

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 090009-EI  
ORDER NO. PSC-09-0689-PAA-EI  
ISSUED: October 15, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
NANCY ARGENZIANO  
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING RULE VARIANCE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

On March 2, 2009, Progress Energy Florida, Inc. (PEF) filed a petition to seek a prudence review of and to recover certain costs associated with construction of the Crystal River Unit 3 Uprate and the Levy Units 1 and 2 nuclear power plants, pursuant to Rule 25-6.0423, F.A.C., and Section 366.93, Florida Statutes (F.S.). On March 2, 2009, Florida Power & Light Company (FPL) also filed a petition to seek a prudence review of and to recover certain costs associated with nuclear power plant costs. PEF and FPL filed their petitions in Docket No. 090009-EI, or the Nuclear Cost Recovery Clause (NCRC) docket.

On July 31, 2009, PEF and FPL filed a Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4, F.A.C. (Petition). A Florida Administrative Weekly notice was issued August 14, 2009, advising that the Petition was received and providing for a 14-day comment period. The comment period expired on August 28, 2009. No comments were received.

As explained in detail below, we approve the utilities' Petition. We have jurisdiction over this matter pursuant to Sections 120.542, 366.05, and 366.06, F.S.

ANALYSIS

We adopted Rule 25-6.0423, F.A.C., to implement Section 366.93, F.S., which provides for alternative cost recovery for costs incurred in the development of nuclear power plants. PEF

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and FPL are engaged in cost recovery proceedings in the NCRC docket for their respective nuclear projects pursuant to this rule. Alternative cost recovery pursuant to the applicable statute and rule is achieved by incorporating the nuclear cost recovery amount approved by us in the NCRC docket into the utility's capacity cost recovery factor. Subsection (5)(c)2 of Rule 25-6.0423, F.A.C., provides for a Commission determination in the annual NCRC docket by October 1 of each year. Subsection (5)(c)4 of Rule 25-6.0423, F.A.C., sets forth the timeframe by which the utility must file revisions to its fuel and purchased power cost recovery filings ("fuel clause filings"). It states:

The final true-up for the previous year, actual/estimated true-up for the current year, and subsequent year's projected 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 following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than October 15 of the current year.

In the current NCRC docket, we have scheduled a Special Agenda Conference on October 16, 2009, to determine the nuclear cost recovery amounts that PEF and FPL will be permitted to recover. PEF and FPL have notified us of their agreement to the Special Agenda Conference date. In their Petition, PEF and FPL state that they will not be able to comply with the timeframe established by Rule 25-6.0423(5)(c)4, F.A.C., because the date of the Special Agenda Conference in the NCRC docket falls outside of the timeframe established by Rule 25-6.0423(5)(c)2, F.A.C. Because we will not make our determination in the NCRC docket until October 16, 2009, PEF and FPL state that they cannot revise their fuel clause filings prior to that date. Accordingly, PEF and FPL assert that strict application of Rule 25-6.0423(5)(c)4, F.A.C., requiring the utilities to make their filings by October 15, or before we have ruled in this proceeding, would cause substantial hardship and violate basic principles of fairness.

Section 120.542, F.S., grants us the authority to grant variances or waivers to the requirements of its rules where the party subject to the rules has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rules would cause the party substantial hardship or violate principles of fairness. "Substantial hardship," as defined in this section, means demonstrated economic, technological, legal, or other hardship.

The underlying statutory provision pertaining to Rule 6.0423, F.A.C., is Section 366.93, F.S. Section 366.93, F.S., provides for alternative cost recovery for costs incurred in the development of nuclear power plants.

PEF and FPL request that they be permitted to submit their fuel clause filing revisions by October 23, 2009, due to the inability to comply with the filing date set forth in Rule 25-6.0423(5)(c)4. The utilities state that this variance request is temporary, because it is only being sought for 2009. According to the utilities, their variance request is consistent with the underlying purpose of Rule 25-6.0423(5)(c)4, F.A.C., which is to provide the utility with enough

time to revise its fuel clause filings (i.e., at least 15 days), and also to provide us with enough time to include the utility's revisions in its determination and order in the fuel and purchase power cost recovery docket. PEF and FPL assert that the requested variance will still achieve those purposes, and that the seven-day time frame they propose would actually result in a quicker submittal from the utilities than that provided for by the rule.

### RULING

PEF and FPL have adequately demonstrated that they are entitled to a rule waiver under the criteria of Section 120.542, F.S. The utilities have met the underlying purpose of Section 366.93, F.S., which is to allow for alternative cost recovery for costs incurred in the development of nuclear power plants. Moreover, they have shown that they will suffer substantial hardship if Rule 25-6.0423(5)(c)4, F.A.C., is strictly applied. Therefore, PEF and FPL are hereby granted a variance from Rule 25-6.0423(5)(c)4, F.A.C., for 2009, to the extent that the rule requires the utilities to make their filings by October 15, 2009. Accordingly, each company shall submit its fuel clause filing revisions after October 16, 2009, but not later than October 23, 2009.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for a Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4, F.A.C., filed by Progress Energy Florida, Inc. and Florida Power & Light Company, is granted as set forth herein. It is further

ORDERED that if no timely protest is received to this proposed agency action on Progress Energy Florida, Inc. and Florida Power & Light Company's joint request for waiver in Docket No. 090009-EI, this Order will become final upon the issuance of a Consummating Order. It is further

ORDERED that Docket No. 090009-EI should remain open pending the Commission's decision on Progress Energy Florida, Inc. and Florida Power & Light Company's petitions in the Nuclear Cost Recovery Clause.

By ORDER of the Florida Public Service Commission this 15th day of October, 2009.



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ANN COLE  
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 5, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.