU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Pre-filed Comments has been furnished by Hand Delivery (\*), or U.S. Mail this 24th day of June, 1999, to the following:

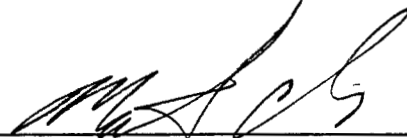
Christiana T. Moore, Esq.\*  
Division of Appeals  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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Tallahassee, FL 32399-0850

Mr. William G. Walker, III  
Florida Power & Light Co.  
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Richard A. Zambo, Esq.  
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Palm City, FL 34990

By: \_\_\_\_\_

  
Matthew M. Childs, P.A.

11

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule 25-4.002, F.A.C., Application and Scope; 25-4.141, Minimum Filing Requirements for Rate of Return Regulated Local Exchange Companies; Commission Designee; 25-4.202, Construction and Waivers; 25-24.555, Scope and Waiver; 25-6.002, Application and Scope; 25-6.043, Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee; 25-6.0438, Non-Firm Electric Service - Terms and Conditions; 25-17.087, Interconnection and Standards; 25-30.010, Rules for General Application; 25-30.011, Application and Scope; 25-30.436, General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase; 25-30.450, Burden of Proof and Audit Provisions; 25-30.455, Staff Assistance in Rate Cases; 25-30.456, Staff Assistance in Alternative Rate Setting; 25-30.570, Imputation of Contributions-In-Aid-of-Construction; and 25-30.580, Guidelines for Designing Service Availability

DOCKET NO. 980569-PU

STAFF COMMENTS

Staff provides the following response to the comments of Tampa Electric Company (TECO) and Florida Power and Light (FPL):

Both TECO and FPL suggest that section 120.542, Florida Statutes, is not intended to require the repeal of the waiver provisions in the Commission's rules. The statute, however,



does not except the Commission's or any other agency's rules. Rather, subsection 120.542(1) provides that it "is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute." It makes no mention of variance and waiver provisions of rules. Staff has not found any specific variance or waiver provisions in the laws implemented by the rules recommended for repeal in this docket, nor has FPL or TECO identified such a provision.

Other statutory provisions support a view contrary to FPL's and TECO's:

Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section.

§120.542(1), Fla. Stat. (1997) (Emphasis supplied.) The statutory definitions of "variance" and "waiver" in section 120.52, Florida Statutes, also support staff's view:

(18) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(19) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

Staff's view of the statute is further supported by a law review article on the Administrative Procedure Act's variance and waiver provisions, where the authors noted:

It is not within the authority of an agency to substantively supplement or refine by rule the statutory standards for issuing a waiver or variance.

Donna E. Blanton and Robert M. Rhodes, Loosening the Chains that Bind: The New Variance and Waiver Provision in Florida's Administrative Procedure Act, 24 Fla. St. U. L. Rev. 353, 369 (1997).

FPL has not addressed the above authorities, nor has it explained why the Commission would have authority to maintain its rule waiver provisions even though it has not been granted an exception to the Uniform Rule of Procedure on waivers and variances. At the same time, FPL argues in another Commission docket that unless the Commission has an exception to the uniform rules, it has no authority to vary from them. See, Docket No. 981890-EU, In Re: Generic Investigation Into the Aggregate Electric Utility Reserve Margins Planned for Peninsular Florida.

Staff disagrees that there are any inconsistencies in the Commission's stated rationale for the rule repeals in this docket. In addition, Staff refers FPL to its recommendation and the support therein, which FPL has apparently overlooked. That recommendation was filed in this docket on December 3, 1998, and approved by the Commission on December 15, 1998. A

copy is attached. FPL has yet to provide a meaningful response to the substance of the stated rationale.

**Rule 25-6.002--Application and Scope:**

TECO comments that subsections (2) and (4) of this rule do not need to be repealed because (2) does not actually effect a waiver or variance but simply states the Commission's willingness to entertain requests for a rule modification or temporary exemption, and (4) authorizes the Commission to amend its rules. To that extent, staff believes the rule is unnecessary and redundant. Petitions to initiate rulemaking are specifically addressed in statute and the uniform rules, as is an agency's authority to initiate rulemaking. § 120.54, Fla. Stat. (Supp. 1998); Rule 28-103.006, F.A.C. Temporary exemptions are simply a time limited waiver and are also authorized by statute and uniform rule. § 120.542(3), Fla. Stat. (1997); Rule 28-104.002(2)(I), F.A.C.

**25-6.043, Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee:**

This rule was amended in 1990 to incorporate the form entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities". Docket No. 891269-EU. The purpose in adopting the form was to establish a standard set of MFRs for rate cases which would provide all the information the Commission needs for rate cases at their initiation, rather than through supplemental data requests and discovery. The information solicited was based on the Commission's practical

experience in rate cases. In addition, the form is uniform for all utilities, and allows potential parties to know what type of data will be available.

