

State of Florida



Public Service Commission

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: December 7, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Harris) *DES*
Division of Economic Regulation (Hewitt, Kummer, Lester, Lewis, McNulty, Slemkewicz) *JS* *PL* *W* *R-T* *CRB* *TJS*

RE: Docket No. 060508-EI – Proposed adoption of new rule regarding nuclear power plant cost recovery.

AGENDA: 12/19/06 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

RULE STATUS: Proposal Should Not Be Deferred

SPECIAL INSTRUCTIONS: 6 Month Statutory Deadline

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060508.RCM.DOC

Case Background

Section 366.93, Florida Statutes, which became law on June 19, 2006, codified the Florida Legislature's desire to promote fuel diversity and electric supply reliability by encouraging utility investment in nuclear power plants. Section 366.93(2) states "[w]ithin 6 months after the enactment of this act, the commission (sic) shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant." This recommendation brings specific rule language to the Commission for consideration.

The statute requires the development of alternative cost recovery mechanisms that will allow recovery of prudently incurred siting, design, licensing, and construction costs. One alternative recovery mechanism outlined specifically in the statute includes recovery through the Capacity Cost Recovery Clause (CCRC) of nuclear plant pre-construction costs and carrying costs on the utility's projected construction cost balance associated with the nuclear power plant.

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The statute, however, encourages the establishment of other alternative cost recovery mechanisms that are designed to promote investment in nuclear power plants. The statute also provides that a utility shall be allowed to increase its base rate charges after the nuclear power plant is placed in commercial service.

Staff is mindful of the Florida legislature's instruction that alternative mechanisms for the recovery of costs associated with nuclear power plant siting, design, licensing and construction are to be established through this rulemaking. Staff believes the Commission's current procedures to review and approve costs associated with nuclear power plant construction will not effectively encourage the investment and construction of new nuclear power plants. Construction of a nuclear power plant requires large investments of capital over a long period of time. Therefore, risks must be minimized as much as possible to encourage the necessary investment. Prior to enactment of Section 366.93, F.S., a utility company's concerns about recovering costs may have caused it not to pursue the siting and construction of a nuclear power plant. Because the legislature determined that Florida should increase the diversity of its fuel supply and that doing so would create greater reliability, alternatives to the cost recovery methods the Commission has traditionally used are being established through this rulemaking for investor-owned utilities electing to build new nuclear power plants.

Staff considers recovery of pre-construction costs and carrying charges associated with construction work in progress through the CCRC an "alternative cost recovery mechanism." Typically, these costs would be capitalized during construction of the power plant and recovery would be addressed in a base rate proceeding once the plant enters commercial service. As an additional alternative cost recovery mechanism, staff recommends the Commission allow a limited proceeding to recover site selection costs once a final order is issued granting a determination of need for a new nuclear power plant.

Staff drafted a proposed rule and a notice of rule development workshop was published in the August 4, 2006, Florida Administrative Weekly. Staff held the rule development workshop on August 30, 2006, to discuss the proposed rule and receive comments from interested persons. Progress Energy Florida, Inc. (PEF) provided written comments in the form of revisions to staff's draft rule in advance of the workshop on August 14, 2006. On August 28, 2006, PEF and Florida Power & Light Company (FPL) jointly provided revised draft rule language for consideration. Representatives of the Office of Public Counsel (OPC), FPL, PEF, Florida Industrial Power Users Group, Florida Retail Federation, Tampa Electric Company, Radey Thomas Yon and Clark law firm, and the Nuclear Energy Institute attended the workshop. Interested persons were also invited to provide written comments after the workshop. On September 13, the Office of Public Counsel filed written comments and PEF and FPL made a joint filing in the form of a revised rule.

On October 12, 2006, staff filed a recommendation that the Commission propose Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery. Subsequently, staff determined that the definition of "pre-construction costs" in the proposed rule contained an apparent contradiction. As this definition was central to the interpretation and implementation of Section 366.93, Florida Statutes, staff requested time to revisit the issue and revise the proposed rule if necessary. On October 18, 2006, approval was granted to defer the Recommendation until the November 21,

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2006, Agenda Conference; it has subsequently been deferred until the December 19, 2006, Agenda Conference.

On October 19, 2006, staff received additional comments on the proposed rule from PEF. On October 30, 2006, staff received comments from FPL.

