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COMMISSION

August 26, 2002

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

VIA HAND DELIVERY

020920-EI

Re: Application of Florida Power & Light Company's Petition for a Waiver of Certain Requirements of Rule 25-6.0437, Florida Administrative Code, and for Approval of its 2002 Load Research Sampling Plan

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Florida Power & Light Company ("FPL") is the original and fifteen copies of the FPL's Petition for Waiver of Rule 25-6.0437, Florida Administrative Code, and Approval of FPL's 2002 Load Research Sampling Plan.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman, Esq.

KAH/rl

Enclosures

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

08995 AUG 26 2002

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application of Florida Power & Light)
Company for a Waiver of Certain)
Requirements of Rule 25-6.0437, Florida)
Administrative Code, and for Approval)
of its 2002-Load Research Sampling Plan)
_____)

Docket No. 020920-EI

Filed: August 26, 2002

**FLORIDA POWER & LIGHT COMPANY'S
PETITION FOR WAIVER OF CERTAIN REQUIREMENTS OF
RULE 25-6.0437, FLORIDA ADMINISTRATIVE CODE, AND
FOR APPROVAL OF ITS 2002 LOAD RESEARCH SAMPLING PLAN**

Pursuant to Section 120.542, Florida Statutes (2001) and Rules 28-104.002 and 25-6.0437(3), Florida Administrative Code, Florida Power & Light Company ("FPL") hereby petitions the Florida Public Service Commission ("Commission") for a waiver of: (1) certain requirements of Rule 25-6.0437(3), Florida Administrative Code, as they apply to FPL's General Service Non-Demand ["GS(T)-1"]¹ rate class; and (2) those portions of Rule 25-6.0437(6) and (7) contemplating the replacement of load research samples every two years. Pursuant to this Petition, FPL requests the same waivers, approved by the Commission on numerous occasions in the past, authorizing the use of a $\pm 15\%$ accuracy criterion at the 90% confidence level for estimating the GS(T)-1 rate class' winter peak demand and the continued use of a three-year cycle for the replacement of load research samples. In addition, FPL requests approval of its Load Research Sampling Plan as filed on August 26, 2002, for the GS(T)-1, General Service Demand ["GSD(T)-1"]², General Service Large Demand

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

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

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08995 AUG 26 02

FPSC-COMMISSION CLERK

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

In support of this Petition, FPL states as follows:

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

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174
(305) 552-3244 (office)
(305) 552-3247 (fax)

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

W. G. Walker, III
Vice President, Regulatory Affairs
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, Florida 32301-1859
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A. BACKGROUND

3. Subsections (1), (6) and (7) of Rule 25-6.0437 require each investor-owned electric utility in Florida which had gross annual retail sales of 500 GWH or more in 1983 to: (a) submit a

but less than 500 kilowatts.

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

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

current, revised sampling plan not less than every two years after such utility's initial sampling plan has been approved by the Commission; and (b) perform a complete load research study in accordance with the Rule's specifications not less often than every two years after December 31, 1985, and submit to the Commission the results of each study within 120 days of the study's completion. FPL submitted its most current Sampling Plan on August 26, 2002. In that transmittal (at page 3), FPL indicated its intention to apply for a waiver of the $\pm 10\%$ relative accuracy at the 90% confidence level, mandated by Rule 25-6.0437(3), as it would pertain to FPL's GS(T)-1 Rate Class for FPL's winter peak demand. The GS(T)-1 Rate Class sample size in FPL's August 26, 2002 filing was based upon a $\pm 15\%$ relative accuracy with relation to FPL's winter coincident peak statistics. In the same transmittal (at page 3), FPL also indicated its intention to continue the use of a three-year replacement cycle for its load research sampling points for the GS(T)-1, GSD(T)-1, GSLD(T)-1 and RS(T)-1 rate classes, as previously approved by the Commission. See Order Nos. PSC-94-1501-FOF-EI,⁵ PSC-97-0379-FOF-EI,⁶ PSC-98-1573-FOF-EI,⁷ and PSC-00-2433-PAA-EI.⁸

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

⁵See 94 F.P.S.C. 12:85 (1994).

⁶See 97 F.P.S.C. 4:109 (1997).

⁷See 98 F.P.S.C. 11:408 (1998).

⁸See 00 F.P.S.C. 12:276 (2000), consummated by Order No. PSC-01-0133-CO-EI.