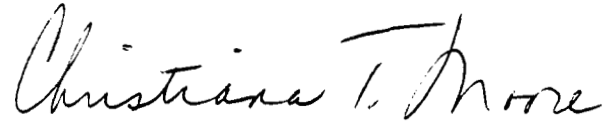
TECO's proposed language allows the utility to "furnish the Commission's Staff a list of the schedules" it intends to file and have the prehearing officer decide any disputes. This has the effect of granting the utility a blanket waiver of all filing requirements by allowing the utility to decide what information is pertinent to evaluation of its filing. The Commission has already determined a minimum filing requirement by rule to standardize the information submitted in a rate case. Staff should not be required to re-justify those requirements on a case-by-case basis.

In addition, TECO's proposal does not appear to include a formal filing of its list of selected schedules. In contrast to the requirements of a section 120.542 petition for waiver or variance, there will be no public notice of what information the utility intends not to file, and no opportunity for interested parties to object.

To the extent an MFR schedule is not applicable to a utility because, for instance, the schedule requires information about nuclear generation and the company does not have any, then all the utility has to do is to write on the form "not applicable" and state the reason. A rule waiver or variance is not required in such a case.

**Rule 25-6.0438 Non-Firm Electric Service - Terms and Conditions:**

TECO does not oppose repeal of subsection (9) of this rule, but only if a substantive provision is added to subsection (8) of the rule. TECO's new provision addresses a tariff policy issue which is currently the subject of Docket No. 990724-EI, In re: Petition of Tampa Electric Company for clarification of its Interruptible Rate Schedules IS-1, IST-1, SBT-1, IS-3, IST-3, and SBT-3. The Commission should decide the issue in that docket, with specific facts before it, rather than addressing it in this rulemaking proceeding.



CHRISTIANA T. MOORE  
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CERTIFICATE OF SERVICE

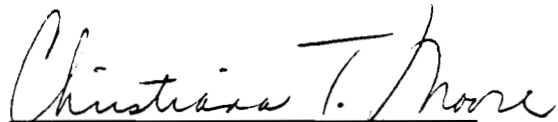
I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail this 15th day of July, 1999, to the following:

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CHRISTIANA T. MOORE



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** 12/3/98

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF APPEALS (MOORE) *cm DS*  
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (MAILHOT) *DM*  
DIVISION OF COMMUNICATIONS (SHELPER) *AKS 117*  
DIVISION OF ELECTRIC AND GAS (KUMMER) *AK* (FUTRELL) *JDT*  
DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *CSH*  
DIVISION OF WATER AND WASTEWATER (LOWE)

**RE:** DOCKET NO. 980569-PU - PROPOSED AMENDMENTS TO RULE 25-4.002, F.A.C., APPLICATION AND SCOPE; 25-4.141, MINIMUM FILING REQUIREMENTS FOR RATE OF RETURN REGULATED LOCAL EXCHANGE COMPANIES; COMMISSION DESIGNEE; 25-4.202, CONSTRUCTION AND WAIVERS; 25-24.455, SCOPE AND WAIVER; 25-6.002, APPLICATION AND SCOPE; 25-6.043, INVESTOR-OWNED ELECTRIC UTILITY MINIMUM FILING REQUIREMENTS; COMMISSION DESIGNEE; 25-6.0438, NON-FIRM ELECTRIC SERVICE - TERMS AND CONDITIONS; 25-17.087, INTERCONNECTION AND STANDARDS; 25-30.010, RULES FOR GENERAL APPLICATION; 25-30.011, APPLICATION AND SCOPE; 25-30.436, GENERAL INFORMATION AND INSTRUCTIONS REQUIRED OF CLASS A AND B WATER AND WASTEWATER UTILITIES IN AN APPLICATION FOR RATE INCREASE; 25-30.450, BURDEN OF PROOF AND AUDIT PROVISIONS; 25-30.455, STAFF ASSISTANCE IN RATE CASES; 25-30.456, STAFF ASSISTANCE IN ALTERNATIVE RATE SETTING; 25-30.570, IMPUTATION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION; AND 25-30.580, GUIDELINES FOR DESIGNING SERVICE AVAILABILITY.

**AGENDA:** 12/15/98 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE

**RULE STATUS:** PROPOSAL SHOULD NOT BE DEFERRED

**SPECIAL INSTRUCTIONS:** PURSUANT TO S. 120.536(2), F.S., THE COMMISSION MUST INITIATE THIS RULEMAKING PRIOR TO 1/1/99.

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\980569.RCM

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### CASE BACKGROUND

In 1996, the Legislature substantially amended Chapter 120, Florida Statutes, the "Administrative Procedure Act" (APA). Among the changes to the APA was the adoption of section 120.542, Florida Statutes, governing rule waivers and variances, and section 120.536, requiring agencies to report to the Joint Administrative Procedures Committee (JAPC) its rules that exceed its rulemaking authority, and repeal those for which authorizing legislation does not exist. On September 9, 1997, the Commission approved the list of rules for which it lacked specific statutory authority. On September 25, 1997, by letter from Chairman Johnson, the Commission submitted its list to the JAPC. The Commission did not seek legislation to authorize the identified rules that provide generally for waivers and variances from the rules, because, as stated in the letter, specific authority is now contained in section 120.542, Florida Statutes, and specific uniform rules to implement the statute had been adopted by the Administration Commission.