This recommendation addresses whether the Commission should propose Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery, included as Attachment A. The Commission has rulemaking authority pursuant to sections 120.54, 366.05(1) and 366.93(2), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose Rule 25-6.0423, Florida Administrative Code, Nuclear Power Plant Cost Recovery?

Recommendation: Yes. (Harris, Hewitt, Kummer, Lester, Lewis, McNulty, Slemkewicz)

Staff Analysis: Rule 25-6.0423 establishes alternative cost recovery mechanisms for the siting, design, licensing, and construction of nuclear power plants as required by Section 366.93, Florida Statutes, which was signed into law by Governor Bush on June 19, 2006.

Prior to enactment of Section 363.93, F.S., the costs of planning and constructing a new nuclear power plant, including an allowance for funds used during construction, would normally be capitalized during the construction period. The costs of the completed plant would not be included in base rates until a subsequent proceeding, such as a base rate proceeding, was concluded. As a result, recovery of costs for a nuclear unit could be delayed for some time, discouraging utilities from pursuing expensive investment in nuclear generation.

Summary of Rule 25-6.0423

Subsection (1) sets forth the purpose of the rule: to promote electric utility investment in nuclear power plants and allow for the recovery, in rates, of all prudently incurred costs; and to establish alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear power plants.

Subsection (2) establishes definitions for the terms “nuclear power plant,” “cost,” “site selection,” “site selection costs,” “pre-construction costs,” and “construction costs.”

Subsection (3) provides for the costs expended in preparation for the construction of a nuclear power plant to be afforded deferred accounting treatment and to accrue a carrying charge equal to the utility’s allowance for funds used during construction (AFUDC) rate until recovered in rates; with the exception that projected costs recovered on a projected basis in one annual cycle shall not be afforded deferred accounting treatment.

Subsection (4) provides that, once the Commission has issued a final order granting a determination of need for a nuclear power plant, the utility may file for a limited proceeding to recover site selection costs.

Subsection (5) establishes the utility’s ability to recover actual and projected pre-construction costs, and actual and projected carrying charges on construction cost balances, through the annual Capacity Cost Recovery Clause (CCRC). The subsection also establishes a separate procedural schedule and hearing for nuclear costs to be recovered through the CCRC.

Subsection (6) codifies a utility’s ability to recover all prudent site selection costs, pre-construction costs and construction costs in the event that a utility elects not to complete or is precluded from completing construction of a nuclear power plant after the Commission has issued a final order granting a determination of need for a nuclear power plant. The CCRC is

identified as the mechanism for cost recovery. The time period during which such recovery shall be accomplished is specified. The method of calculating interest accrual on the unrecovered balance is also specified.

Subsection (7) establishes the procedures that the utility shall follow to file for an increase in its base rates after a nuclear power plant and associated systems are placed in commercial service. The subsection also specifies the method for calculating the increase in base rates, the method for calculating the rate of return on capital investments, and procedures to follow if an existing generating plant is retired as a result of operation of a nuclear power plant.

Subsection (8) codifies the manner in which a utility shall provide the Commission with the budgeted and actual costs of the nuclear power plant following the final order granting a determination of need and until commercial operation of the plant begins.

Inclusion of Post-Workshop Comments

In consideration of the joint comments provided by PEF and FPL, staff revised the initial draft of the rule. Staff has made other revisions to the rule as a result of comments made at the workshop and/or post-workshop written comments, as discussed below.

In Paragraph (2)(c) (Attachment A, p 11, lines 13-15) staff recommends that a site be deemed selected upon the issuance of a final order granting a determination of need for a nuclear power plant. As discussed below, staff recommends site selection costs and pre-construction costs be recovered through different mechanisms. Given the potential magnitude of these costs, staff believes that a demarcation point between site selection and pre-construction timeframes should be clearly established.

In Paragraph (2)(d) (Attachment A, p. 11, lines 16-20) staff has included a definition for "site selection costs" as provided in the comments staff received from PEF on October 19, 2006. Though "site selection costs" were not defined by the legislature, capital investments and expenses "related to or resulting from the siting" of the nuclear power plant are contained in the legislature's definition of "cost" in Section 366.93(1)(a), F.S. A utility company may incur millions of dollars in costs before a site is ultimately selected. For example, an application for a Combined Operating License cannot be filed with the Nuclear Regulatory Commission unless the utility includes detailed information on its designated site as well as three alternative sites. Therefore, technology research and site characterization studies must be conducted for multiple sites. These activities, such as plant design studies, project planning and soil testing, are examples of some of the site selection costs a utility company may incur. Defining "site selection costs" will clarify that the costs a utility company incurs prior to site selection will be recoverable, as staff believes the legislature intended.

