

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF DEVELOPMENT OF RULEMAKING

TO

ALL INTERESTED PERSONS

DOCKET NO. 130222-EI

IN RE: PROPOSED AMENDMENT OF RULE 25-6.0423, F.A.C., NUCLEAR OR INTEGRATED GASIFICATION COMBINED CYCLE POWER PLANT COST RECOVERY.

ISSUED: August 28, 2013

NOTICE is hereby given pursuant to Section 120.54, Florida Statutes (F.S.), that the Florida Public Service Commission staff has initiated rulemaking to amend Rule 25-6.0423, Florida Administrative Code, to implement changes made to Section 366.93, F.S., by the 2013 Florida Legislature.

The attached Notice of Development of Rulemaking appeared in the August 28, 2013, edition of the Florida Administrative Register. If requested in writing and not deemed unnecessary by the agency head, a rule development workshop will be scheduled and noticed in the next available Florida Administrative Register. Written requests for a rule development workshop must be submitted to Kathryn G.W. Cowdery, c/o Ann Cole, Director, Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, or via electronic filing, in Docket No. 130222-EI, by September 11, 2013. A copy of the preliminary draft rule is attached.

The person to be contacted regarding the rule development is Kathryn G. W. Cowdery, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 at (850) 413-6216, kcowdery@psc.state.fl.us.

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By DIRECTION of the Florida Public Service Commission this 28th day of August,
2013.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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Notice of Development of Rulemaking

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-6.0423 Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery

PURPOSE AND EFFECT: The rule amendments will implement changes to Section 366.93, F.S., enacted by the 2013 Legislature.

Docket No. 130222-EI

SUBJECT AREA TO BE ADDRESSED: Nuclear or integrated gasification combined cycle power plant cost recovery.

RULEMAKING AUTHORITY: 350.127(2), 366.05(1), 366.93(2) FS.

LAW IMPLEMENTED: 366.93 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Kathryn G.W. Cowdery, Florida Public Service Commission, Office of the General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, kcowdery@psc.state.fl.us

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE

1 **25-6.0423 Nuclear or Integrated Gasification Combined Cycle Power Plant Cost**

2 **Recovery.**

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

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

9 (a) "Nuclear power plant" is an electrical power plant which ~~that~~ utilizes nuclear materials as
10 fuel, as defined in Sections 403.503(14)(13) and 366.93(1)(d)(e), F.S.

11 (b) "Integrated gasification combined cycle power plant" is an electrical power plant which
12 ~~that~~ uses synthesis gas produced by integrated gasification technology, as defined in Sections
13 403.503(14)(13) and 366.93(1)(c), F.S.

14 (c) "Power plant" or "plant" means a nuclear power plant or an integrated gasification
15 combined cycle power plant.

16 (d) "Cost" includes, but is not limited to, all capital investments including rate of return, any
17 applicable taxes, and all expenses, including operation and maintenance expenses, related to or
18 resulting from the siting, licensing, design, construction, or operation of the nuclear power
19 plant, including new, expanded, or relocated electrical transmission lines or facilities of any
20 size which are necessary thereto, or of the integrated gasification combined cycle power
21 plant, as defined in Section 366.93(1)(a), F.S.

22 (e) "Site selection." A site will be deemed to be selected upon the filing of a petition for a
23 determination of need for a nuclear or integrated gasification combined cycle power plant
24 pursuant to Section 403.519, F.S.

25 (f) "Site selection costs" are costs that are expended prior to the selection of a site.