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission repeal Rules 25-4.141(4), 25-4.202(3), 25-24.455(4) and (5), 25-6.002(2) and (4), 25-6.043(3), 25-6.0438(9), 25-17.087(2), 25-30.011(2) and (4), 25-30.436(6), 25-30.455(11), 25-30.456(11), 25-30.570(2), 25-30.580(2), F.A.C., the individual provisions for rule variances and waivers; amend Rule 25-30.010 to delete the general provision for exceptions; amend 25-30.450, to delete the general provision for a waiver of the rule; and amend other provisions of these rules to update cross references?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** Section 120.536(2), Florida Statutes, requires the Commission to initiate rulemaking by January 1, 1999, to repeal the rules identified as exceeding its authority and "for which authorizing legislation does not exist." Those rules are listed below with a summary of their content. Rule 25-4.002(2) has been removed from the list because its repeal has been accomplished in Docket No. 951560-TI.

**25-4.141(4), Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designees.** Provides a waiver of MFR requirements for specific data or for the number of copies required by the rule upon a showing that production of the data would be impractical or impose an excessive economic burden on the company. In addition to deleting (4), the Commission should amend Rule 25-4.141(1)(d) to substitute the text of the cross-



referenced rule for the number of the rule because that rule is scheduled for repeal.

**25-4.202(3), Construction and Waivers.** Provides that when compliance with a commission requirement imposes an unreasonable hardship on the small LEC, would not be cost effective, or would not be in the public interest, the small LEC may apply for temporary rule waiver, repeal or amendment of the rule, or other similar relief.

**Rule 25-6.002(2) and (4), Application and Scope.** Provides for modification or exemption from rule requirements in cases of unusual hardship or difficulty or under exceptional conditions.

**Rule 25-6.043(3), Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee.** States that the Commission will waive the rule requirements upon a showing that data production would be impractical or impose an excessive economic burden on the utility.

**Rule 25-6.0438(9), Non-Firm Electric Service - Terms and Conditions.** Provides that the Commission may waive any provision of the rule after notice to all affected customers.

**Rule 25-17.087(2), Interconnection and Standards.** Allows a utility to modify the standards specified in the rule. The reference in section (3) to section (2) is deleted, rather than all of (3) as stated on the list submitted to JAPC. Section (3) does not in itself authorize a waiver of rules, but places the burden on the utility to demonstrate why interconnection with a qualifying facility (QF) should not be required or that the standards the utility seeks to impose on the QF are reasonable.

**25-24.555(4) and (5), Scope and Waiver.** Allows a Shared Tenant Service company to petition for waiver of any provisions of Part XII of Chapter 25-24. The waiver will be granted to the extent that the Commission determines that it is in the public interest to do so. Section (5) should also be repealed because it provides that rule waivers granted prior to the adoption of the rule are void and must be renewed. This section was adopted in 1987, and there is no basis to re-adopt such a provision now.

**Rule 25-30.010, Rules for General Application.** Provides that the water and wastewater utility rules are subject to such exceptions as the Commission may consider just and reasonable in individual cases.

**Rule 25-30.011(2) and (4), Application and Scope.** Section (2) authorizes application to the Commission for modification of or exemption from the rules for unusual hardship. Section (4) authorizes the Commission to alter and amend its rules as necessary to meet exceptional conditions.

Section (2) was not on the list submitted to the JAPC in 1997. Staff believes, however, that this was an oversight because the language of (2) is substantially the same as other provisions being repealed, and the law it implements does not provide any greater authority. In addition, section 120.542, Florida Statutes, provides the procedure and basis for obtaining a waiver or variance.

**Rule 25-30.436(6), General Information Required in an Application for Rate Increase (Minimum Filing Requirements).** Provides that the Commission may grant a waiver to filing specific data required by the rule upon a showing that production of the data would be impractical or impose an excessive economic burden upon the applicant.

**Rule 25-30.450, Burden of Proof and Audit Provisions.** The last sentence of this rule provides that utilities may request a waiver by submitting a written statement setting forth the reason, in detail, why a waiver should be granted.

**Rule 25-30.455(11), Staff Assistance in Rate Cases.** Provides that a petitioner may request a waiver of any of the factors listed in subsection (8), which provides the factors to be considered in recommending whether to grant or deny a petition for staff assistance in a rate application.

**Rule 25-30.456(11), Staff Assistance in Alternative Rate Setting.** Provides that an applicant may request a waiver of any of the factors set out in subsection (8), which provides the factors to be considered in recommending whether to grant or deny a petition for staff assistance in a rate application. In addition, section (15) is amended to add a reference to the uniform rule that has superseded the applicable part of Rule 25-22.036.

**Rules 25-30.570(2), Imputation of Contributions-in-Aid-of-Construction.** Provides for a waiver from the requirement in (1) that Contributions-in-Aid-of-Construction (CIAC) be imputed when the amount of CIAC has not been recorded in the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC. A waiver is authorized for unusual hardship or unreasonable difficulty and it is shown that it is not in the best interests of the customers of the utility.

