

ORIGINAL

DOCKET NO. 980569-PU

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

RECEIVED-FPSC

00 JAN 10 PM 1:07

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REPORTING

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

2000 JAN 11 PM 3:44

FILED

I do hereby certify:

/x/ (1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

/x/ (2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

/x/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

/ (a) Are filed not more than 90 days after the notice; or

/ (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

/ (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

/x/ (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

/ (e) Are filed more than 90 days after the notice, but

WFA _____
WPP _____
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WNU _____
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within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

 / (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

 / (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

 / (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

 / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-4.141
25-4.202

Under the provision of subparagraph 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department

of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records & Reporting

Number of Pages Certified

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1 25-4.141 Minimum Filing Requirements for Rate-of-Return Regulated
2 Local Exchange Companies; Commission Designee.

3 (1) General Filing Instructions.

4 (a) - (c) No change.

5 (d) Each page of the filing shall be numbered and
6 11-inch paper. Each witness' prefiled testimony shall be
7 spaced with 25 numbered lines on numbered pages. and Exhibits
8 shall be on numbered pages and all exhibits shall be attached to
9 the proponent's testimony and ~~shall also comply with Rule 25-~~
10 ~~22.048, Evidence.~~ Each set of the filing, consisting of the
11 petition and its supporting attachments, testimony, and exhibits,
12 shall be bound in order of appearance in this rule in standard
13 three ring binders, with each schedule indexed and tabbed.

14 (e) - (I) No change.

15 (2) - (3) No change.

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

21 Specific Authority 350.127(2), FS.

22 Law Implemented 364.05(4), FS.

23 History--New 5-4-81, Amended 7-29-85, 6-11-86, 2-3-88, 3-10-96, _____

24 _____.

25 25-4.202 Construction and Waivers

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1 (1) - (2) No change.

2 ~~(3) When compliance with a Commission imposed requirement~~
3 ~~would result in unreasonable hardship on a small local exchange~~
4 ~~company, would not be cost effective, or would not be in the~~
5 ~~public interest, the small local exchange company may apply for a~~
6 ~~temporary rule waiver pursuant to Rule 25 4.002(2), petition the~~
7 ~~Commission to amend or repeal its rule pursuant to Rule 25-~~
8 ~~22.012, or seek similar relief as appropriate.~~

9 Specific Authority 350.127(2), FS.

10 Law Implemented 364.052, FS.

11 History--New 3-10-96, Amended_____.

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Rules 25-4.141, 25-4.202
Docket No. 980569-PU

SUMMARY OF RULE

Repeals the waiver provisions and substitutes the text of a cross-referenced rule for the number of the rule because the rule has been repealed.

SUMMARY OF HEARINGS ON THE RULE

The Commission conducted a rulemaking hearing on August 12, 1999, at the request of Florida Power and Light (FPL) and Tampa Electric Company (TECO). FPL and TECO are investor owned electric companies regulated by the Commission. FPL and TECO urged the Commission not to repeal the various waiver provisions of the rules in this docket. They asserted that the Commission has the authority to maintain its own waiver rules and to follow them as an alternative to the APA's provisions. In addition, FPL asserted that the uniform rules of procedure only apply to waivers filed under the authority of section 120.542, F.S., and not to requests for waivers that are filed pursuant to the Commission's rules providing for waivers.

The Commission determined that several of the rule provisions were unnecessary because they are not substantially different than the standards in section 120.542 or because the rule simply states that a person "may request a waiver." The Commission determined that if the waiver and variance provisions of section 120.542, Florida Statutes, do not provide adequate flexibility, the parties should file a petition to initiate rulemaking and submit specific

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language providing exceptions or standards for granting waivers or variances to specific rules. The Commission decided that since neither party identified a specific provision of its rules that may result in a problem absent the existing rule waiver provisions, nor suggested any changes to the remaining provisions of the rules, and since the provisions of section 120.542 for waivers and variances had been followed by the Commission and the parties for the past three years, the rule provisions in this docket should be repealed.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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. The Commission approved the list of rules for which it lacked specific statutory authority and on September 25, 1997, submitted it 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.

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TALLAHASSEE, FLORIDA

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I do hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

(2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

(a) Are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but

within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

 / (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

 / (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

 / (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

 / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

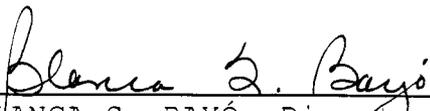
Rule Nos.