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- 1 (g) "Pre-construction costs" are costs that are expended after a site has been selected in
2 preparation for the construction of a nuclear or integrated gasification combined cycle power
3 plant, incurred up to and including the date the utility completes site clearing work.
- 4 (h) Site selection costs and pre-construction costs include, but are not limited to: any and all
5 costs associated with preparing, reviewing and defending a Combined Operating License
6 (COL) application for a nuclear power plant; costs associated with site and technology
7 selection; costs of engineering, designing, and permitting the nuclear or integrated gasification
8 combined cycle power plant; costs of clearing, grading, and excavation; and costs of on-site
9 construction facilities (i.e., construction offices, warehouses, etc.).
- 10 (i) "Construction costs" are costs that are expended to construct the nuclear or integrated
11 gasification combined cycle power plant including, but not limited to, the costs of constructing
12 power plant buildings and all associated permanent structures, equipment and systems.
- 13 (j) "Carrying Costs" shall be calculated using the utility's most recently approved pretax
14 allowance for funds used during construction (AFUDC) rate at the time an increment of cost
15 recovery is sought.
- 16 (3) After the Commission has issued a final order granting a determination of need for a power
17 plant pursuant to 403.519, F.S., a utility may file a petition for Commission approval of
18 activities pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification
19 combined cycle cost recovery proceeding, or a separate proceeding limited in scope to address
20 only the petition for approval.
- 21 ~~(4)(3)~~ Deferred Accounting Treatment. Site selection and pre-construction costs shall be
22 afforded deferred accounting treatment and shall, except for projected costs recovered on a
23 projected basis in one annual cycle, accrue a carrying costs charge equal to the utility's
24 ~~allowance for funds used during construction (AFUDC) rate~~ until recovered in rates.
- 25 ~~(5)(4)~~ Site Selection Costs. After the Commission has issued a final order granting a
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1 determination of need for a power plant pursuant to Section 403.519, F.S., a utility may file a
2 petition for a separate proceeding, to recover prudently incurred site selection costs. This
3 separate proceeding will be limited to only those issues necessary for the determination of
4 prudence and alternative method for recovery of site selection costs of a power plant.

5 ~~(6)(5)~~ Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After the
6 Commission has issued a final order granting a determination of need for a power plant
7 pursuant to Section 403.519, F.S., a utility may petition the Commission for recovery of pre-
8 construction costs and carrying costs of construction cost balance as follows:

9 (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost
10 Recovery Clause, its actual and projected pre-construction costs. The utility may also recover
11 the related carrying costs ~~charge~~ for those costs not recovered on a projected basis. Such costs
12 will be recovered within 1 year, unless the Commission approves a longer recovery period.
13 Any party may, however, propose a longer period of recovery, not to exceed 2 years. Actual
14 pre-construction costs incurred by a utility prior to the issuance of a final order granting a
15 determination of need pursuant to Section 403.519, F.S., shall be included in the initial filing
16 made by a utility under this subsection for review, approval, and a finding with respect to
17 prudence.

18 ~~1. Actual pre-construction costs incurred by a utility prior to the issuance of a final order~~
19 ~~granting a determination of need pursuant to Section 403.519, F.S., shall be included in the~~
20 ~~initial filing made by a utility under this subsection for review, approval, and a finding with~~
21 ~~respect to prudence.~~

22 ~~2. The Commission shall include pre-construction costs determined to be reasonable and~~
23 ~~prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as~~
24 ~~specified in subparagraph (5)(c)3. of this rule. Such costs shall not be subject to disallowance~~
25 ~~or further prudence review.~~

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

7 ~~1. For power plant need petitions submitted on or before December 31, 2010, the associated~~
8 ~~carrying costs shall be computed based on the pretax AFUDC rate in effect on June 12, 2007;~~

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

12 ~~3. The Commission shall include carrying costs on the balance of construction costs~~
13 ~~determined to be reasonable or prudent in setting the factor in the annual Capacity Cost~~
14 ~~Recovery Clause proceedings, as specified in paragraph (5)(c) of this rule.~~

15 (c) Capacity Cost Recovery Clause for Nuclear or Integrated Gasification Combined Cycle
16 Power Plant Costs.