**Rule 25-30.580(2), Guidelines for Designing Service Availability Policy.** Provides for a waiver of the requirement in (1) that a utility's CIAC should not exceed 75 percent of the total original cost, and that the minimum should not be less than a certain amount.

**Rule Development Workshop:**

A rule development workshop was held on June 23, 1998. Florida Power and Light (FPL) disagreed that repeal is necessarily

required by the new rulemaking standard in section 120.536, Florida Statutes. FPL also disagreed that section 120.542 requires all requests for variances and waivers to comply with the provisions of that statute.

Staff believes that although the Commission has authority to enumerate specific instances in which a rule does not apply, it does not have the authority for the identified general rules that allow rule waivers or variances and that provide a different procedure or standards than are authorized by section 120.542, Florida Statutes. Any authority for such general waiver or variance provisions has been superseded by the Legislature's enactment of section 120.542, the specific statute authorizing waivers and variances and providing the procedures for requesting a waiver, and the standards to be applied by an agency in deciding whether to grant such a request.

Staff agrees with FPL that the Legislature intended to encourage flexibility in the application of rules, however, the discretion the Commission has to do this is now constrained by the requirements of section 120.542 and the uniform rules adopted thereunder. FPL asserts that section 120.542 contains no requirement that all requests for rule variances and waivers must comply with that statute, however, Staff notes the statute specifically states that:

Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section.

(Emphasis supplied.) In addition, in a law review article on the APA's new variance and waiver provisions, the authors noted that:

It is not within the authority of an agency to substantively supplement or refine by rule the statutory standards for issuing a waiver or variance.

Donna E. Blanton and Robert M. Rhodes, Loosening the Chains that Bind: The New Variance and Waiver Provision in Florida's Administrative Procedure Act, 24 Fla. St. U. L. Rev. 353, 369 (1997).

FPL also points out that this statute provides that it "is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute." The difficulty with this contention is that there are no specific variance or waiver provisions in the laws implemented by the rules recommended for

DOCKET NO. 980569-PU  
DATE: DECEMBER 3, 1998

repeal; thus, waivers and variances must comply with section 120.542.

**Statement of Estimated Regulatory Cost:**

Because there should be no significant additional costs or negative impacts on utilities, small businesses, small cities, or small counties, a Statement of Estimated Regulatory Costs (SERC) was not prepared.

**ISSUE 2:** If no requests for hearing or comments are filed, should the rule as proposed be filed for adoption with the Secretary of State and the docket be closed?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** Unless comments or requests for hearing are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

**Attachments:**

Rules  
SERC Memorandum

CTM/

12

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed amendments to Rules	)	DOCKET NO. 980569-PU
25-4.002, F.A.C., Application and Scope;	)	DATE: AUGUST 5, 1999
25-4.141, F.A.C., Minimum Filing	)	
Requirements for Rate of Return	)	
Regulated Local Exchange Companies;	)	
Commission Designee; 25-4.202, F.A.C.,	)	
Construction and Waivers; 25-24.455,	)	
F.A.C., Scope and Waiver; 25-6.002,	)	
F.A.C., Application and Scope; 25-6.043,	)	
F.A.C., Investor-Owned Electric Utility	)	
Minimum Filing Requirements; Commission	)	
Designee; 25-6.0438, F.A.C., Non-Firm	)	
Electric Service - Terms and Conditions;	)	
25-17.087, F.A.C., Interconnection and	)	
Standards; 25-30.010, F.A.C., Rules for	)	
General Application; 25-30.011, F.A.C.,	)	
Application and Scope; 25-30.436, F.A.C.,)	)	
General Information and Instructions	)	
Required of Class A and B Water and	)	
Wastewater Utilities in an Application	)	
for Rate Increase; 25-30.450, F.A.C.,	)	
Burden of Proof and Audit Provisions;	)	
25-30.455, F.A.C., Staff Assistance in	)	
Rate Cases; 25-30.456, F.A.C., Staff	)	
Assistance in Alternative Rate Setting;	)	
25-30.570, F.A.C., Imputation of	)	
Contributions-in-Aid-of-Construction;	)	
and 25-30.580, F.A.C., Guidelines	)	
for Designing Service Availability Policy)	)	
	)	

REBUTTAL COMMENTS

Pursuant to the directions in Order No. PSC-99-0968-PCO-PU, Florida Power & Light Company ("FPL"), hereby submits this its rebuttal comments to those of the Commission Staff.

Since the initiation of this docket more than a year ago, FPL has participated because of its perception that the proposed rule

revisions would have serious adverse impact on FPL's substantial interests. It was asserted that various provisions of the Florida Administrative Procedure Act, (Chapter 120, Florida Statutes), compelled the revision to the Commission rules as proposed in this docket. FPL has sought to obtain the basis for that conclusion since the beginning of this docket.

