

STEEL  
HECTOR  
& DAVIS

REGISTERED LIMITED LIABILITY PARTNERSHIP

Steel Hector & Davis LLP  
215 South Monroe, Suite 601  
Tallahassee, Florida 32301-1804  
850.222.2300  
850.222.8410 Fax  
www.steelhector.com

ORIGINAL

Matthew M. Childs, P.A.

September 2, 1999

Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, FL 32399

RECORDS AND  
REPORTING

09 SEP -2 PM 1:42

RECEIVED-FPSC

RE: DOCKET NO. 980569-PU

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Post-Hearing Comments in the above referenced docket.

Also enclosed is a formatted double sided high density 3.5 inch diskette containing the Rebuttal Comments of Florida Power & Light Company.

Very truly yours,

Matthew M. Childs, P.A.

MMC:ml

cc: All Parties of Record

- AFA \_\_\_\_\_
- APP Mailhot
- CAF Pluse
- CMU Simmons
- CTR \_\_\_\_\_
- EAG 2
- LEG \_\_\_\_\_
- MAS 5
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- SEC 1
- WAW Love
- OTH \_\_\_\_\_

RECEIVED & FILED  
Max  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

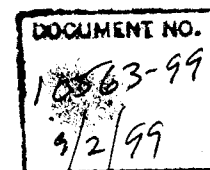
10563 SEP-28

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: SEPTEMBER 2, 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 )  
\_\_\_\_\_ )

POST-HEARING COMMENTS

Florida Power & Light Company ("FPL"), pursuant to applicable rules and the May 13, 1999 Order establishing procedure in this Docket, hereby submits its Post-Hearing Comments concerning those rules identified herein which are applicable to electric utilities.



## I. Introduction

The rules at issue herein, are at issue because of the adoption by the Legislature in 1996 of Section 120.536, F.S. After stating in subsection 1 of Section 120.536 that agencies may only adopt rules that "implement, interpret, or make specific the particular powers and duties granted by the enabling statute.", subsection 2 directs each agency to:

"...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."

(Emphasis added). This subsection 2 then directs "each agency" to repeal each rule or portion thereof identified as exceeding the rulemaking authority permitted by this Section. That is what this Commission has done. By letter dated September 25, 1997 addressed to Senator Charles Williams, Chairman of the Joint Administrative Procedure Committee, (a copy of which is attached hereto), the Commission identified portions of various rules which it said was the result of its applying the criteria set out in Section 120.536(1). It was then stated in this transmittal:

"Many of the identified rules contain waiver provisions for which there is no specific authority in the Commission's enabling statutes."

Also a part of the 1996 amendment to Chapter 120, Florida Statutes, was the adoption of Section 120.542. Staff, in this docket, has also taken the position that there can be no variance and waiver provisions in rules of the Florida Public Service Commission because Section 120.542 displaces any independent Commission authority. (See Hearing Transcript at pp. 7,8,40,42, etc.).

## II. FPL's Comments On The Justification For The Rule Repeals

FPL understands and appreciates that the rules being addressed in this docket were previously identified to the Legislature because of this Commission's understanding as to the scope of its authority with respect to portions of various rules. However, FPL believes that the repeal of a rule on the basis of a legal conclusion must provide adequate support for the legal conclusion. Stated differently, it is not appropriate in FPL's view to rely upon the ministerial act of placing various rule provisions on a list as justification for the Commission's action in a rulemaking proceeding.

## III. Section 120.536 - Lack of Sufficient Authority

FPL incorporates its prior comments in this Docket on this point but wishes to note that the Commission clearly maintained at one time and over time that it had the necessary legal authority to adopt the rule provisions at issue in this docket. That is, it clearly believed that its actions were lawful and it had sufficient

legal authority to act. Section 120.536 raises the question as to whether the Commission's authority was sufficient in general with respect to rules it has adopted. FPL takes issue with the staff's offered conclusion that the Commission lacks authority to grant waivers (because there is no separate statute saying expressly that the Commission can grant such waivers) but retains authority for other substantive rules where there is a similar lack of express authority. Moreover, there has been absolutely no identification of the underlying statutory authority for the remaining portions of the rules and absolutely no explanation of how that statutory authority is sufficient for the retained portions of the rule but deficient for the waiver provisions.

Of necessity, the Commission action on the basis of a lack of statutory authority has to raise the question of the sufficiency of the authority for the remaining portions of the rules.