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

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

6. FPL's Load Research Sampling Plan filed on August 26, 2002, satisfies the sampling plan design requirement identified in paragraph 3 above for all rate classes specified in paragraph 4 above except the GS(T)-1 rate class. The Load Research Sampling Plan is designed to provide an estimate of the GS(T)-1 rate class' winter peak within ± 15% at the 90% confidence level. Accuracy changes have been utilized in FPL's 1986, 1988, 1990, 1992, 1994, 1996 , 1998 and 2000 Sampling Plans; and the Commission has approved similar applications of FPL for waivers submitted in conjunction with these eight previous Sampling Plans. The Load Research Sampling Plan filed by FPL on August 26, 2002, is designed to otherwise comply with the sampling-related requirements of Rule 25-6.0437.

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

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

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

(c) During 2001, a 2.80% accuracy was achieved for the GS(T)-1 rate class' twelve-month coincident peak average, which is also used for cost-of-service studies. (See Table contained in FPL's April 2002 filing of its load research study results).

(d) The GS(T)-1 rate class represents 6.60% of FPL's kWh for the four sampled rate classes; however, a sample designed to achieve a 10% winter peak relative accuracy for the GS(T)-1 rate class would require 51.4% of the total samples for the same four sampled rate classes.

(e) A GS(T)-1 rate class sample size which would satisfy the Rule's relative accuracy criterion of $\pm 10\%$ for FPL's winter peak would require 294 additional recording meters, resulting in approximately \$65,000 of additional meter installation and removal costs and an increase in on-going metering expenses of approximately \$217,000 over the planned three-year life of the sample. The additional capital cost to purchase the necessary meters would be approximately \$146,000. These expenses are not cost-justified when one considers the factors enumerated in sub-paragraphs (7)(a), (b), (c) and (d) above.

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

8. As noted above in paragraph 3 of this Petition, FPL indicated in its August 26, 2002 Sampling Plan that it desires to continue to replace load research samples every three years (rather than every two years) as previously approved by the Commission in Order Nos. PSC-94-1501-FOF-EI , PSC-97-0379-FOF-EI, PSC-98-1573-FOF-EI and PSC-00-2433-PAA-EI. FPL is hereby formally requesting a continued waiver of the two-year turnaround indicated by the Commission in Order No. PSC-94-1501-FOF-EI as contemplated by Rule 25-6.0437(6) and (7) for all components

of utilities' sampling plans and load research studies.

9. FPL is seeking approval of its continued use of the three-year replacement cycle for the same reasons as those justifying the Commission's approval of the same requests in Order Nos. PSC-94-1501-FOF-EI, PSC-97-0379-FOF-EI, PSC-98-1573-FOF-EI and PSC-00-2433-PAA-EI, specifically:

(a) FPL Cost Savings - A significant operation and maintenance cost associated with FPL's load research sample points is the cost of installation and removal of recording meters (SSDRs). A three-year cycle would spread out FPL's workload by eliminating an estimated 829 installation/removal activities every six years; and approximately \$183,000 would be saved over that time period. This amount only includes on-going installation and removal expenses and does not consider any additional capital costs which may be required.

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

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

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

(e) Reasonableness of a Three-year Usage Period - Because FPL conducts continuous, on-going sampling, it is a reasonable alternative to continue the usage of sample points for a three-

year period after first installation of an approved sampling plan. FPL will continue to submit sampling plans based on current load research data every two years as required by Rule 25-6.0437(3), (6) and (7).

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

10. Section 120.542(2), Florida Statutes (2001) provides:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

**The Requested Waivers Serve the Purposes
of the Underlying Statutes**

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

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

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

We have approved requests for waiver of the rule with respect to the precision of the GS winter peak hour for FPL's last several filed sampling plans, most recently for FPL's sampling plan used to collect data for calendar year 1999 (See Order No. PSC-98-1573-FOF-EI in Docket No. 981064-EI). In granting FPL's waiver for the 1999 calendar year, and in previous years, we noted that a waiver should be granted when the peak hour for the class in question does not occur within the season for which the waiver is requested, and when the Commission is not currently using, for any utility, a cost of service methodology that allocates production plant costs based on a single peak hour.

The first condition ensures that the estimate of the class peak hour used to develop an allocation factor for distribution plant meets the precision requirement of the rule. The second condition insures that the allocation factors developed for production plant used in rate cases and in the recovery clauses meet the accuracy requirements of the rule.

Order No. PSC-00-2433-PAA-EI issued December 19, 2000, at 3.