In Paragraph (2)(e) (Attachment A, p. 11, line 21 through p. 12, line 3) the joint comments of PEF/FPL included a definition of "pre-construction costs." OPC recommended that the definition of "pre-construction costs" be limited to those costs incurred after a site has been selected, consistent with the provisions of Section 366.93(1)(d), F.S. Staff agrees with OPC that the term "pre-construction" is defined in the statute and has revised the definition in the

proposed rule to clarify that pre-construction costs are limited to costs incurred after a site has been selected consistent with the definition of “pre-construction” in Section 366.93(1)(d), F.S.

In Paragraphs (2)(d) and (2)(e) (Attachment A, p 11, lines 16-20 and p. 11, line 21 through p. 12, line 3) PEF/FPL’s joint comments suggested the inclusion of “litigation costs” among the costs the utility would be entitled to recover through the CCRC. Staff agrees with OPC that litigation costs need not be specifically included in these definitions, as neither the rule nor the statute prohibit the Commission from considering litigation costs on a case-by-case basis, if requested.

Subsequent to the October 12, 2006, Recommendation, staff has significantly revised subsections (4) and (5), which address the recovery of site selection costs, pre-construction costs, and carrying costs on the construction cost balance. Staff initially combined site selection and pre-construction costs into one category, with recovery through the CCRC. Staff now believes that the two categories of costs should, in fact, be treated differently. Accordingly, staff recommends two different mechanisms for the recovery of site selection costs and pre-construction costs.

Section 366.093(1), F.S., contains an apparent contradiction with regard to costs incurred prior to the selection of a site for a nuclear power plant. The definition of “pre-construction” clearly states it is the period of time after a site has been selected; however the term “cost” includes the siting of a nuclear power plant. Section 366.93(2) then goes on to require the Commission to adopt, by rule, alternative cost recovery mechanisms for the siting, design, licensing, and construction of a nuclear power plant. Staff believes the intent of the legislature is to promote new nuclear power plants, and that site selection costs will be significant.

Accordingly, in Subsection 4 (Attachment A, p. 12, lines 11-14) staff recommends that once a final order granting a determination of need for a new nuclear plant has been issued, the utility may file a petition for a limited proceeding to recover site selection costs. Staff believes allowing the utility to petition for recovery of the costs prior to the nuclear power plant being placed in commercial service, but requiring this to be done through a limited proceeding instead of the annual CCRC filing, appropriately balances the interests of the utility, the ratepayers, and the legislative intent of promoting new nuclear power plants in Florida while following the plain language of §366.093, F.S.

In Paragraph (5)(a) (Attachment A, p. 12, lines 21-21) staff made changes suggested by OPC to clarify that carrying charges may only be recovered for those pre-construction costs that were not recovered on a projected basis. Staff agrees with OPC that it would not be appropriate to accrue AFUDC on projected costs that are incurred after clause recovery begins.

Paragraph (5)(a) (Attachment A, p. 12, lines 21-22) was also modified to clarify that actual and projected pre-construction costs may be recovered either on an annual basis or over a greater period of years, subject to the Commission’s approval. This clarification was made in response to OPC’s suggestion that it be made clear in the rule that this option is available.

In Subsection 5, paragraphs (a) and (b) (Attachment A, p. 12, line 19 through p. 13, line 24), staff lays out the procedure for recovery of pre-construction costs and carrying costs on construction cost balances. Pre-construction costs and carrying costs on construction cost balances shall be recovered through the CCRC, as required by §366.93(2)(a), F.S. Staff recommends, however, that a separate hearing be conducted to determine the nuclear power plant cost factor to be included in the annual CCRC adjustment, separate and apart from the annual fuel and purchased power clause hearing.

In its post-workshop written comments, OPC asked that procedural protections be included to ensure all parties are provided an opportunity to review the pre-construction costs and projected construction costs submitted by utilities for approval by the Commission. OPC pointed out that the expedited schedule typically used in annual adjustment clause hearings, including the CCRC, may not be adequate for reviewing nuclear pre-construction costs and carrying costs on projected construction costs which could reach hundreds of millions of dollars. OPC suggested that the rule be written to require utilities to file testimony and supporting cost information, and to respond to discovery requests in the CCRC docket, within a certain time frame (for example, filing testimony and supporting data 60 days before intervenor testimony is due). OPC's November 2, 2006, additional comments also suggest that the Commission include rule language that would require hearings on nuclear plant cost recovery be scheduled separately from the other annual adjustment clause hearings.