25-6.002
25-6.043
25-6.0438

Under the provision of subparagraph 120.54(3)(e)6., F.S., the

rules take effect 20 days from the date filed with the Department
of State or a later date as set out below:

Effective: _____
(month) (day) (year)



BIANCA S. BAYÓ, Director
Division of Records & Reporting

Number of Pages Certified

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1 25-6.002 Application and Scope.

2 (1) No change.

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

10 (2)~~(3)~~ No change.

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

18 (3)~~(5)~~ No change.

19 Specific Authority 366.05(1), FS.

20 Law Implemented 366.05(1), FS.

21 History--New 7-29-69, formerly 25-6.02, Amended_____.

22 25-6.043 Investor-Owned Electric Utility Minimum Filing
23 Requirements; Commission Designee.

24 (1) - (2) No change.

25 ~~(3) Waiver of Minimum Filing Requirements. The Commission~~

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1 ~~may grant a waiver with respect to specific data required by this~~
2 ~~rule upon a showing that production of the data would be~~
3 ~~impractical or impose an excessive economic burden upon the~~
4 ~~company.~~

5 Specific Authority 366.05(1), (2), 366.06(3), FS.

6 Law Implemented 366.06(1), (2), (3), (4), 366.04(2)(f), 366.071, FS.

7 History--New 5-27-81, formerly 25-6.43, Amended 7-5-90, _____.

8 **25-6.0438 Non-Firm Electric Service - Terms and Conditions.**

9 (1) - (8) No change.

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

13 Specific Authority 350.127(2), 366.05(1), FS.

14 Law Implemented 366.03, 366.04, 366.041, 366.05, FS.

15 History--New 8-21-86, Amended 9-4-91, _____.

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Rules 25-6.002, 25-6.043, 25-6.0438
Docket No. 980569-PU

SUMMARY OF RULE

Repeals the rule waiver provisions and amends rule 30.456(15) to add a reference to the uniform rule that superseded the applicable part of the referenced rule.

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SUMMARY OF HEARINGS ON THE RULE

The Commission conducted a rulemaking hearing on August 12, 1999, at the request of Florida Power and Light (FPL) and Tampa Electric Company (TECO). FPL and TECO are investor owned electric companies regulated by the Commission. FPL and TECO urged the Commission not to repeal the various waiver provisions of the rules in this docket. They asserted that the Commission has the authority to maintain its own waiver rules and to follow them as an alternative to the APA's provisions. In addition, FPL asserted that the uniform rules of procedure only apply to waivers filed under the authority of section 120.542, F.S., and not to requests for waivers that are filed pursuant to the Commission's rules providing for waivers.

The Commission determined that several of the rule provisions were unnecessary because they are not substantially different than the standards in section 120.542 or because the rule simply states that a person "may request a waiver." The Commission determined that if the waiver and variance provisions of section 120.542, Florida Statutes, do not provide adequate flexibility, the parties

should file a petition to initiate rulemaking and submit specific language providing exceptions or standards for granting waivers or variances to specific rules. The Commission decided that since neither party identified a specific provision of the rules that may result in a problem absent the existing rule waiver provisions, nor suggested any changes to the remaining provisions of the rules, and since the provisions of section 120.542 for waivers and variances had been followed by the Commission and the parties for the past three years, the rule provisions in this docket should be repealed.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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. The Commission approved the list of rules for which it lacked specific statutory authority and on September 25, 1997, submitted it 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.

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(2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

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(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

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 / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-17.087

Under the provision of subparagraph 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department

of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records & Reporting

Number of Pages Certified

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1 25-17.087 Interconnection and Standards.

2 (1) No change.

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

7 (2)~~(3)~~ Where a utility refuses to interconnect with a
8 qualifying facility or attempts to impose unreasonable standards
9 pursuant to subsection ~~(2)~~ of this rule, the qualifying facility
10 may petition the Commission for relief. The utility shall have
11 the burden of demonstrating to the Commission why interconnection
12 with the qualifying facility should not be required or that the
13 standards the utility seeks to impose on the qualifying facility
14 pursuant to subsection ~~(2)~~ are reasonable.

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

16 Specific Authority 366.051, 350.127(2), FS.

17 Law Implemented 366.04(2)(c)&(5), 366.051, FS.

18 History--New 9-4-83, formerly 25-17.87, Amended 10-25-90, 5-6-93,
19 _____.

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TALLAHASSEE, FLORIDA

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SUMMARY OF RULE

Repeals the waiver provisions.

