

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 20170009-EI
ORDER NO. PSC-2017-0445-FOF-EI
ISSUED: November 17, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN
GARY F. CLARK

FINAL ORDER APPROVING NUCLEAR COST RECOVERY AMOUNTS FOR
FLORIDA POWER & LIGHT COMPANY AND DUKE ENERGY FLORIDA, LLC

APPEARANCES:

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List of Acronyms and Abbreviations

AFUDC	Allowance for Funds Used During Construction
CCRC	Capacity Cost Recovery Clause
COL	Combined Operating License (issued by the NRC)
Commission	Florida Public Service Commission
CR3 Uprate Project	Multi-phased uprate project at DEF's Crystal River Unit 3
CWIP	Construction Work In Progress
DEF	Duke Energy Florida, LLC
EPC Contract	Engineering, Procurement, and Construction Contract
EXH	Exhibit
F.A.C.	Florida Administrative Code
FIPUG	Florida Industrial Power Users Group
FPL	Florida Power & Light Company
FRF	Florida Retail Federation
F.S.	Florida Statutes
Levy Project	DEF's Levy Units 1 & 2 Project
Miami	City of Miami
MW	Megawatt (1,000,000 watts)
NCRC	Nuclear Cost Recovery Clause
NRC	Nuclear Regulatory Commission
OPC	Office of Public Counsel
PCS Phosphate	White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate -White Springs
SACE	Southern Alliance for Clean Energy
TP Project	FPL's Turkey Point Units 6 & 7 Project

BY THE COMMISSION:

Background

This final order addresses petitions for alternative cost recovery of new nuclear generation project costs through the Nuclear Cost Recovery Clause (NCRC) pursuant to Rule 25-6.0423, Florida Administrative Code (F.A.C.), and Section 366.93, Florida Statutes (F.S.), that were filed by Florida Power & Light Company (FPL) and Duke Energy Florida, LLC, (DEF).

The Nuclear Cost Recovery Process

Traditionally, all power plant construction projects are generally afforded the same regulatory accounting and ratemaking treatment. That is, once the need for a power plant is determined, the utility records expenditures associated with the project into Account 107, Construction Work in Progress (CWIP), for that particular project. A monthly allowance-for-funds-used-during-construction (AFUDC) rate is applied to the average balance in the CWIP account and the resulting dollar amount is then added to the account. This process continues until the project is completed. If a construction project is terminated prior to commercial service, the utility may petition to recover the related CWIP account balance over a period of years.

Once a power plant is in commercial service, the CWIP account balance is transferred to the appropriate plant-in-service accounts and becomes part of the utility's rate base. The impact of including the total project costs in a utility's rate base, as well as the impact of plant operating expenses, is addressed during a subsequent proceeding to determine whether customer base rates should be changed in order to provide the utility the opportunity to fully recover those costs and expenses.

In 2006, the Florida Legislature enacted Section 366.93, F.S., to encourage utility investment in nuclear electric generation in Florida. Section 366.93, F.S., directed this Commission to establish, by rule, alternative cost recovery mechanisms allowing investor-owned electric utilities to recover certain costs during the licensing and construction process. In 2007, the Legislature amended Section 366.93, F.S., to include integrated gasification combined cycle plants, and in 2008, to include new, expanded, or relocated transmission lines and facilities necessary for the new power plant. In 2013, the Florida Legislature further amended the statute to change the applicable carrying costs, restrict cost recovery during the license application process, and require Commission approval prior to commencing certain activities and purchases. The 2013 amendments also established timeframes within which the utility's physical construction activities must commence after obtaining a combined operating license (COL) from the Nuclear Regulatory Commission (NRC).¹

In 2007, we adopted Rule 25-6.0423, F.A.C., to establish the alternative nuclear cost recovery process. We utilized a cost recovery clause methodology for reviewing and approving annual nuclear cost recovery amounts. We conduct an annual evidentiary proceeding whereby

¹ We amended Rule 25-6.0423, F.A.C., to incorporate these changes. Order No. PSC-14-0022-FOF-EI, issued January 10, 2014, in 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.

we review activities and costs projected to occur in the subsequent year. We then approve a recovery amount and establish a cost recovery factor that allows the company to recover the projected costs as they are incurred. In subsequent years projected costs are further refined, based upon partial-year actual costs, and adjustments are made to better match revenues to estimated costs. In the following year we conduct audits and approve a final true-up to ensure final revenues match actual costs. In sum, under this methodology, we approve cost recovery on a projected basis and then spend two years truing-up those projections to actuals. Following the evidentiary proceeding, we make particular findings when evaluating projected costs, actual/estimated costs, and the final true up of actual costs. For the projected year and the current year, we determine whether the projected costs and the current year re-estimated costs are reasonable. A determination of reasonableness permits a utility to recover costs on a projected basis. For the final true-up of actual costs we determine whether the costs are prudent. Our prudence review cannot be a hindsight review. Rule 25-6.0423(6), F.A.C., establishes the process and filing requirements associated with the annual proceedings.

