

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Proposed adoption of new rule regarding
nuclear power plant cost recovery.

DOCKET NO. 060508-EI
ORDER NO. PSC-06-1050-NOR-EI
ISSUED: December 20, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF RULEMAKING

BY THE COMMISSION:

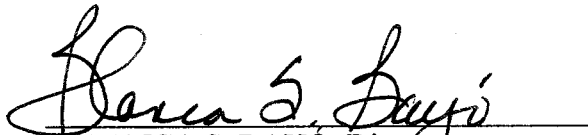
NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has initiated rulemaking to adopt Rule 25-6.0423, Florida Administrative Code, relating to nuclear power plant cost recovery.

The attached Notice of Rulemaking will appear in the December 29, 2006 edition of the Florida Administrative Weekly.

If timely requested, a hearing will be held at a time and place to be announced in a future notice.

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than January 19, 2007.

By ORDER of the Florida Public Service Commission this 20th day of December, 2006.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

LDH

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

by the amount included to recover any such undepreciated plant at the expiration of that recovery period.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: The SERC states there will be increased costs to utilities from preparing and presenting nuclear power plant costs for annual Commission review. There will be significant benefits to utilities from the certainty associated with the recovery of these costs, both before the plant goes into commercial service and after the plant is completed. While consumers of electricity will benefit from fuel diversity and price stability once the nuclear plant goes into commercial service, consumers will begin paying these costs through rates prior to the receipt of the benefits.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.05(1), FS

LAW IMPLEMENTED: 366.93, FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Larry Harris, Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6076.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.0423 Nuclear Power Plant Cost Recovery

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

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

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

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

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

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

(e) "Pre-construction costs" are costs that are expended after a site has been selected in preparation for the construction of a nuclear power plant, incurred up to and including the date the utility completes site clearing work.

(f) Site Selection costs and pre-construction costs include, but are not limited to: any and all costs associated with preparing, reviewing and defending a Combined Operating License (COL) application for a nuclear power plant; costs associated with site and technology selection;

costs of engineering, designing, and permitting the nuclear power plant; costs of clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction offices, warehouses, etc.).

(g) "Construction costs" are costs that are expended to construct the nuclear power plant including, but not limited to, the costs of constructing nuclear power plant buildings and all associated permanent structures, equipment and systems.

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

(4) Site Selection Costs. After the Commission has issued a final order granting a determination of need for a nuclear power plant pursuant to Section 403.519, Florida Statutes, a utility may file a petition for a separate proceeding, to recover prudently incurred site selection costs. This separate proceeding will be limited to only those issues necessary for the determination of prudence and method for recovery of site selection costs of a nuclear power plant.

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

(a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected pre-construction costs. The utility may also recover the related carrying charge for those costs not recovered on a projected basis. Such costs will be

recovered on an annual basis, or may, as proposed by the utility in its petition or any other party and approved by the Commission, be recovered over a greater period of years.

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

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

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

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

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

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

(c) Capacity Cost Recovery Clause for Nuclear Costs.

1. Each year, a utility shall submit, for Commission review and approval, as part of its Capacity Cost Recovery Clause filings:

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

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

description of the construction work projected to be performed during such year.

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

2. The Commission shall, prior to August 15 of each year, conduct a hearing to determine the reasonableness of projected pre-construction expenditures and the prudence of actual pre-construction expenditures expended by the utility; or, once construction begins, to determine the reasonableness of carrying costs on projected construction expenditures and the prudence of actual carrying costs on construction expenditures expended by the utility. Within 30 days of the Commission's vote, the Commission shall enter its order. One year after the true-up of actual carrying charges, the Commission shall make an annual prudence determination of the annual actual construction costs. To facilitate this determination, the Commission shall conduct an on-going auditing and monitoring program of construction costs and related contracts pursuant to Section 366.08, Florida Statutes. In making its determination of reasonableness and prudence the Commission shall apply the standard provided pursuant to Section 403.519(4)(e), Florida Statutes.

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

4. The final true-up for the previous year, actual/estimated true-up for the current year,

and subsequent year's projected nuclear power plant costs as approved by the Commission pursuant to subparagraph (5)(c)2. will be included for cost recovery purposes as a component of the over/under recovered balance to be included in the following year's nuclear power plant cost recovery proceeding for the Capacity Cost Recovery Clause.

5. By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the nuclear plant.

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

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

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

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

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

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

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

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

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

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

Specific Authority 350.127(2), 366.05(1)

Law Implemented 366.93 FS

History: New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathy Lewis.

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: December 19, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 32,
Number 31, August 4, 2006

If any person decides to appeal any decision of the Commission with respect to any matter

considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings. Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).