At the Hearing in this Docket, the question was raised as to whether the more recent revisions to the Administrative Procedure Act in response to the decision of the First District Court of Appeal in the so-called Consolidated Tomoka case had implications for the sufficiency of the statutory authority for the Commission to act. FPL pointed out that the 1999 amendments to the APA were not operative to the action in this Docket however it did observe that it might be appropriate for the Commission to consider re-reviewing all of its rule provisions with an eye to the sufficiency of the statutory authorization and noted that this might be an appropriate way to deal with the questions in this Docket.

FPL also points out that the action proposed in this Docket would in effect constitute rulemaking by re-adopting the other substantive provisions of the rule without the waiver provision. When the rules were initially adopted, they had waiver provisions. To remove those waiver provisions is not merely the act of removing a technical provision of the rule. Instead, the entire character of the rule has changed.

#### IV. Section 120.542

The totality of the legal argument presented in support of reliance on Section 120.542 is that one sentence in Section 120.542(1) reads:

"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."

At the Hearing, the Staff took the position that although Section 120.542 does not say that an agency cannot have a separate waiver provision in their rules it does say that agencies are authorized to grant waivers consistent with the statute and the Uniform Rules of Procedure (TR 48) thus displacing such separate waiver provisions. In presenting this view, no explanation was provided as to how this interpretation could be reconciled with this legislative intent that the Section 120.542 procedures be remedial. Moreover, the Staff maintained that its interpretation of Section 120.542 does not require application of any rule of statutory

construction. (TR 51). Therefore, the staff's contention becomes inscrutable. In addition, the Staff sought to rely upon a Law Review article when questioned as to its conclusion that 120.542 represented the "exclusive way" for there to be a waiver or variance "unless there's separate statutory authority" for the proposition:

"that variances and waivers can be sought, either under the general authority in the APA which is 120.542, and there they call it general, or under the authority of specific substantive statutes."

(TR 41 and 42). Staff however did not respond in a meaningful way when it was pointed out that one of the authors of the very Law Review article relied upon and who was executive director of the Governor's Administrative Procedure Review Commission (TR. 51) testified at the Commission's Workshop addressing these particular rule amendments as follows:

"The whole purpose of coming up with Section 120.542 was to give agencies more discretion, not less, and to increase the opportunity for the exercise of the discretion. Many agencies, not the Public Service Commission because you did have these rules, but many agencies felt for whatever reason they had no authority, that is, to grant a waiver. Their rules were their rules and no matter how absurd their result we are going to apply those rules."

(TR 50 and 51). Thus, it appears that there is absolutely no support provided for the severe construction presented by the Commission staff and, they have not recognized various factors that reflect that their interpretation is not correct. One final area

that was not addressed by the Staff in its reliance on Section 120.542 is how, assuming that the Commission's waiver provisions were valid prior to the amendment of the Administrative Procedure Act, now become invalid. It is clear that Section 120.542 addresses and provides a procedure for variance and waivers. The statute however does not say that it overrules and displaces any other legal or valid procedure that may be in existence.

Finally, the construction offered by FPL does not, as was suggested at the Hearing in this Docket propose a conflict with either Section 120.542 or the implementing provisions of the Uniform Rules. To the contrary, FPL's construction is that the procedures contemplated by Section 120.542 and the Uniform Rules do apply to the Public Service Commission if and to the extent a variance or waiver is sought by someone pursuant to their provisions. On the other hand, if a variance or waiver is sought pursuant to the provision Commission rule then those rules would apply to the action requested.

## V. Conclusion

FPL submits that the rationale advanced for the repeal of the rules in this Docket (those as to which FPL is participating) raise question as to the authority of the Commission to adopt the remaining portions of the rules as to which those variance and waiver provisions apply. In addition, FPL submits that the approach proposed to be taken which is to eliminate long standing



waiver and variance provisions from Commission rules is a harsh action which serves to re-establish and re-institute rules quite different from those that were adopted by the Commission initially. Finally, FPL submits that reliance upon Section 120.542 has not been adequately justified. Instead, the explanation for that reliance appears to conflict with the clear remedial intent of the legislature in adopting that Section in the first place.

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.

JULIA L. JOHNSON  
CHAIRMAN



CAPITAL CIRCLE OFFICE CENTER  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(850) 413-6040

## Public Service Commission

September 25, 1997

Senator Charles Williams, Chairman  
Joint Administrative Procedures Committee  
Room 250, Senate Office Building  
Tallahassee, Florida 32399

Dear Senator Williams:

Enclosed for the Committee's consideration is the Public Service Commission's list of rules exceeding statutory authority identified pursuant to Section 120.536(2), Florida Statutes. The list is the result of the Commission's review of its rules adopted prior to October 1, 1996, applying the criteria set out in section 120.536(1).

