

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed amendment of Rule 25-6.0423, F.A.C., Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery.	DOCKET NO. 130222-EI ORDER NO. PSC-13-0643-NOR-EI ISSUED: December 4, 2013
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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 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 amend Rule 25-6.0423, Florida Administrative Code, relating to nuclear or integrated gasification combined cycle power plant cost recovery.

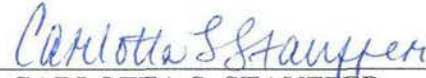
The attached Notice of Rulemaking appeared in the December 4, 2013 edition of the Florida Administrative Register.

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 on the rule must be received by the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0862, no later than December 26, 2013.

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By ORDER of the Florida Public Service Commission this 4th day of December,  
2013.



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CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://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 Proposed Rule

**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

SUMMARY: The amendments to Rule 25-6.0423, F.A.C., include amending definitions, addressing the statutory requirement that utilities petition the Commission for approval before proceeding with certain activities, updating the rule for accuracy and procedural flexibility, and streamlining the rule by deleting unnecessary and duplicative language.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:**

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

The SERC examined the factors required by Section 120.541(2), F.S., and concluded that the rule amendments will not have an adverse impact or exceed any of the impact/cost criteria established in Section 120.541(2)(a), F.S.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC.

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

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

LAW IMPLEMENTED: 366.93 FS.

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

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, [kcowdery@psc.state.fl.us](mailto:kcowdery@psc.state.fl.us)

**THE FULL TEXT OF THE PROPOSED RULE IS:**

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

(1) through (2) No change.

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

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

(c) No change.

(d) "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, including new, expanded, or relocated electrical transmission lines or facilities of any size which are necessary thereto, or of the integrated gasification combined cycle power plant, as defined in Section 366.93(1)(a), F.S.

(e) through (g) No change.

(h) 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

or integrated gasification combined cycle power plant; costs of clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction offices, warehouses, etc.).

(i) No change.

(j) “Carrying Costs” shall be calculated using the utility’s most recently approved pretax allowance for funds used during construction (AFUDC) rate at the time an increment of cost recovery is sought.

(3) After the Commission has issued a final order granting a determination of need for a power plant pursuant to 403.519, F.S., a utility may file a petition for Commission approvals pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification combined cycle cost recovery proceeding, or a separate proceeding limited in scope to address only the petition for approval.

~~(4)(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 costs charge equal to the utility’s allowance for funds used during construction (AFUDC) rate until recovered in rates.~~

(5)(4) Site Selection Costs. After the Commission has issued a final order granting a determination of need for a power plant pursuant to Section 403.519, F.S., 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 alternative method for recovery of site selection costs of a power plant.

~~(6)(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 power plant pursuant to Section 403.519, F.S., 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 costs charge for those costs not recovered on a projected basis. Such costs will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, not to exceed 2 years. 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, F.S., shall be included in the initial filing made by a utility under this subsection for review, approval, and a finding with respect to prudence.~~

~~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, F.S., 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 subparagraph (5)(c)3. of this rule. Such costs shall not be subject to disallowance or further prudence review.~~

~~(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 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 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 12, 2007;~~

~~2. For 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 or prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as specified in paragraph (5)(c) of this rule.~~

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

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

a. True-Up for Previous Years. ~~By March 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 October 1 of each year,~~ conduct an annual a hearing to and 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 projected construction expenditures and the prudence of actual construction expenditures expended by the utility, and the associated carrying costs. ~~Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the Commission shall make a prudence determination of the prior year's actual construction costs and associated carrying costs. To facilitate this determination, the Commission shall conduct an on-going auditing and monitoring program of prior year actual construction costs and related contracts pursuant to Section 366.08, F.S. In making its determination of reasonableness and prudence the Commission shall apply the standard provided pursuant to Section 403.519(4)(e), F.S.~~

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

4. 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 ~~(6)(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 Clause. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than eight business days after the Commission's vote ~~October 15 of the current year.~~

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

~~(7)(6)~~ Failure to Enter Commercial Service. Following the Commission's issuance of a final order granting a determination of need for the power plant, in the event the utility elects not to complete or is precluded from

completing construction of the power plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction costs, and construction costs.

(a) No change.

(b) The amount recovered under this subsection 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.

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

(a) through (b) No change.

(c) At such time as the 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 ~~(6)(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 paragraph ~~(8)(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) No change.

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

(a) Subject to suitable confidentiality agreements or, to the extent necessary, protective orders issued by the Commission, a utility will ensure reasonably contemporaneous access, which may include access by electronic means, for review by parties of all documents relied on by utility management to approve expenditures for which cost recovery is sought. Access to any information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10 C.F.R. 73.21, incorporated by reference into this Rule, shall only be in accordance with applicable Nuclear Regulatory Commission requirements. 42 U.S.C. §2167 (2012) may be accessed at <http://www.flrules.org>[hyperlink address]. 10 C.F.R. §73.21 (2013) may be accessed at <http://www.flrules.org>[hyperlink address].

(b) through (f) No change.

*Rulemaking Specific Authority 350.127(2), 366.05(1), 366.93(2) FS. Law Implemented 366.93 FS. History--New 4-8-07, Amended 2-3-08.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Casey Hinton

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 3, 2013

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: Volume 39, Number 168, August 28, 2013