Staff agrees with OPC that costs from a new nuclear power plant will likely be significant, and that the proceedings to determine the reasonableness and prudence of the costs should be conducted separately from the other annual clause hearings. Separate nuclear cost hearings will allow staff and the Commission to give these costs additional scrutiny, and will ensure that they are not treated as routine Commission filings. Accordingly, staff recommends that, by May 1 of each year, the utility be required to file its actual true-up data, its actual/estimated true-up data, and its annual projected cost data; and that the Commission conduct a hearing by August 15 of each year, solely for nuclear power plant costs. The Commission shall issue its order within thirty days of its vote, and the costs determined reasonable and prudent in the nuclear cost proceeding will be included as a factor in the annual CCRC proceeding in November, so that only one clause adjustment will be made for all fuel and purchased power factors. The rule makes clear that the nuclear factor would not be subject to disallowance or further prudence review in the November CCRC proceeding. Staff has therefore included subparagraphs 5(c)1-5 to lay out the procedure for recovery of nuclear pre-construction costs and carrying costs on construction balance.

Subparagraph (5)(c)2. (Attachment A, p. 15, lines 14-18) was clarified in response to OPC's comments dated November 2, 2006, regarding the Commission's review of projected and actual costs expended by the utility. These changes are intended to clarify that the Commission will evaluate projected costs for reasonableness as well as make a finding as to the prudence of actual costs expended by the utility.

Subparagraph (5)(c)5. (Attachment A, p. 15, lines 19-23) was suggested by OPC in their November 2, 2006, additional comments. OPC suggests the Commission develop a new section to require annual project updates and feasibility analysis. Staff agrees with OPC that requiring

the utility to annually report on the continued long-term feasibility of the project, including any significant changes to factors considered at the determination of need proceeding, will help the Commission to monitor the project. Accordingly, staff recommends the Commission include subparagraph 5(c)7. to require annual feasibility reports to be submitted along with the May 1 projected cost filings.

At Subsection (6) (Attachment A, p. 16, line 3) staff added "site selection costs" to the list of prudently incurred costs the utility shall be allowed to recover in the event the utility elects not to complete, or is precluded from completing, construction of the nuclear power plant. As previously discussed, staff recommends it is consistent with the legislature's intent to allow recovery of prudently incurred site selection costs.

In Paragraph (7)(a) (Attachment A, p. 16, lines 15-23) staff added language to clarify the process that a utility should use to file for an increase in its base rates after the nuclear plant is placed in commercial service. Base rates will not be adjusted through an annual clause proceeding. Although the Commission will have already reviewed most costs in the annual CCRC proceeding, staff believes any costs that the utility wishes to place in base rates should be included in a petition whether or not the Commission has previously reviewed them. OPC concurs with staff's position that some sort of limited proceeding should be held to adjust base rates. FPL/PEF had previously proposed that the Commission simply confirm the utility's calculations as submitted; however, on October 19, 2006, PEF suggested in written comments that the proposed rule should require the utility to submit the base rate increase for Commission approval pursuant to 366.93(4), F.S. Staff also included language to clarify that, once administrative finality has attached, costs previously determined to be prudent shall not be subject to disallowance in the base rate proceeding.

At Paragraph (7)(e) (Attachment A, p. 17, lines 16-20), the utility is permitted to recover, through an increase in base rate charges, the jurisdictional net book value of any existing generating plant that is retired as a result of the operation of the nuclear power plant. Staff recommends language that requires base rates to be reduced by an equal amount at the end of the recovery period. In staff's view, the utility could potentially recover more than the net book value of a retired generating plant through its base rates if the requirement to reduce base rates at the end of the recovery period is not included. OPC's comments concur with staff's recommended language to reduce base rates at the end of the five-year period. The joint comments filed by PEF and FPL did not include this language.

Statement of Estimated Regulatory Cost

Staff prepared a Statement of Estimated Regulatory Costs which is included as Attachment B. In summary, this rule implements Section 366.93, Florida Statutes, which specifies that pre-construction costs and carrying costs on construction cost balances be recovered annually through the CCRC. The statute also directs the Commission to establish alternative cost recovery mechanisms for the recovery of expenses incurred from the siting, design, licensing, and construction of nuclear power plants.