17 1. Each year, pursuant to the order establishing procedure in the annual cost recovery
18 proceeding, a utility shall submit, for Commission review and approval, as part of its cost
19 recovery Capacity Cost Recovery Clause filings:

20 a. True-Up for Previous Years. ~~By March 1,~~ A utility shall submit its final true-up of pre-
21 construction expenditures, based on actual preconstruction expenditures for the prior year and
22 previously filed expenditures for such prior year and a description of the pre-construction
23 work actually performed during such year; or, once construction begins, its final true-up of
24 carrying costs on its construction expenditures, based on actual carrying costs on construction
25 expenditures for the prior year and previously filed carrying costs on construction

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1 expenditures for such prior year and a description of the construction work actually performed
2 during such year.

3 b. True-Up and Projections for Current Year. ~~By May 1,~~ Aa utility shall submit for
4 Commission review and approval its actual/estimated true-up of projected pre-construction
5 expenditures based on a comparison of current year actual/estimated expenditures and the
6 previously-filed estimated expenditures for such current year and a description of the pre-
7 construction work projected to be performed during such year; or, once construction begins,
8 its actual/estimated true-up of projected carrying costs on construction expenditures based on
9 a comparison of current year actual/estimated carrying costs on construction expenditures and
10 the previously filed estimated carrying costs on construction expenditures for such current
11 year and a description of the construction work projected to be performed during such year.

12 c. Projected Costs for Subsequent Years. ~~By May 1,~~ Aa utility shall submit, for Commission
13 review and approval, its projected pre-construction expenditures for the subsequent year and a
14 description of the pre-construction work projected to be performed during such year; or, once
15 construction begins, its projected construction expenditures for the subsequent year and a
16 description of the construction work projected to be performed during such year.

17 2. The Commission shall, ~~prior to October 1 of each year,~~ conduct an annual a hearing to and
18 determine the reasonableness of projected pre-construction expenditures and ~~the~~ prudence of
19 actual pre-construction expenditures expended by the utility; or, once construction begins, to
20 determine the reasonableness of projected construction expenditures and ~~the~~ prudence of
21 actual construction expenditures expended by the utility, and the associated carrying costs.

22 ~~Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the~~
23 ~~Commission shall make a prudence determination of the prior year's actual construction costs~~
24 ~~and associated carrying costs. To facilitate this determination,~~ The Commission shall conduct
25 an on-going auditing and monitoring program of prior year actual construction costs and

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1 related contracts pursuant to Section 366.08, F.S. In making its determination of
2 reasonableness and prudence the Commission shall apply the standard provided pursuant to
3 Section 403.519(4)(e), F.S.

4 ~~3. Upon a determination of prudence, The Commission shall include those costs it determines,~~
5 ~~pursuant to this subsection, to be reasonable or prudent in setting the Capacity Cost Recovery~~
6 ~~Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings. Such prior~~
7 ~~year actual costs associated with power plant construction subject to the annual proceeding~~
8 ~~shall not be subject to disallowance or further prudence review.~~

9 4. The final true-up for the previous year, actual/estimated true-up for the current year, and
10 subsequent year's projected power plant costs as approved by the Commission pursuant to
11 subparagraph ~~(6)~~(5)(c)2. will be included for cost recovery purposes as a component of the
12 following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery
13 Clause. The utility must file all necessary revisions to the fuel and purchased power cost
14 recovery filings no later than eight business days after the Commission's vote ~~October 15 of~~
15 ~~the current year.~~

16 5. ~~By May 1 of each year,~~ Along with the filings required by this paragraph, each year a
17 utility shall submit for Commission review and approval a detailed analysis of the long-term
18 feasibility of completing the power plant. Such analysis shall include evidence that the utility
19 intends to construct the nuclear or integrated gasification combined cycle power plant by
20 showing that it has committed sufficient, meaningful, and available resources to enable the
21 project to be completed and that its intent is realistic and practical.

22 ~~(7)~~(6) Failure to Enter Commercial Service. Following the Commission's issuance of a final
23 order granting a determination of need for the power plant, in the event the utility elects not to
24 complete or is precluded from completing construction of the power plant, the utility shall be
25 allowed to recover all prudent site selection costs, pre-construction costs, and construction

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1 costs.