SUMMARY OF HEARINGS ON THE RULE

The Commission conducted a rulemaking hearing on August 11, 1999, at the request of Florida Power and Light (FPL) and Tampa Electric Company (TECO). FPL and TECO are investor owned electric companies regulated by the Commission. FPL and TECO urged the Commission not to repeal the various waiver provisions of the rules in this docket. They asserted that the Commission has the authority to maintain its own waiver rules and to follow them as an alternative to the APA's provisions. In addition, FPL asserted that the uniform rules of procedure only apply to waivers filed under the authority of section 120.542, F.S., and not to requests for waivers that are filed pursuant to the Commission's rules providing for waivers.

The Commission determined that several of the rule provisions were unnecessary because they are not substantially different than the standards in section 120.542 or because the rule simply states that a person "may request a waiver." The Commission determined that if the waiver and variance provisions of section 120.542, Florida Statutes, do not provide adequate flexibility, the parties should file a petition to initiate rulemaking and submit specific language providing exceptions or standards for granting waivers or variances to specific rules. The Commission decided that since

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neither party identified a specific provision of its rules that may result in a problem absent the existing rule waiver provisions, nor suggested any changes to the remaining provisions of the rules, and since the provisions of section 120.542 for waivers and variances had been followed by the Commission and the parties for the past three years, the rule provisions in this docket should be repealed.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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. The Commission approved the list of rules for which it lacked specific statutory authority and on September 25, 1997, submitted it 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.

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Rule Nos.

25-24.555

Under the provision of subparagraph 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department

of State or a later date as set out below:

Effective: _____
(month) (day) (year)

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BLANCA S. BAYÓ, Director
Division of Records & Reporting

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TALLAHASSEE, FLORIDA

1 25-24.555 Scope and Waiver.

2 (1) through (3) No change.

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

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

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

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

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

20 Specific Authority 350.127(2) FS.

21 Law Implemented 364.01, 364.339 FS.

22 History--New 1-28-91, Amended 7-29-97, _____.

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SUMMARY OF RULE

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SUMMARY OF HEARINGS ON THE RULE

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neither party identified a specific provision of its rules that may result in a problem absent the existing rule waiver provisions, nor suggested any changes to the remaining provisions of the rules, and since the provisions of section 120.542 for waivers and variances had been followed by the Commission and the parties for the past three years, the rule provisions in this docket should be repealed.

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(e) Are filed more than 90 days after the notice, but

within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

 / (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

 / (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

 / (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

 / (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule Nos.

25-30.010
25-30.011
25-30.436
25-30.450
25-30.455
25-30.456

25-30.570
25-30.580

Under the provision of subparagraph 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



BLANCA S. BAYÓ, Director
Division of Records & Reporting

Number of Pages Certified

(S E A L)

CTM

1 25-30.010 Rules for General Application. The rules hereinafter
2 set forth are for general application and are subject to such
3 changes and modifications, permitted by law, as the Commission
4 from time to time may determine advisable. ~~The rules are subject~~
5 ~~to such exceptions as the Commission may consider just and~~
6 ~~reasonable in individual cases.~~ The rules are supplementary to
7 the Water and Wastewater System Regulatory Law, Chapter 367,
8 Florida Statutes.

9 Specific Authority 367.121, FS.

10 Law Implemented 367.121, FS.

11 History--Amended 2-3-70, 9-12-74, formerly 25-10.01, ~~History~~
12 from 25-10.001 11-9-86, Amended.

13 25-30.011 Application and Scope.

14 (1) No change.

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

22 (2)-(3) No change.

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

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

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

14 (4)~~(6)~~ No change.

15 Specific Authority 367.121, FS.

16 Law Implemented 367.121(1), FS.

17 History--Amended 9-12-74, formerly 25-10.14, Transferred from 25-
18 10.014 and Amended 11-9-86,_____.

19 25-30.436 General Information and Instructions Required of Class
20 A and B Water and Wastewater Utilities in an Application for Rate
21 Increase.

22 (1) through (5) No change.

23 ~~(6) Waiver of MFR Requirements. The Commission may grant a~~
24 ~~waiver with respect to specific data required by this rule upon a~~
25 ~~showing that the production of the data would be impractical or~~

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1 ~~impose an excessive economic burden upon the applicant. All~~
2 ~~requests for waiver of specific portions of the minimum filing~~
3 ~~requirements shall be made as early as practicable.~~

4 (6)-(7) No change.