In its Pre-filed Comments filed in this docket on June 24, 1999, FPL pointed out the lack of rationale for the action proposed in this docket and that it was not clear whether Staff reliance is on Section 120.542 and 120.536, Florida Statutes; that the "explanations" for the revisions to date are bare assertions; and that the lack of explanations put FPL in the untenable position of attempting to guess at the Staff's rationale and then "prove a negative".

In the Staff responsive comments filed on July 15, 1999, no attempt was made to provide the rationale for the rule revisions in this docket. Instead, the Staff restates the previous bare assertions and then takes FPL to task for failing to prove the negative.

1. Staff's first basis of criticism is to refer to and quote several provisions of Section 120.542 as well as an excerpt from a Law Review article and state that "FPL has not addressed [these] authorities." This is wrong. In this regard, FPL incorporates all of its prior comments and filings in this docket. Moreover, the

"above authorities" as identified by the Staff are not authorities and do not support the action recommended. For instance, referring to subsection 120.542(1), the Staff asserts that no mention is made (in Section 120.542) of variance and waiver provisions of rules. Clearly, the Staff wishes to draw an inference and to do so without saying so (apparently that the failure to mention rules means that they have been repealed) but has failed to state the basis for that inference. Having failed to establish any support for its own position the Staff then takes FPL to task for failing to deal adequately with the bare assertions Staff presented.

Next, reference is made to an excerpt from a Law Review article. Contrary to the Staff's assertion FPL has addressed that Law Review article (And, it provided it to Staff). Moreover, Staff's reliance on the sentence from the Law Review article simply "begs the question". The point however is that the question to be decided whether the variance and waiver provisions of the Commission's rules have been eliminated not whether, assuming that to be the case, the Commission can ignore the statutory standards in applying the statute.

2. Staff also, and obliquely injects a new argument by asserting:

"...nor has [it] explained why the Commission would have authority to maintain its rule waiver provisions even though it has not been granted an exception to the Uniform Rule[s] of Procedure on waivers and variances."

Staff then attempts to establish an inconsistency by FPL by incorrectly referring to the position advocated by FPL in Docket No. 981890-EU.

FPL does not understand the adversarial approach. However, FPL must provide some response here. First in Docket No. 981890-EU, FPL pointed out that Section 120.54(5)(a) 1. expressly provides:

...the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

In addition, Rule 28-108.001, Petition for Exception to Uniform Rules of Procedure (a part of the Uniform Rules) directs each agency head to petition for an exception "...for all of the agency's procedural rules which fall within the subject matter or scope of any of the individual Uniform Rules of Procedure...". The Commission did not seek this exception for the rules at issue here. Certainly, it cannot be suggested that the Commission consciously failed to comply. Of course not. The Commission did not identify the rules at issue here as being within the "subject matter or scope" of the Uniform Rules. Instead, the rules at issue here were expressly identified by the Commission as exceeding its rulemaking authority under Section 120.536(2), Florida Statutes, and as noticed by the Commission this Docket is to implement the requirements Section 120.536.



It is thus not clear whether the Staff is seeking to go beyond the notice in this Docket and characterize the Commission's actions differently than the Commission has.

3. Staff also asserts that FPL has yet to provide a meaningful response to the substance of the stated rationale (set forth in its December 3, 1998 recommendation). Once again, FPL respectfully suggests that this "rationale" is not enlightening.

As set out in Section 120.536(2), the Commission was required to initiate rulemaking by January 1, 1999 to repeal rules "exceeding the rulemaking authority permitted by this Section for which authorizing legislation does not exist." FPL has simply been attempting to obtain the rationale for the assertion that the rule at issue fit in this category. FPL does not believe that repeated assertions alone satisfy that request.

Respectfully submitted,

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Suite 601  
215 South Monroe Street  
Tallahassee, FL 32301  
Attorneys for Florida Power  
& Light Company

By:   
Matthew M. Childs, P.A.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 980569-PU**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Rebuttal Comments has been furnished by Hand Delivery (\*), or U.S. Mail this 5<sup>th</sup> day of August, 1999, to the following:

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By: 

Matthew M. Childs, P.A.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Amendments to Rule )  
 25-4.002, F.A.C., Application and Scope; )  
 25-4.141, Minimum Filing Requirements )  
 for Rate of Return Regulated Local )  
 Exchange Companies; Commission )  
 Designee; 25-4.202, Construction and )  
 Waivers; 25-24.455, Scope and Waiver; )  
 25-6.002, Application and Scope; 25-6.043, )  
 Investor-Owned Electric Utility Minimum )  
 Filing Requirements; Commission Designee; )  
 25-6.0438, Non-Firm Electric Service – Terms )  
 and Conditions; 25-17.087, Interconnection )  
 and Standards; 25-30.010, Rules for General )  
 Application; 25-30.011, Application and Scope; )  
 25-30.436, General Information and Instructions )  
 Required of Class A and B Water and Wastewater )  
 Utilities in an Application for Rate Increase; )  
 25-30.450, Burden of Proof and Audit Provisions; )  
 25-30.455, Staff Assistance in Rate Cases; )  
 25-30.456, Staff Assistance in Alternative Rate )  
 Setting; 25-30.570, Imputation of Contributions- )  
 In-Aid-of-Construction; and 25-30.580, )  
 Guidelines for Designing Service Availability. )  
 \_\_\_\_\_ )