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

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

13 ~~(8)(7)~~ Commercial Service. As operating units or systems associated with the power plant and
14 the power plant itself are placed in commercial service:

15 (a) The utility shall file a petition for Commission approval of the base rate increase pursuant
16 to Section 366.93(4), F.S., separate from any cost recovery clause petitions, that includes any
17 and all costs reflected in such increase, whether or not those costs have been previously
18 reviewed by the Commission; provided, however, that any actual costs previously reviewed
19 and determined to be prudent in the Capacity Cost Recovery Clause shall not be subject to
20 disallowance or further prudence review except for fraud, perjury, or intentional withholding
21 of key information.

22 (b) The utility shall calculate the increase in base rates resulting from the jurisdictional annual
23 base revenue requirements for the power plant in conjunction with the Capacity Cost
24 Recovery Clause projection filing for the year the power plant is projected to achieve
25 commercial operation. The increase in base rates will be based on the annualized base revenue

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1 requirements for the power plant for the first 12 months of operations consistent with the cost
2 projections filed in conjunction with the Capacity Cost Recovery Clause projection filing.

3 (c) At such time as the power plant is included in base rates, recovery through the Capacity
4 Cost Recovery Clause will cease, except for the difference between actual and projected
5 construction costs as provided in subparagraph ~~(6)(5)(c)~~4. above.

6 (d) The rate of return on capital investments shall be calculated using the utility's most recent
7 actual Commission adjusted basis overall weighted average rate of return as reported by the
8 utility in its most recent Earnings Surveillance Report prior to the filing of a petition as
9 provided in paragraph ~~(8)(7)(a)~~. The return on equity cost rate used shall be the midpoint of
10 the last Commission approved range for return on equity or the last Commission approved
11 return on equity cost rate established for use for all other regulatory purposes, as appropriate.

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

17 ~~(9)(8)~~ A utility shall, contemporaneously with the filings required by paragraph ~~(6)(5)(c)~~
18 above, file a detailed statement of project costs sufficient to support a Commission
19 determination of prudence, including, but not limited to, the information required in
20 paragraphs ~~(9)(8)(b)~~ – ~~(9)(8)(e)~~, below.

21 (a) Subject to suitable confidentiality agreements or, to the extent necessary, protective orders
22 issued by the Commission, a utility will ensure reasonably contemporaneous access, which
23 may include access by electronic means, for review by parties of all documents relied on by
24 utility management to approve expenditures for which cost recovery is sought. Access to any
25 information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10 C.F.R.

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1 73.21, incorporated by reference into this Rule, shall only be in accordance with applicable
2 Nuclear Regulatory Commission requirements.

3 (b) Regarding technology selected, a utility shall provide a description of the technology
4 selected that includes, but is not limited to, a review of the technology and the factors leading
5 to its selection.

6 (c) The annual true-up and projection cost filings shall include a list of contracts executed in
7 excess of \$1 million to include the nature and scope of the work, the dollar value and term of
8 the contract, the method of vendor selection, the identity and affiliation of the vendor, and
9 current status of the contract.

10 (d) Final true-up filings and actual/estimated true-up filings will include monthly expenditures
11 incurred during those periods for major tasks performed within Site Selection, Preconstruction
12 and Construction categories. A utility shall provide annual variance explanations comparing
13 the current and prior period to the most recent projections for those periods filed with the
14 Commission.

15 (e) Projection filings will include monthly expenditures for major tasks performed within Site
16 Selection, Preconstruction and Construction categories.

17 (f) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following issuance
18 of the final order granting a determination of need and until commercial operation of the
19 power plant, a utility shall include the budgeted and actual costs as compared to the estimated
20 in-service costs of the power plant as provided in the petition for need determination in its
21 annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates provided in the petition
22 for need determination are non-binding estimates. Some costs may be higher than estimated
23 and other costs may be lower. A utility shall provide such revised estimated in-service costs as
24 may be necessary in its annual report.

25 *Specific Authority 350.127(2), 366.05(1), 366.93(2) FS. Law Implemented 366.93 FS.*

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1 *History--New 4-8-07, Amended 2-3-08, _____.*
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