Many of the identified rules contain waiver provisions for which there is no specific authority in the Commission's enabling statutes. No additional legislation is necessary to provide authority for these rules, however, since that authority is now contained in section 120.542, Florida Statutes. Moreover, specific rules implementing 120.542 are now contained in the new Uniform Rules of Procedure.

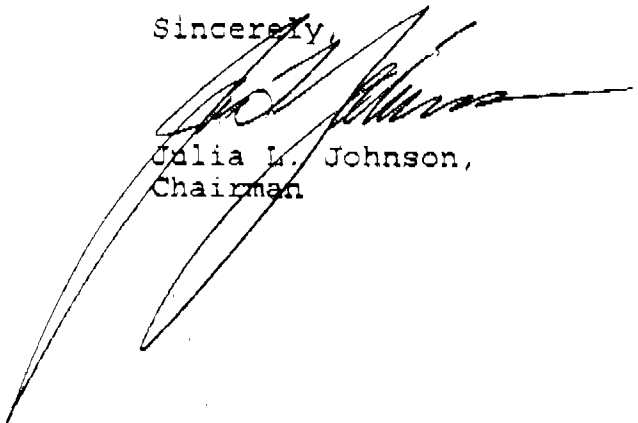
There are several other rules on the Commission's list for which it does intend to seek legislative authority. These are water and wastewater rules 25-30.034(1)(e); 25-30.035(6); 25-30.36(3)(d); 25-30.039; 25-30.433(10); 25.30.436(4)(I), Florida Administrative Code, and the Commission's purchasing rules, Chapter 25-25, Florida Administrative Code. These rules are identified on the attached list as numbers 11, 12, 13, 14, 15, 16 and 23 respectively. A brief explanation of the specific deficiency is contained in the comments to the rule. The Commission believes that these rules contain important regulatory requirements, and we are in the process of formulating legislative proposals to provide the necessary authority. We will transmit our proposals to the Committee as soon as they are available.

Florida Power & Light Company  
Docket No. 980569-PU  
Post-Hearing Comments  
Attachment 1  
Page 1 of 10

Senator Charles Williams, Chairman  
September 25, 1997  
Page -2-

Please contact me if I can be of further assistance to the  
Committee in this matter.

Sincerely,



Julia L. Johnson,  
Chairman

DES  
Enclosure

cc: Commissioners  
Talbott  
Vandiver  
Bane  
Directors  
Miller

Florida Power & Light Company  
Docket No. 980569-PU  
Post-Hearing Comments  
Attachment 1  
Page 2 of 10

6-22-1999 11:37AM FROM

**RULES OF THE FLORIDA PUBLIC SERVICE COMMISSION IDENTIFIED AS  
LACKING STATUTORY AUTHORITY PURSUANT TO SECTION 120.536(2),  
FLORIDA STATUTES**

**CHAPTER 25-4, F.A.C.**

**1. Rule 25-4.002(2), Application and Scope.**

**Summary:** Provides that 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.

**Law Implemented:** Sections 364.01 and 364.337, F.S. Section 364.01, F.S., does not contain a provision for exception to Commission rules. Section 364.337, F.S., provides for waiver of rules regulating alternative local exchange telecommunications companies and interexchange telecommunications companies only. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**2. 25-4.141(4), Minimum Filing Requirements for Rate-of-Return Regulated Local Exchange Companies; Commission Designees.**

**Summary:** Provides a waiver of MFR requirements 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 of the company.

**Law Implemented:** Section 364.05(4), F.S. This section does not contain a provision for exception to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**3. 25-4.202(3), Construction and Waivers.**

**Summary:** Provides that when compliance of 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.

**Law Implemented:** Section 364.052, F.S. This section does not contain a provision for exception to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform

Florida Power & Light Company  
Docket No. 980569-PU  
Post-Hearing Comments  
Attachment 1  
Page 3 of 10

rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**4. 25-24.555, Scope and Waiver.**

**Summary:** Subsection (4) allows a STS company to petition for waiver of any provisions of Par XII relating to STS providers. The waiver will be granted to the extent that the Commission determines that it is in the public interest to do so.

**Law Implemented:** Sections 364.01 and 364.339, F.S. These sections do not contain a provision for exception to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**CHAPTER 25-6, F.A.C.**

**5. Rule 25-6.002(2) and (4), Application and Scope.**

**Summary:** Subsections (2) and (4) provide that the Commission will modify or exempt rule requirements in cases of unusual hardship or difficulty or under exceptional conditions.

**Law Implemented:** Section 366.05(1), F.S. This statute does not contain a provision for exceptions to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**6. Rule 25-6.043(3), Investor-Owned Electric Utility Minimum Filing Requirements; Commission Designee.** Subsection (3) states 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.