Investor owned utilities (IOUs) electing to build a new nuclear power plant may incur additional costs as a result of this rule. Costs will be associated with the separate limited proceeding to recover site selection costs, as well as the costs of separate filing deadlines and hearing dates for the CCRC recovery of pre-construction costs and carrying costs on construction cost balances.

IOUs will receive a significant benefit in knowing beforehand that reasonable and prudent investment in new nuclear plant will be recovered in advance of the plant being placed in commercial service. IOUs will also benefit from the statutory recovery of sunk costs if a nuclear plant is not completed. The financial risk to IOUs planning to build a nuclear power plant will also be significantly reduced as a result of the statute and this rule.

Sections 366.936(2)(a) and (b), Florida Statutes, provide for the recovery of pre-construction costs and the carrying costs on the utility's projected construction costs through the CCRC. Staff also recommends the Commission implement alternative cost recovery mechanisms to allow site selection costs to be recovered prior to the nuclear plant being placed in commercial service. As a result, small businesses, small cities, small counties, and individual customers will see increased electricity rates prior to the plant being placed in commercial service. Ratepayers also face the risk that the nuclear plant will not be completed, yet the statute mandates that the costs of the nuclear power plant be recovered through rates. These costs are consistent with the statutory requirements.

Small businesses, small cities, small counties, and individual customers should benefit, however, if an IOU builds a nuclear plant with lower electricity costs and increased fuel diversity. While these benefits will not be received until the nuclear plant is placed in service, they can be expected to be significant. Long term benefits of diversification of energy supply should mitigate future impacts in fuel price volatility.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Harris)

Staff Analysis: Unless comments or requests for hearing are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

1 **25-6.0423 Nuclear Power Plant Cost Recovery**

2 (1) Purpose. The purpose of this rule is to establish alternative cost recovery
3 mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction
4 of nuclear power plants in order to promote electric utility investment in nuclear power plants
5 and allow for the recovery in rates of all such prudently incurred costs.

6 (2) Definitions. As used in this rule, the following definitions shall apply:

7 (a) “Nuclear power plant” or “plant” is an electrical power plant that utilizes nuclear
8 materials as fuel, as defined in Section 403.503(13), Florida Statutes and Section 366.93(1)(c).

9 (b) “Cost” includes, but is not limited to, all capital investments including rate of
10 return, any applicable taxes and all expenses, including operation and maintenance expenses,
11 related to or resulting from the siting, licensing, design, construction, or operation of the
12 nuclear power plant as defined in Section 366.93(1)(a).

13 (c) “Site selection.” A site will be deemed to be selected upon issuance of a final
14 order granting a petition for a determination of need for a nuclear power plant pursuant to
15 Section 403.519, Florida Statutes.

16 (d) “Site selection costs” are costs that are expended prior to the selection of a site.
17 These costs may include, but are not limited to: any and all costs associated with preparing,
18 reviewing and defending a Combined Operating License (COL) application for a nuclear
19 power plant; costs of engineering, designing, and permitting the nuclear power plant; and costs
20 associated with site and technology selection.

21 (e) “Pre-construction costs” are costs that are expended after a site has been selected
22 in preparation for the construction of a nuclear power plant, incurred up to and including the
23 date the utility completes site clearing work. Pre-construction costs may include, but are not
24 limited to: any and all costs associated with preparing, reviewing and defending a Combined

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1 Operating License (COL) application for a nuclear power plant; costs of engineering,
2 designing, and permitting the nuclear power plant; costs of clearing, grading, and excavation;
3 and costs of on-site construction facilities (i.e., construction offices, warehouses, etc.).

4 (f) “Construction costs” are costs that are expended to construct the nuclear power
5 plant including, but not limited to, the costs of constructing nuclear power plant buildings and
6 all associated permanent structures, equipment and systems.

7 (3) Deferred Accounting Treatment. Site selection and pre-construction costs shall be
8 afforded deferred accounting treatment and shall, except for projected costs recovered on a
9 projected basis in one annual cycle, accrue a carrying charge equal to the utility’s allowance
10 for funds used during construction (AFUDC) rate until recovered in rates.

11 (4) Site Selection Costs. After the Commission has issued a final order granting a
12 determination of need for a nuclear power plant pursuant to Section 403.519, Florida Statutes,
13 a utility may file a petition for a limited proceeding, pursuant to Section 366.076, Florida
14 Statutes, to recover prudently incurred site selection costs.