DOCKET NO. 980569-PU  
 FILED: August 5, 1999

**TAMPA ELECTRIC COMPANY'S  
REBUTTAL COMMENTS TO STAFF'S WRITTEN COMMENTS**

Tampa Electric Company ("Tampa Electric" or "the company"), offers the following comments in rebuttal to the written comments filed in this proceeding by the Commission's Staff:

1. Staff initially said it has found no specific variance or waiver provisions in the laws implemented by the rules recommended for appeal in this docket. Tampa Electric submits that Staff's approach fails to recognize the dynamic nature of the Commission's regulation of

investor-owned electric utilities and the need for flexibility that regulation requires. The Legislature clearly recognized this when it authorized the Commission "to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter [Chapter 366, Florida Statutes]." Section 366.05(1), Florida Statutes.

2. The waiver provisions referred to in Tampa Electric's written comments are necessary and appropriate for the administration of Chapter 366, Florida Statutes. Without the flexibility to grant waivers as provided in these rules (separate and apart from the procedures outlined in Section 120.542, Florida Statutes), the Commission would be severely hampered in its ability to carry out its duties under Chapter 366, Florida Statutes. As the Commission well knows, the procedures outlined in Section 120.542, Florida Statutes, are lengthy, time-consuming and, if followed, could grind Commission proceedings to a halt. Given the time frames required for the Commission to act on various regulatory issues, following the procedures in Section 120.542, Florida Statutes, could make the availability of any meaningful waiver or variance unattainable.

3. The Staff's demand for a specific statutory reference to waiver or variance is overly strict. Many of the Commission's rules implement statutes that are broadly worded. Terms such as "just and reasonable," "fair and reasonable," and the like appear throughout Chapter 366, Florida Statutes. Given the technical nature of regulation the Commission has adopted numerous detailed rules that implement these general statements of authority. The Commission's ability to include in its technical requirements provisions for waivers of those requirements, likewise, flows from the Commission's authority to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of Chapter 366.

4. The minimum filing requirement rule, Rule 25-6.043, Florida Administrative Code, itself recognizes the dynamic nature of rate regulation. This rule in its present form calls for the evolution of MFR preparation by directing utilities to follow guidelines prescribed not only in the Commission's relevant rules but also in the company's last rate case "or in a more recent rate case involving a comparable utility" (emphasis supplied). The underscored language recognizes that some judgment must be involved in deciding what should be included or excluded from MFRs based on changing circumstances.

5. If a specific statutory reference to waivers and variances is required, as suggested by Staff, then many other provisions in the Commission's rules lack the same statutory specificity. For example, there is no specific statutory reference to minimum filing requirements, although the Commission has deemed it reasonably necessary and appropriate to adopt a rule prescribing minimum filing requirements.

6. The Commission's MFR rule purports to implement, among other provisions, Section 366.04(2)(f), Florida Statutes, which authorizes the Commission:

(f) to prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

Note the use of the terms "as may be reasonably available" and "as necessary." When viewed in the context of a rate proceeding, the Legislature's selection of these terms suggests its intent for the Commission to at least have the opportunity to make a determination of what is "reasonably available" and what is "necessary" each time a new proceeding is initiated. This dovetails perfectly with the MFR rule provision allowing the Commission to grant a waiver of a MFR requirement upon proper showing by the utility that "production of the data would be impractical or impose an excessive economic burden upon the company." Rule 25-6.043, Fla. Admin. Code.

7. What data is “reasonably available” to one utility may not be reasonably available to another utility. What data the Commission may deem “necessary” in a particular rate proceeding involving one particular set of issues may not be necessary in a different proceeding where those issues aren’t involved or are stipulated from the outset. To require the Commission and the parties to pursue the procedures set forth in Section 120.542 rather than the existing waiver provision in the Commission’s MFR rule would be time consuming, unnecessarily costly, and totally unworkable.

8. As the Legislature recognized in its 1996 adoption of Section 120.542, Florida Statutes:

Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. . . .

Tampa Electric submits that Staff’s approach requiring specific statutory references to the Commission’s ability to include waiver provisions in its rules would lead to unreasonable, unfair and unintended results. The Commission’s statutory authority under Chapter 366.05(1) to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of Chapter 366 and the Commission’s authority under Section 366.04(2)(f) to require the submission of data “as may be reasonably available” or “as necessary” can be read together to authorize the continued inclusion of waiver provisions in the Commission’s rules notwithstanding the enactment of Section 120.542, Florida Statutes.


9. Finally, Tampa Electric submits that if the waiver provisions of the subject rules are repealed, such action will significantly affect the substance of the rules in which the waiver provisions appear. These waiver provisions are an important part of the rules. Repealing them

would convert the rules from flexible and reasonable into the category of inflexible and potentially unreasonable.