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

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

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

15. As demonstrated above, the failure to grant the requested waivers would create a substantial hardship for FPL and its ratepayers by requiring FPL to incur significant additional expenses - - roughly \$428,000 of additional costs if the waiver of the $\pm 10\%$ accuracy criterion for FPL's GS(T)-1 winter peak is not granted and approximately \$183,000 in additional costs if the Commission requires FPL to discontinue the prior approved use of a three-year replacement cycle for load research samples.⁹

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

⁹See Order No. PSC-00-2433-PAA-EI issued December 19, 2000 (finding of "substantial hardship" sufficient to satisfy requirements of Section 120.542(2), Florida Statutes, under similar circumstances involving substantial increased costs if the requested waivers were not granted).

unintended results,"¹⁰ the requested waivers should be granted.¹¹ Granting the waivers requested herein also is consistent with the Legislature's intent in enacting Section 120.542, Florida Statutes (2001), to grant agencies broad discretion and flexibility to forego rigid adherence to rules when a more cost-effective, sensible approach to accomplishing specific statutory goals is available.¹²

WHEREFORE, FPL respectfully requests the Commission:

- A. To grant a waiver of the above-specified requirements of Rule 25-6.0437, Florida Administrative Code;
- B. Authorize FPL's use of a $\pm 15\%$ accuracy criterion at the 90% confidence level to estimate the GS(T)-1 rate class' winter peak in FPL's 2002 Load Research Sampling Plan;
- C. Authorize FPL's continued use of a three-year cycle for the replacement of load research samples; and

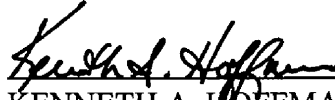
¹⁰See Fla. Stat. §120.542(1) (2001).

¹¹In Order No. PSC-98-1211-FOF-EI issued September 14, 1998, the Commission granted FPL's Petition for Waiver of Rule 25-17.015(1), Florida Administrative Code, based on the Commission's determinations that the term "substantial hardship" under Section 120.542(2), Florida Statutes, may include the loss of substantial benefits for the petitioning utility and its ratepayers if a waiver request is denied and circumstances where a failure to grant a requested waiver of a Commission rule leads to an unreasonable, unfair or unintended result.

¹²See Loosening the Chains that Bind: The New Variance and Waiver Provisions in Florida's Administrative Procedure Act, Donna E. Blanton and Robert M. Rhodes, Vol. 24, Florida State University Law Review, 353 at 371 (Winter 1997, No. 2).

D. Approve FPL's Load Research Sampling Plan as filed on August 26, 2002.

Respectfully submitted,



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-- and --

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Florida Power & Light Company
Senior Attorney
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Attorneys for Florida Power & Light Company

FPL\loadwaiver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application of Florida Power & Light)
Company for a Waiver of Certain)
Requirements of Rule 25-6.0437, Florida)
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Docket No. 020920-EI

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**FLORIDA POWER & LIGHT COMPANY'S
PETITION FOR WAIVER OF CERTAIN REQUIREMENTS OF
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FOR APPROVAL OF ITS 2002 LOAD RESEARCH SAMPLING PLAN**

Pursuant to Section 120.542, Florida Statutes (2001) and Rules 28-104.002 and 25-6.0437(3), Florida Administrative Code, Florida Power & Light Company ("FPL") hereby petitions the Florida Public Service Commission ("Commission") for a waiver of: (1) certain requirements of Rule 25-6.0437(3), Florida Administrative Code, as they apply to FPL's General Service Non-Demand ["GS(T)-1"]¹ rate class; and (2) those portions of Rule 25-6.0437(6) and (7) contemplating the replacement of load research samples every two years. Pursuant to this Petition, FPL requests the same waivers, approved by the Commission on numerous occasions in the past, authorizing the use of a $\pm 15\%$ accuracy criterion at the 90% confidence level for estimating the GS(T)-1 rate class' winter peak demand and the continued use of a three-year cycle for the replacement of load research samples. In addition, FPL requests approval of its Load Research Sampling Plan as filed on August 26, 2002, for the GS(T)-1, General Service Demand ["GSD(T)-1"]², General Service Large Demand

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

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DOCUMENT NUMBER 10000

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FPSC-COMMISSION CLERK

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

In support of this Petition, FPL states as follows:

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

Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174
(305) 552-3244 (office)
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2. All pleadings, notices, staff recommendations, orders or other documents required to be served, filed by any party or issued by the Commission in this proceeding should be forwarded to the following individuals:

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A. BACKGROUND

3. Subsections (1), (6) and (7) of Rule 25-6.0437 require each investor-owned electric utility in Florida which had gross annual retail sales of 500 GWH or more in 1983 to: (a) submit a

but less than 500 kilowatts.