15 (5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After
16 the Commission has issued a final order granting a determination of need for a nuclear power
17 plant pursuant to Section 403.519, Florida Statutes, a utility may petition the Commission for
18 recovery of pre-construction costs and carrying costs of construction cost balance as follows:

19 (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost
20 Recovery Clause, its actual and projected pre-construction costs. The utility may also recover
21 the related carrying charge for those costs not recovered on a projected basis. Such costs will
22 be recovered on an annual basis, or may, as approved by the Commission, be recovered over a
23 greater period of years.

24 1. Actual pre-construction costs incurred by a utility prior to the issuance of a final
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1 order granting a determination of need pursuant to Section 403.519, Florida Statutes, shall be
2 included in the initial filing made by a utility under this subsection for review, approval, and a
3 finding with respect to prudence;

4 2. The Commission shall include pre-construction costs determined to be reasonable
5 and prudent as a factor in the annual Capacity Cost Recovery Clause proceedings, as specified
6 in Paragraph 5(c)2. of this rule. Such factor shall not be subject to disallowance or further
7 prudence review in that proceeding.

8 (b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover,
9 through the utility's Capacity Cost Recovery Clause, the carrying costs on the utility's annual
10 projected construction cost balance associated with the nuclear power plant. The actual
11 carrying costs recovered through the Capacity Cost Recovery Clause shall reduce the
12 allowance for funds used during construction (AFUDC) that would otherwise have been
13 recorded as a cost of construction eligible for future recovery as plant in service;

14 1. For nuclear power plant need petitions submitted on or before December 31, 2010,
15 the associated carrying costs shall be computed based on the pretax AFUDC rate in effect on
16 June 19, 2006;

17 2. For nuclear power plant need petitions submitted after December 31, 2010, the
18 utility's pretax AFUDC rate in effect at the time the petition for determination of need is filed
19 is presumed to be appropriate unless the Commission determines otherwise in its need
20 determination order;

21 3. The Commission shall include carrying costs on the construction cost balance
22 determined to be reasonable and prudent as a factor in the annual Capacity Cost Recovery
23 Clause proceedings, as specified in Paragraph (5)(c) of this rule. Such factor shall not be
24 subject to disallowance or further prudence review in that proceeding.

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1 (c) Capacity Cost Recovery Clause for Nuclear Costs.

2 1. By May 1 of each year, a utility shall submit, for Commission review and approval,
3 as part of its Capacity Cost Recovery Clause filings:

4 a. True-Up for Previous Years. A utility shall submit its final true-up of pre-
5 construction expenditures, based on actual preconstruction expenditures for the prior year and
6 previously approved projected expenditures for such prior year and a description of the pre-
7 construction work actually performed during such year; or, once construction begins, its final
8 true-up of carrying costs on its construction expenditures, based on actual carrying costs on
9 construction expenditures for the prior year and previously approved projected carrying costs
10 on construction expenditures for such prior year and a description of the construction work
11 actually performed during such year.

12 b. True-Up and Projections for Current Year. A utility shall submit for Commission
13 review and approval its actual/estimated true-up of projected pre-construction expenditures
14 based on a comparison of current year actual/estimated expenditures and the previously
15 approved projected estimated expenditures for such current year and a description of the pre-
16 construction work projected to be performed during such year; or, once construction begins,
17 its actual/estimated true-up of projected carrying costs on construction expenditures based on
18 a comparison of current year actual/estimated carrying costs on construction expenditures and
19 the previously approved projected estimated carrying costs on construction expenditures for
20 such current year and a description of the construction work projected to be performed during
21 such year.

22 c. Projected Costs for Subsequent Years. A utility shall submit, for Commission
23 review and approval, its projected pre-construction expenditures for the subsequent year and a
24 description of the pre-construction work projected to be performed during such year; or, once
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1 construction begins, its projected construction expenditures for the subsequent year and a
2 description of the construction work projected to be performed during such year.

3 2. The Commission shall, prior to August 15 of each year, conduct a hearing to
4 determine the reasonableness of projected pre-construction expenditures and the prudence of
5 actual pre-construction expenditures expended by the utility; or, once construction begins, to
6 determine the reasonableness of carrying costs on projected construction expenditures and the
7 prudence of actual carrying costs on construction expenditures expended by the utility.