**Laws Implemented:** Sections 366.04(2)(f), 366.06, and 366.071, F.S. These statutes do not contain a provision for exceptions to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**7. Rule 25-6.0438(9), Non-Firm Electric Service - Terms and Conditions.** Subsection (9) provides the Commission may waive any provision of the rule after notice to all affected customers.

**Law Implemented:** Sections 366.03, 366.04, 366.041, and 366.05, F.S. None of these statutes contain a provision for exceptions to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**CHAPTER 25-17, F.A.C.**

**8. Rule 25-17.087(2)&(3), Interconnection and Standards.**  
Subsections (2) and (3) allow a utility to seek waiver of the rule's requirements.

**Law Implemented:** Sections 366.051, 266.04(2)(c) and (5), F.S. These statutes do not contain a provision for exceptions to Commission rules. Effective October 1, 1996, Section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**CHAPTER 25-30, F.A.C.**

**9. Rule 25-30.010, Rules for General Application.**

**Summary:** Provides that the water and wastewater utility rules are subject to such exceptions as the Commission may consider reasonable in individual cases.

**Law Implemented:** Section 367.121, F.S. This statute does not contain a provision for exceptions to Commission rules. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**10. Rule 25-30.011(4), Application and Scope.**

**Summary:** Subsection (4) authorizes the Commission to modify the application of its rules as necessary to meet exceptional conditions.

**Law Implemented:** Section 367.121, F.S. This statute does not contain a provision for exceptions to Commission rules. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**11. Rule 25-30.034(1)(e), Application for Certificate of Authorization for Existing Utility Currently Charging for Service.**

**Summary:** Requires an existing utility that is applying for an initial certificate to provide evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement that provides for the continued use of the land such as a 99-year lease. It also provides that the Commission may consider a written easement or other cost-effective alternative.

**Law Implemented:** The rule cites section 367.045 as the law implemented. Subsection 367.045(1)(b) requires a utility to provide all information required by rule or order of the Commission which information may include a detailed inquiry into the ability of the applicant to provide service. Although it is logical to require a utility to own or have the legal right to long-term use of the land upon which its facilities are located to ensure its ability to continue to provide service, the statute does not authorize the Commission to require this.

**12. Rule 25-30.035(6), Application for Grandfather Certificate.**

**Summary:** Rule 25-30.035(6) requires an applicant for a "grandfather" certificate under section 367.171, F.S., to provide evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement that provides for the continued use of the land such as a 99-year lease. It also provides that the Commission may consider a written easement or other cost-effective alternative.

**Law Implemented:** Subsection 367.171(2) provides that a utility shall make application for a certificate by filing with the Commission a map of its system; a description of the area served, and a tariff listing all rates and charges and such other financial information as may be required by the Commission. It does not itself require proof of ownership or a right to long-term use of the land or authorize the Commission to require it.

**13. Rule 25-30.036(3)(d) Application for Amendment to Certificate of Authorization to Extend or Delete Service.**

**Summary:** Rule 25-30.036(3)(d) requires a certificated water or wastewater utility that proposes to extend its service area to provide evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement that provides for the continued use of the land such as a 99-year lease. It also provides that the Commission may consider a written easement or other cost-effective alternative.

**Law Implemented:** Section 367.045, F.S., requires the utility to provide all information required by rule or order of the

Commission, which information may include a detailed inquiry into the ability or inability of the applicant to provide service. Although it is logical to require a utility to own or have the legal right to long-term use of the land upon which its facilities are located to insure its ability to continue to provide service, the statute does not require proof of ownership or a right to long-term use of the land.

**14. Rule 25-30.039, Application for Name Change.**

**Summary:** This rule requires a certificated utility that changes its name, with no change in the ownership or control of the utility or its assets, to apply for approval of a change in name, and to provide notice to its customers.

**Law Implemented:** Section 367.121. Although the Commission has broad authority under section 367.121 to require utilities to file information and reports, this statute does not appear to authorize the Commission to require a utility to seek approval of a name change. Section 367.071, F.S., requires Commission approval of a sale, assignment, or transfer of a certificate, but not of a name change only.

**15. Rule 25-30.433(10), Rate Case Proceedings.**

**Summary:** Rule 25-30.433(10) provides that a utility is required to own the land upon which the treatment facilities are located, or possess the right to continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.

**Law Implemented:** Section 367.081 provides the procedure for fixing and changing rates. While it is logical to require a utility to own or have the legal right to long-term use of the land upon which it is recovering a return on an investment, section 367.081 does not appear to authorize imposing such a requirement.