WHEREFORE, Tampa Electric Company submits the foregoing rebuttal comments in response to the written comments filed by Staff in this proceeding.

DATED this 5<sup>th</sup> day of August 1999.

Respectfully submitted,

  
\_\_\_\_\_  
LEE L. WILLIS  
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Ausley & McMullen  
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Comments, filed on behalf of Tampa Electric Company, has been forwarded by U. S. Mail or hand delivery(\*) on this 5<sup>th</sup> day of August 1999 to the following:

Ms. Christiana Moore\*  
Staff Counsel  
Division of Appeals  
Florida Public Service Commission  
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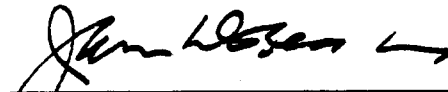
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RE: DOCKET NO. 980569-PU/Proposed amendments  
to F.A.C. Rules 25-6.002(2) and (4); 25-  
6.043(3); 25-6.0438(9); and 25-17.087(2)  
and (3)

Dear Ms. Helton:

Please accept these written comments on behalf of Florida Power & Light Company (FPL) as supplemental to our comments at the workshop on June 23, 1998, concerning Docket 980569-PU. This docket includes the proposed repeal of rules 25-6.002(2) and (4); 25-6.043(3); 25-6.0438(9); and 25-17.087(2) and (3), Florida Administrative Code.

FPL's primary concern with the proposed repeal of these provisions is the sharp limitation on the Commission's ability to exercise discretion in the substantive areas addressed by these rules. Although the Commission staff appears convinced that the 1996 amendments to the Administrative Procedure Act (APA) require this result, we do not believe that interpretation is necessarily correct.

The stated reason for proposing the repeal of all of the above-referenced rules is as follows:

The purpose of these rule amendments is to repeal the waiver and variance provisions for which the Commission no longer has rule authority under the more restrictive rulemaking standard in Section 120.536, Florida Statutes. Moreover, since 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes.

24 Fla. Admin. Weekly 2773, May 22, 1998.

FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET  
NO. 980569-PU EXHIBIT NO. 2  
COMPANY/ Company  
DATE: 8-12-98

Mary Anne Helton, Esq.  
Page 2-  
July 14, 1998

The first stated reason appears to assume that the APA's new rulemaking standard in section 120.536, Florida Statutes,<sup>1</sup> requires the repeal of the rules because they now lack adequate statutory authority. We recognize that the APA's new rulemaking standard is widely viewed as requiring a closer link between administrative rules and statutes the rules purport to implement. However, the scope of the new standard is far from clear, and a major case is currently pending at the First District Court of Appeal that is expected to provide guidance concerning the new standard. This case, St. Johns River Water Management District v. Consolidated-Tomoka Land Co. (Case No. 97-02996) ("Consolidated Tomoka") was orally argued before the court on May 27, 1998.

The importance of Consolidated Tomoka is illustrated by the parties that submitted briefs: the Governor, the Legislature, the Attorney General, and five state agencies, as well as numerous private organizations. Recognizing the significance of its interpretation of the new standard, the court granted 45 minutes per side for oral argument, three times as long as is usually permitted. No opinion has been released by the court. The court's opinion in Consolidated Tomoka may provide additional information about the new rulemaking standard and how strictly it will be interpreted. Thus, the Commission may want to consider this opinion before embarking on the repeal of rules that staff assumes do not satisfy the new standard.<sup>2</sup>

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<sup>1</sup> The language from section 120.536(1) also appears in section 120.52(8), Florida Statutes.

<sup>2</sup> FPL recognizes that the Commission submitted all of the rules at issue in this docket to the Legislature in September 1997 as among the rules the Commission believes do not meet the new rulemaking standard in section 120.536, Florida Statutes. FPL also recognizes that section 120.536(2) states that "[b]y January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist." Nonetheless, a more thorough analysis of the new standard's requirements, in light of the expected opinion in Consolidated Tomoka, may be prudent.

Mary Anne Helton, Esq.  
Page 3-  
July 14, 1998

Furthermore, in considering the relevance of the APA amendments to the Commission, it may be appropriate to review case law from the Florida Supreme Court concerning the Commission's broad and comprehensive regulatory authority. E.g., Florida Power Corp. v. Seminole County, 579 So. 2d 105 (Fla. 1991); City Gas Co. v. Peoples Gas System, Inc., 182 So. 2d 429 (Fla. 1965). The court specifically recognized in General Telephone Co. of Florida v. Florida Public Service Commission, 446 So. 2d 1063 (Fla. 1984), that the PSC has authority to exercise discretion in application of its rules. The general concept of inherent agency discretion also is expressed in Booker Creek Preservation, Inc. v. Southwest Florida Water Management District, 534 So. 2d 419 (Fla. 5th DCA 1988) (what agency in its discretion chooses to require, it may also choose not to require).

