

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 120009-EI
ORDER NO. PSC-12-0488-PAA-EI
ISSUED: September 24, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PROGRESS ENERGY FLORIDA, INC. AND FLORIDA POWER &
LIGHT COMPANY'S JOINT MOTION FOR VARIANCE TO RULE 25-6.0423(5)(c)(4),
FLORIDA ADMINISTRATIVE CODE

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.).

On March 1, 2012, 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 1, 2012, 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. 120009-EI, the Nuclear Cost Recovery Clause (NCRC) docket.

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FPSC-COMMISSION CLERK

On July 30, 2012, 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 on August 10, 2012, advising that the Petition was received and providing for a 14-day comment period. The comment period expired on August 24, 2012. No comments were received. We have jurisdiction over this matter pursuant to Sections 120.542, 366.05, and 366.06, F.S.

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 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 we approved in the NCRC docket into the utility's capacity cost recovery factor in Docket No. 120001-EI, or the Fuel and Purchased Power Cost Recovery docket. Subsection (5)(c)2 of Rule 25-6.0423, F.A.C., provides for our 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 time 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 scheduled a Special Agenda Conference on November 20, 2012, to determine the nuclear cost recovery amounts that PEF and FPL will be permitted to recover. We were notified by PEF and FPL that each agrees 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 November 20, 2012, PEF and FPL state that they cannot revise their fuel clause filings prior to that date. Accordingly, PEF and FPL assert that it would be impossible to comply with strict application of Rule 25-6.0423(5)(c)4, F.A.C., which requires the utilities to make their filings by October 15, over a month before we will have ruled in this proceeding.

Section 120.542, F.S., authorizes us to grant variances or waivers to the requirements of our 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. The underlying statutory provision pertaining to Rule 25-6.0423, 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. "Substantial hardship," as defined in this section, means demonstrated economic, technological, legal, or other hardship.

PEF and FPL request that they be permitted to submit their revised capacity factors by November 27, 2012, due to the inability to comply with the filing date set forth in Rule 25-6.0423(5)(c)4, F.A.C. The utilities state that this variance request is temporary because it is only being sought for 2012. According to the utilities, their variance request is consistent with the underlying purpose of Section 366.93, F.S., which is to allow for timely alternative cost recovery for costs incurred in the development of nuclear power plants. The utilities contend that this statutory purpose cannot be achieved absent a variance from the filing date set forth in Rule 25-6.0423(5)(c)4, F.A.C., which is meant to provide the utility with enough time to revise its fuel clause filings and to provide us with enough time to include the utility's revisions in our determination and order in the Fuel and Purchased Power Cost Recovery docket. PEF and FPL assert that the requested variance will achieve those purposes.

We find that PEF and FPL have adequately demonstrated that they are entitled to a rule variance 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 timely alternative cost recovery for costs incurred in the development of nuclear power plants. Moreover, PEF and FPL have shown that they will suffer substantial hardship if Rule 25-6.0423(5)(c)4, F.A.C., is strictly applied. Therefore, we grant PEF and FPL's request for a variance from Rule 25-6.0423(5)(c)4, F.A.C., to the extent that the rule requires the utilities to make their filings by October 15.

PEF and FPL requested that they be permitted to submit their revised capacity factors no later than November 27, 2012, noon. The request is appropriate and each company shall submit its revised capacity factors that include the nuclear cost recovery amounts approved by us no later than noon November 27, 2012, for administrative approval by our staff.

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 the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that Docket No. 120009-EI shall remain open pending our decision on Progress Energy Florida, Inc. and Florida Power & Light Company's petitions in the Nuclear Cost Recovery Clause.

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By ORDER of the Florida Public Service Commission this 24th day of September, 2012.



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.

LCB

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 October 15, 2012.

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.