8 Within 30 days of the Commission's vote, the Commission shall enter its order. In making its
9 determination of reasonableness and prudence the Commission shall apply the standard
10 provided pursuant to Section 403.519(4)(e), Florida Statutes.

11 3. The Commission shall include those costs it determines, pursuant to this subsection,
12 to be reasonable and prudent as a factor in the annual Capacity Cost Recovery Clause
13 proceedings. Such factor shall not be subject to disallowance or further prudence review in
14 that proceeding.

15 4. The final true-up for the previous year, actual/estimated true-up for the current year,
16 and subsequent year's projected nuclear power plant costs as approved by the Commission
17 pursuant to subparagraph (5)(c)2. will be included for cost recovery purposes as a component
18 of the over/under recovered balance to be included in the current year's nuclear power plant
19 cost recovery proceeding for the Capacity Cost Recovery Clause.

20 5. By May 1 of each year, along with the filings required by this paragraph, a utility
21 shall submit for Commission review and approval a detailed analysis of the long-term
22 feasibility of completing the nuclear plant, taking into account significant changes, if any, in
23 the factors considered by the Commission in granting the determination of need for the
24 proposed plant.

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1 (6) Failure to Enter Commercial Service. Following the Commission's issuance of a
2 final order granting a determination of need for the nuclear power plant, in the event the utility
3 elects not to complete or is precluded from completing construction of the nuclear power
4 plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction
5 costs, and construction costs.

6 (a) The utility shall recover such costs through the Capacity Cost Recovery Clause
7 over a period equal to the period during which the costs were incurred or 5 years, whichever is
8 greater.

9 (b) The amount recovered under this section will be the remaining unrecovered
10 Construction Work in Progress (CWIP) balance at the time of abandonment and future
11 payment of all outstanding costs. The unrecovered balance during the recovery period will
12 accrue interest at the utility's overall pretax weighted average midpoint cost of capital on a
13 Commission adjusted basis as reported by the utility in its Earnings Surveillance Report filed
14 in December of the prior year, utilizing the midpoint of return on equity (ROE) range or ROE
15 approved for other regulatory purposes, as applicable.

16 (7) Commercial Service. As operating units or systems associated with the nuclear
17 power plant and the nuclear power plant itself are placed in commercial service:

18 (a) The utility shall file a petition for Commission approval of the base rate increase
19 pursuant to Section 366.93(4), Florida Statutes, separate from any cost recovery clause
20 petitions, that includes any and all costs reflected in such increase, whether or not those costs
21 have been previously reviewed by the Commission; provided, however, that any actual costs
22 previously reviewed and determined to be prudent in the Capacity Cost Recovery Clause, to
23 which administrative finality has attached, shall not be subject to disallowance or further
24 prudence review.

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1 (b) The utility shall calculate the increase in base rates resulting from the jurisdictional
2 annual base revenue requirements for the nuclear power plant in conjunction with the Capacity
3 Cost Recovery Clause projection filing for the year the nuclear power plant is projected to
4 achieve commercial operation. The increase in base rates will be based on the annualized base
5 revenue requirements for the nuclear power plant for the first 12 months of operations
6 consistent with the cost projections filed in conjunction with the Capacity Cost Recovery
7 Clause projection filing.

8 (c) At such time as the nuclear power plant is included in rate base, recovery through
9 the Capacity Cost Recovery Clause will cease, except for the difference between actual and
10 projected construction costs as provided in subparagraph (5)(c)3. above.

11 (d) The rate of return on capital investments shall be calculated using the utility's most
12 recent actual Commission adjusted basis overall weighted average rate of return as reported by
13 the utility in its Earnings Surveillance Report prior to the commercial in-service date of the
14 nuclear power plant. The return on equity cost rate used shall be the midpoint of the last
15 Commission approved range for return on equity or the last Commission approved return on
16 equity cost rate established for use for all other regulatory purposes, as appropriate.

17 (e) The jurisdictional net book value of any existing generating plant that is retired as
18 a result of operation of the nuclear power plant shall be recovered through an increase in base
19 rate charges over a period not to exceed 5 years. At the end of the recovery period, base rates
20 shall be reduced by an amount equal to the increase associated with the recovery of the retired
21 generating plant.