The staff appears to have assumed that the new rulemaking standard in the APA wipes out the concepts expressed in these cases. This assumption apparently has been made simply because the statutes the above-referenced rules purport to implement do not expressly authorize the Commission to adopt rules that provide for variances and waivers. Such a strict interpretation of the new rulemaking standard, if carried to its logical conclusion, could call into question the validity of numerous Commission rules, including many that were not submitted to the Legislature last year under the requirements of section 120.536(2), Florida Statutes. Given that the First District Court of Appeal is expected to soon elaborate on the parameters of the new APA rulemaking standard, FPL respectfully suggests that it may be appropriate to wait until the Consolidated Tomoka opinion is released before repealing rules as violative of that standard.

The second stated reason for the proposed repeal of the rules is that "[S]ince 1996, all requests for rule variances and waivers must comply with Section 120.542, Florida Statutes." Section 120.542 is the new provision in the APA authorizing agencies to grant variances and waivers to their own rules. We have been unable to find any requirement in section 120.542 or elsewhere stating that all requests for rule variances and waivers must comply with that statute. Indeed, section 120.542 itself provides that "[t]his section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute." § 120.542(1), Fla. Stat. If

Mary Anne Helton, Esq.  
Page 4-  
July 14, 1998

statutes authorizing the Commission to regulate in substantive areas also authorize the Commission to exercise discretion during the course of that regulation, then those statutes could be read as providing the statutory authority for variance and waiver provisions in Commission rules. Thus, the Commission then could rely on its own procedural requirements in considering requests for variances and waivers, rather than the generic provisions in section 120.542. In short, repeal of the rules would be unnecessary.

The idea that section 120.542 requires the Commission to repeal its own rules relating to variances and waivers is inconsistent with the intent and purpose of section 120.542. The statute was enacted to increase, not reduce, agencies' ability to exercise discretion. This concept is included in the statute itself, which provides:

Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.

§ 120.542(1), Fla. Stat.

A review of the legislative history of section 120.542 also makes clear that the statute was enacted because many agencies -- obviously not including the Commission -- did not believe they had the authority to waive or vary their own rules. Section 120.542 was drafted by the Governor's Administrative Procedure Act Review Commission, which recommended numerous changes in the APA to the Legislature in 1996. The premise behind the Commission's recommendation of the variance and waiver provision is as follows:

More flexibility is needed in the administrative process, particularly in the ways agencies apply their rules to the public. Agencies must write their rules specific enough to be meaningful, yet general enough to fit a variety of situations. The broader the regulatory task, the greater the likelihood that unforeseen situations will arise, thus creating the need for "adjustments" to rules of general applicability. Consequently, to achieve an

Mary Anne Helton, Esq.  
Page 5-  
July 14, 1998

appropriate result for the public and private citizens, agencies often need flexibility to vary from literal requirements of rules. Procedural mechanisms are needed to consider individual requests for variances and exceptions to administrative rules of general applicability.

Final Report of the Governor's Administrative Procedure Act Review Commission, at 9 (February 20, 1996).

Thus, the Commission and the Legislature were seeking to give agencies the tools to flexibly apply their rules to regulated industries and persons. Nowhere does the legislative history of section 120.542 suggest that enactment of the statute would require agencies already providing such flexibility through agency rules to repeal the rules and use the new APA provision. Rather, the statute and its history make clear that section 120.542 was intended to be supplemental to other flexibility provisions already in existence. FPL respectfully suggests that the enactment of section 120.542 does not require the above-referenced rules to be repealed.

Thank you for providing FPL with the opportunity to provide these comments on the proposed amendments to rules 25-6.002; 25-6.043; 25-6.0438; and 25-17.087. As previously noted, FPL believes the proposed amendments will limit the Commission's ability to effectively regulate in the substantive areas covered by these rules.

Very truly yours,



Matthew M. Childs, P.A.

MMC:ml

cc: Blanca S. Bayó, Director, Division of Records & Reporting

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June 12, 1998

Ms. Blanca S. Bayó, Director  
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FPSC - Administration

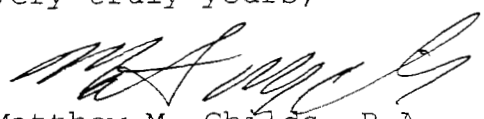
RE: DOCKET NO. 980569-PU

Dear Ms. Bayó:

In accordance with the notice published by the Commission on May 22, 1998 in the Florida Administrative Weekly, Florida Power & Light Company hereby requests that a rule development workshop be held on the subject rule amendment proposal at the time and place set forth in the notice.

Florida Power & Light Company is a public utility, as defined in Section 366.02, F.S. and as such, is subject to the Commission's regulatory authority in general and Rules 25-6.002, 25-6.043, 25-6.0438, 25-17.087, in particular. FPL believes that the requested workshop would be beneficial in assisting FPL and other affected utilities to understand the rationale for these proposed amendments and to have the opportunity to discuss its concerns.

Very truly yours,

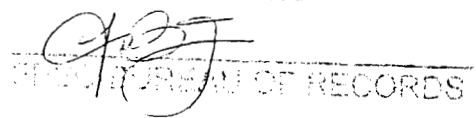


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cc: Mary Anne Helton, Esq., Division of Appeals, FPSC

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