5 Specific Authority 350.127(2), 367.121, FS.

6 Law Implemented 367.081, 367.083, 367.121, FS.

7 History--New 11-9-86, Amended 6-25-90, 11-30-93, _____.

8 25-30.450 Burden of Proof and Audit Provisions. In each
9 instance, the utility must be able to support any schedule
10 submitted, as well as any adjustments or allocations relied on by
11 the utility. The work sheets, etc. supporting the schedules and
12 data submitted must be organized in a systematic and rational
13 manner so as to enable Commission personnel to verify the
14 schedules in an expedient manner and minimum amount of time. The
15 supporting work sheets, etc., shall list all reference sources
16 necessary to enable Commission personnel to track to original
17 source of entry into the financial and accounting system and, in
18 addition, verify amounts to the appropriate schedules. ~~Utilities~~
19 ~~may request a waiver of specific parts of the above rule from the~~
20 ~~Commission by submitting a written statement setting forth the~~
21 ~~reason, in detail, why the waiver should be granted.~~

22 Specific Authority 367.121, FS.

23 Law Implemented 367.081, FS.

24 History--New 6-10-75, Transferred from 25-10.177 11-9-86, Amended

25 _____.

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1 25-30.455 Staff Assistance in Rate Cases.

2 (1) through (4) No change.

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

6 (a) through (b) No change.

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

11 (6) through (10) No change.

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

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

15 Specific Authority 367.0814, 367.121, FS.

16 Law Implemented 367.0814, FS.

17 History--New 12-8-80, Transferred from 25-10.180 and Amended 11-
18 9-86, 8-26-91, 11-30-93, _____.

19 25-30.456 Staff Assistance in Alternative Rate Setting.

20 (1) through (4) No change.

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

25 (a) through (b) No change.

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

5 (6) through (10) No change.

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

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

9 (14) ~~(15)~~ A substantially affected person may file a petition
10 to protest the Commission's PAA Order regarding a staff assisted
11 alternative rate setting application within 21 days of issuance
12 of the Notice of Proposed Agency Action as set forth in Rule 28
13 106.201 ~~25-22.036~~, F.A.C.

14 (16) through (20) renumbered (15) through (19) No change.
15 Specific Authority 367.0814, 367.121, FS.
16 Law Implemented 367.0814, FS.
17 History--New 11-30-93, Amended.

18 25-30.570 Imputation of Contributions-in-Aid-of-Construction.

19 ~~(1)~~ No change.

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

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1 Specific Authority 367.121(1), 367.101, FS.

2 Law Implemented 367.101, FS.

3 History--New 6-14-83, formerly 25-30.57, Amended_____.

4 25-30.580 Guidelines for Designing Service Availability Policy.

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

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

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

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

15 Specific Authority 367.121(1), 367.101, FS.

16 Law Implemented 367.101, FS.

17 History--New 6-14-83, formerly 25-30.58, Amended_____.

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Rules 25-30.010, 25-30.011, 25-
30.436, 25-30.450, 25-30.455, 25-
30.456, 25-30.570, 25-30.580
Docket No. 980569-PU

SUMMARY OF RULE

Repeals the waiver provisions.

SUMMARY OF HEARINGS ON THE RULE

The Commission conducted a rulemaking hearing on August 12, 1999, at the request of Florida Power and Light (FPL) and Tampa Electric Company (TECO). FPL and TECO are investor owned electric companies regulated by the Commission. FPL and TECO urged the Commission not to repeal the various waiver provisions of the rules in this docket. They asserted that the Commission has the authority to maintain its own waiver rules and to follow them as an alternative to the APA's provisions. In addition, FPL asserted that the uniform rules of procedure only apply to waivers filed under the authority of section 120.542, F.S., and not to requests for waivers that are filed pursuant to the Commission's rules providing for waivers.

The Commission determined that several of the rule provisions were unnecessary because they are not substantially different than the standards in section 120.542 or because the rule simply states that a person "may request a waiver." The Commission determined that if the waiver and variance provisions of section 120.542, Florida Statutes, do not provide adequate flexibility, the parties should file a petition to initiate rulemaking and submit specific language providing exceptions or standards for granting waivers or

variances to specific rules. The Commission decided that since neither party identified a specific provision of its rules that may result in a problem absent the existing rule waiver provisions, nor suggested any changes to the remaining provisions of the rules, and since the provisions of section 120.542 for waivers and variances had been followed by the Commission and the parties for the past three years, the rule provisions in this docket should be repealed.

FACTS AND CIRCUMSTANCES JUSTIFYING THE 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. The Commission approved the list of rules for which it lacked specific statutory authority and on September 25, 1997, submitted it 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.

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