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

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

current, revised sampling plan not less than every two years after such utility's initial sampling plan has been approved by the Commission; and (b) perform a complete load research study in accordance with the Rule's specifications not less often than every two years after December 31, 1985, and submit to the Commission the results of each study within 120 days of the study's completion. FPL submitted its most current Sampling Plan on August 26, 2002. In that transmittal (at page 3), FPL indicated its intention to apply for a waiver of the $\pm 10\%$ relative accuracy at the 90% confidence level, mandated by Rule 25-6.0437(3), as it would pertain to FPL's GS(T)-1 Rate Class for FPL's winter peak demand. The GS(T)-1 Rate Class sample size in FPL's August 26, 2002 filing was based upon a $\pm 15\%$ relative accuracy with relation to FPL's winter coincident peak statistics. In the same transmittal (at page 3), FPL also indicated its intention to continue the use of a three-year replacement cycle for its load research sampling points for the GS(T)-1, GSD(T)-1, GSLD(T)-1 and RS(T)-1 rate classes, as previously approved by the Commission. See Order Nos. PSC-94-1501-FOF-EI,⁵ PSC-97-0379-FOF-EI,⁶ PSC-98-1573-FOF-EI,⁷ and PSC-00-2433-PAA-EI.⁸

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

⁵See 94 F.P.S.C. 12:85 (1994).

⁶See 97 F.P.S.C. 4:109 (1997).

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

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

6. FPL's Load Research Sampling Plan filed on August 26, 2002, satisfies the sampling plan design requirement identified in paragraph 3 above for all rate classes specified in paragraph 4 above except the GS(T)-1 rate class. The Load Research Sampling Plan is designed to provide an estimate of the GS(T)-1 rate class' winter peak within ± 15% at the 90% confidence level. Accuracy changes have been utilized in FPL's 1986, 1988, 1990, 1992, 1994, 1996 , 1998 and 2000 Sampling Plans; and the Commission has approved similar applications of FPL for waivers submitted in conjunction with these eight previous Sampling Plans. The Load Research Sampling Plan filed by FPL on August 26, 2002, is designed to otherwise comply with the sampling-related requirements of Rule 25-6.0437.

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

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

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

(c) During 2001, a 2.80% accuracy was achieved for the GS(T)-1 rate class' twelve-month coincident peak average, which is also used for cost-of-service studies. (See Table contained in FPL's April 2002 filing of its load research study results).

(d) The GS(T)-1 rate class represents 6.60% of FPL's kWh for the four sampled rate classes; however, a sample designed to achieve a 10% winter peak relative accuracy for the GS(T)-1 rate class would require 51.4% of the total samples for the same four sampled rate classes.

(e) A GS(T)-1 rate class sample size which would satisfy the Rule's relative accuracy criterion of $\pm 10\%$ for FPL's winter peak would require 294 additional recording meters, resulting in approximately \$65,000 of additional meter installation and removal costs and an increase in on-going metering expenses of approximately \$217,000 over the planned three-year life of the sample. The additional capital cost to purchase the necessary meters would be approximately \$146,000. These expenses are not cost-justified when one considers the factors enumerated in sub-paragraphs (7)(a), (b), (c) and (d) above.

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

8. As noted above in paragraph 3 of this Petition, FPL indicated in its August 26, 2002 Sampling Plan that it desires to continue to replace load research samples every three years (rather than every two years) as previously approved by the Commission in Order Nos. PSC-94-1501-FOF-EI , PSC-97-0379-FOF-EI, PSC-98-1573-FOF-EI and PSC-00-2433-PAA-EI. FPL is hereby formally requesting a continued waiver of the two-year turnaround indicated by the Commission in Order No. PSC-94-1501-FOF-EI as contemplated by Rule 25-6.0437(6) and (7) for all components

of utilities' sampling plans and load research studies.