22 (8) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following
23 issuance of the final order granting a determination of need and until commercial operation of
24 the nuclear power plant, a utility shall include the budgeted and actual costs as compared to
25

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 the estimated in-service costs of the nuclear power plant as provided in the petition for need
2 determination in its annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates
3 provided in the petition for need determination are non-binding estimates. Some costs may be
4 higher than estimated and other costs may be lower. A utility shall provide such revised
5 estimated in-service costs as may be necessary in its annual report.

6 *Specific Authority 350.127(2), 366.05(1).*

7 *Law Implemented 366.93 FS.*

8 *History: New*

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State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 8, 2006
TO: Office of General Counsel (Harris)
FROM: Division of Economic Regulation (Hewitt) *CH* *1/9/07*
RE: Statement of Estimated Regulatory Costs for Proposed Rule 25-6.0423, F.A.C.,
Nuclear Power Plant Cost Recovery; Docket Number 060508-EI

SUMMARY OF THE RULE

The proposed Rule 25-6.0423, F.A.C, would implement Section 366.93, Florida Statutes, which gives detailed requirements for creating an alternative cost recovery mechanism for all prudently incurred costs for investment in new nuclear power plants. These costs would include those expenditures for siting, design, licensing, and construction of a nuclear power plant. The proposed rule would allow preconstruction costs to be recovered through the Capacity Cost Recovery Clause (CCR). When the nuclear power plant is placed in service, the utility would be allowed to increase base rate charges by the projected annual revenue requirements.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

Currently, two electric investor owned utilities (IOUs) have built nuclear plants and have expressed interest in building new nuclear plants; but any of the five IOUs in Florida planning to build a nuclear plant would be affected by the proposed rule. The IOUs sell electricity to industrial, commercial, and residential customers throughout the state.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Commission would have some administration costs monitoring and reviewing new nuclear plant expenditures. There would be extra filings and a separate hearing in the CCR procedure yearly. These tasks would be done with existing staff. There should be no impact on agency revenues.

There should be no negative impact on the revenues of other state and local government entities from the adoption of the rule. However, these other state and local government entities could see their utility bills rise if preconstruction costs are passed through the CCR Clause as provided for by the statutes. These entities could possibly benefit as customers of an IOU building a nuclear plant with lower electricity costs and fuel diversity.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Sections 366.936(2)(a) and (b), Florida Statutes, provide for the recovery of preconstruction costs and the carrying costs on the utility's projected construction costs through the CCRC. Staff also recommends the Commission implement alternative cost recovery mechanisms to allow site selection costs to be recovered prior to the nuclear plant being placed in commercial service. As a result, small businesses, small cities, small counties, and individual customers will see increased electricity rates prior to the plant being placed in commercial service. Ratepayers also face the risk that the nuclear plant will not be completed, yet the statute mandates that the costs of the nuclear power plant be recovered through rates. These costs are consistent with the statutory requirements.

IOUs should have no significant additional costs because of the new rule. IOUs currently must show that expenditures are reasonable and prudently incurred before being allowed to be recovered. There may be some additional accounting and filing costs associated with new nuclear plant planning and construction expenditures that would be recovered through the CCR clause. There would be an additional hearing for Commission review of associated costs of a new nuclear plant before they are passed through to customers. There would be a significant benefit to the utility in being able to collect preconstruction costs through the CCR clause before a plant is in service. Also, IOUs would benefit from knowing that reasonable and prudent investment in new nuclear plants will be allowed to be recovered in rates as well as the recovery of sunk costs if a plant is not completed. This could encourage the building of new plants. The only estimated additional costs reported by one company would be \$10,000 per year for on-going costs. The financial risk in IOUs planning on building a nuclear plant will be significantly reduced as a result of statute and this rule.

Small businesses, small cities, small counties, and individual customers should benefit, however, if an IOU builds a nuclear plant with lower electricity costs and increased fuel diversity. While these benefits will not be received until the nuclear plant is placed in service, they can be expected to be significant. Long term benefits of diversification of energy supply should mitigate future impacts in fuel price volatility.

IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

There could be a negative impact on the utility bill of small businesses, small cities, or small counties as customers if preconstruction costs are passed on before the benefits of a new plant offset that impact. Also, a negative impact would occur if a nuclear plant was started and not finished and the sunk costs were recovered through their electricity bills. They should benefit as customers of an IOU that builds a nuclear plant with resulting lower electricity costs and fuel diversity.

CH:kb

cc: Mary Andrews Bane
Chuck Hill
Kathy Lewis
Hurd Reeves