**16. Rule 25-30.436(4)(I), General Information and Instructions Required of Class A and B Water and Wastewater Utilities in an Application for Rate Increase.**

**Summary:** Rule 25-30.436(4)(I) requires that for any land recorded on the utility's books since rate base was last established, the utility shall file copies of the documents that demonstrate that the utility owns the land upon which the treatment facilities are located, or that provides for the right to continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-



effective alternative.

**Law Implemented:** Section 367.081, F.S., provides the procedure for fixing and changing rates. While it is logical to require a utility to own or have the legal right to long-term use of the land upon which it is recovering a return on an investment, section 367.081 does not appear to authorize imposing such a requirement. The rule also cites to section 367.121, F.S. Although the Commission has broad authority under section 367.121 to require utilities to file information and reports, which would include documents showing who owns the land, the statute does not appear to authorize the Commission to require documents that show that the utility owns it.

**17. Rule 25-30.436(6), General Information Required in an Application for Rate Increase (Minimum Filing Requirements).**

**Summary:** Subsection (6) 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.

**Law Implemented:** Section 367.081, Rates, Procedures for Fixing and Changing, and section 367.121, Powers of the Commission. Neither of these statutes contain a provision for a waiver. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**18. Rule 25-30.450, Burden of Proof and Audit Provisions.**

**Summary:** 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.

**Law Implemented:** Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**19. Rule 25-30.455(1), Staff Assistance in Rate Cases.**

**Summary:** Provides that a petitioner may request a waiver of any of the guidelines 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.

**Law Implemented:** Section 367.0814, which authorizes the Commission to establish rules for certain utilities to request

Florida Power & Light Company  
Docket No. 980569-PU  
Post-Hearing Comments  
Attachment 1  
Page 8 of 10

staff assistance in changing rates, does not authorize a waiver of the rules. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**20. Rule 25-30.456(11), Staff Assistance in Alternative Rate Setting.**

**Summary:** Provides that an applicant may request a waiver of any of the guidelines 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.

**Law Implemented:** Section 367.0814 which authorizes the Commission to establish rules for certain utilities to request staff assistance in changing rates, does not authorize a waiver of its rules. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**21. Rules 25-30.570(2), Imputation of Contributions-in-Aid-of-Construction.**

**Summary:** 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.

**Law Implemented:** Section 367.101 authorizes the Commission by rule to set standards for and levels of service availability charges and conditions. It does not authorize a waiver of the rules. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**22. Rule 25-30.580(2), Guidelines for Designing Service Availability Policy.**

**Summary:** 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.

**Law Implemented:** Section 367.101 authorizes the Commission by rule to set standards for and levels of service availability

charges and conditions. It does not authorize a waiver of the rules. Effective October 1, 1996, section 120.542, F.S., and the uniform rules adopted thereunder govern an agency's grant of a variance or waiver of its rules.

**CHAPTER 25-25, F.A.C.**

**23. Rule Chapter 25-25, General Purchasing Procedures**

**Summary:** This chapter is comprised of 27 rules governing the Commission's procedures for purchases of commodities and services.

**Law Implemented:** The rules, first adopted in 1983, cite subsection 120.53(1), Florida Statutes, as the law implemented and specific authority. Prior to October 1, 1996, subsection 120.53(1) provided that each agency shall adopt rules of practice setting forth the nature and requirements of all formal and informal procedures. Because Chapter 287, Florida Statutes, governing procurement of commodities and contractual services and authorizing the Division of Purchasing of the Department of Management Services to adopt such rules, does not apply to agencies of the legislative branch such as the Commission, the Commission adopted its own rules.

Effective October 1, 1996, agencies no longer have the authority to adopt rules of practice or procedure. Rather, they are required to comply with uniform rules of procedure. §120.54(5), Fla. Stat. (Supp. 1996). Although the uniform rules include rules on bid protests, they do not include rules on purchasing, as those rules are provided for by Chapter 287, Florida Statutes.

revrules.mrd

CERTIFICATE OF SERVICE  
DOCKET NO. 980569-PU

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Post-Hearing Comments has been furnished by Hand Delivery (\*), or U.S. Mail this 2nd day of September, 1999, to the following:

Christiana T. Moore, Esq.\*  
Division of Appeals  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 301  
Tallahassee, FL 32399-0850

Mr. William G. Walker, III  
Florida Power & Light Co.  
215 South Monroe Street #810  
Tallahassee, FL 32301

Lee L. Willis, Esq.  
James D. Beasley, Esq.  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, FL 32302

Richard A. Zambo, Esq.  
598 S.W. Hidden River Ave.  
Palm City, FL 34990

By: 

Matthew M. Childs, P.A.