9. FPL is seeking approval of its continued use of the three-year replacement cycle for the same reasons as those justifying the Commission's approval of the same requests in Order Nos. PSC-94-1501-FOF-EI, PSC-97-0379-FOF-EI, PSC-98-1573-FOF-EI and PSC-00-2433-PAA-EI, specifically:

(a) FPL Cost Savings - A significant operation and maintenance cost associated with FPL's load research sample points is the cost of installation and removal of recording meters (SSDRs). A three-year cycle would spread out FPL's workload by eliminating an estimated 829 installation/removal activities every six years; and approximately \$183,000 would be saved over that time period. This amount only includes on-going installation and removal expenses and does not consider any additional capital costs which may be required.

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

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

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

(e) Reasonableness of a Three-year Usage Period - Because FPL conducts continuous, on-going sampling, it is a reasonable alternative to continue the usage of sample points for a three-

year period after first installation of an approved sampling plan. FPL will continue to submit sampling plans based on current load research data every two years as required by Rule 25-6.0437(3), (6) and (7).

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

10. Section 120.542(2), Florida Statutes (2001) provides:

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

**The Requested Waivers Serve the Purposes
of the Underlying Statutes**

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

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

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

We have approved requests for waiver of the rule with respect to the precision of the GS winter peak hour for FPL's last several filed sampling plans, most recently for FPL's sampling plan used to collect data for calendar year 1999 (See Order No. PSC-98-1573-FOF-EI in Docket No. 981064-EI). In granting FPL's waiver for the 1999 calendar year, and in previous years, we noted that a waiver should be granted when the peak hour for the class in question does not occur within the season for which the waiver is requested, and when the Commission is not currently using, for any utility, a cost of service methodology that allocates production plant costs based on a single peak hour.

The first condition ensures that the estimate of the class peak hour used to develop an allocation factor for distribution plant meets the precision requirement of the rule. The second condition insures that the allocation factors developed for production plant used in rate cases and in the recovery clauses meet the accuracy requirements of the rule.

Order No. PSC-00-2433-PAA-EI issued December 19, 2000, at 3.

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

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

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

15. As demonstrated above, the failure to grant the requested waivers would create a substantial hardship for FPL and its ratepayers by requiring FPL to incur significant additional expenses - - roughly \$428,000 of additional costs if the waiver of the $\pm 10\%$ accuracy criterion for FPL's GS(T)-1 winter peak is not granted and approximately \$183,000 in additional costs if the Commission requires FPL to discontinue the prior approved use of a three-year replacement cycle for load research samples.⁹

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

⁹See Order No. PSC-00-2433-PAA-EI issued December 19, 2000 (finding of "substantial hardship" sufficient to satisfy requirements of Section 120.542(2), Florida Statutes, under similar circumstances involving substantial increased costs if the requested waivers were not granted).

unintended results,"¹⁰ the requested waivers should be granted.¹¹ Granting the waivers requested herein also is consistent with the Legislature's intent in enacting Section 120.542, Florida Statutes (2001), to grant agencies broad discretion and flexibility to forego rigid adherence to rules when a more cost-effective, sensible approach to accomplishing specific statutory goals is available.¹²

WHEREFORE, FPL respectfully requests the Commission:

- A. To grant a waiver of the above-specified requirements of Rule 25-6.0437, Florida Administrative Code;
- B. Authorize FPL's use of a $\pm 15\%$ accuracy criterion at the 90% confidence level to estimate the GS(T)-1 rate class' winter peak in FPL's 2002 Load Research Sampling Plan;
- C. Authorize FPL's continued use of a three-year cycle for the replacement of load research samples; and

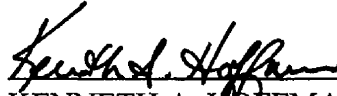
¹⁰See Fla. Stat. §120.542(1) (2001).

¹¹In Order No. PSC-98-1211-FOF-EI issued September 14, 1998, the Commission granted FPL's Petition for Waiver of Rule 25-17.015(1), Florida Administrative Code, based on the Commission's determinations that the term "substantial hardship" under Section 120.542(2), Florida Statutes, may include the loss of substantial benefits for the petitioning utility and its ratepayers if a waiver request is denied and circumstances where a failure to grant a requested waiver of a Commission rule leads to an unreasonable, unfair or unintended result.

¹²See Loosening the Chains that Bind: The New Variance and Waiver Provisions in Florida's Administrative Procedure Act, Donna E. Blanton and Robert M. Rhodes, Vol. 24, Florida State University Law Review, 353 at 371 (Winter 1997, No. 2).

D. Approve FPL's Load Research Sampling Plan as filed on August 26, 2002.

Respectfully submitted,



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FPLloadwaiver