Pursuant to Rule 25-6.0423(5) and (6), F.A.C., once a utility obtains an affirmative need determination for a power plant covered by Section 366.93, F.S., the utility may petition for cost recovery using the alternative mechanism. Pursuant to Section 366.93(2), F.S., and Rule 25-6.0423(6), F.A.C., all prudently incurred preconstruction costs, as well as the carrying charges on prudently incurred construction costs, are to be recovered directly through the Capacity Cost Recovery Clause (CCRC). Rule 25-6.0423(6)(c)5., F.A.C., states that each year a utility shall submit for our review and approval a detailed analysis of the long-term feasibility of completing the power plant (feasibility analysis).

When a nuclear power plant enters commercial service, a utility is allowed to increase its base rates. Section 366.93(4), F.S., describes the method for calculating the increase, and Rule 25-6.0423(8), F.A.C., provides further details on the calculations and the process. In the event a utility elects not to complete or is precluded from completing the power plant project, Section 366.93(6), F.S., and Rule 25-6.0423(7), F.A.C., allow a utility to collect its unrecovered prudently incurred costs over a period of at least 5 years.

The 2017 NCRC Proceeding

FPL and DEF both filed petitions on March 1, 2017, seeking prudence reviews and final true-up of actual costs incurred in prior years for certain nuclear power plant projects. On May 1, 2017, FPL and DEF filed additional petitions seeking various approvals. Cost recovery of any approved amounts from these petitions will occur in 2018 through the CCRC. This is the tenth year that we have convened an evidentiary hearing to examine alternative cost recovery for new nuclear generation construction projects.

The following parties intervened in this year's proceeding: the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), Southern Alliance for Clean Energy (SACE), White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate), the City of Miami (Miami), and Florida Retail Federation (FRF). Testimony was submitted by FPL, DEF, Miami, and Commission staff. On August 11, 2017, Miami filed a Notice of Withdrawal from this docket. On August 15, 2017, we convened the evidentiary

hearing in the 2017 NCRC proceeding. During preliminary matters, we acknowledged Miami's withdrawal from this proceeding. On August 31, 2017, post-hearing briefs were filed by FPL, OPC, FIPUG, FRF, and SACE.

Duke Energy Florida, LLC

DEF's petitions addressed two nuclear projects: the uprate of Crystal River Unit 3 (CR3 Uprate Project), and the construction of new units Levy 1 and 2 (Levy Project). DEF obtained affirmative need determinations for the CR3 Uprate Project in 2007 and the Levy Project in 2008.² DEF announced the cancelation of these projects in 2013.

On June 16, 2017, OPC and PCS Phosphate filed a Motion to Temporarily Hold in Abeyance and Reschedule the hearing for DEF's Levy Project until October 24, 2017. On July 10, 2017, by Order No. PSC-2017-0260-PCO-EI, the hearing on DEF's Levy Project was rescheduled for October 25, 2017. On August 29, 2017, DEF filed a Motion to further Defer or Continue the Levy Project portion of the hearing so that we could first hold a hearing on DEF's Petition for a Limited Proceeding to Approve the 2017 Second Revised and Restated Settlement Agreement filed on August 29, 2017. On August 30, 2017, by Order No. PSC-2017-0341-PCO-EI, the Prehearing Officer approved DEF's Motion to Defer or Continue. On October 25, 2017, we approved the 2017 Second Revised and Restated Settlement Agreement. All remaining Levy Project issues in this docket were resolved in the settlement.

We were also presented with proposed stipulations on all of DEF's CR3 Uprate Project issues. Upon discussion with the parties, we approved the stipulations. Therefore, for the CR3 Uprate Project, DEF is authorized to include \$49,648,457 in the calculation of its 2018 CCRC factors.

Florida Power & Light Company

FPL's petitions addressed continued development of new nuclear units Turkey Point 6 and 7 (TP Project), for which FPL obtained an affirmative need determination in 2008.³

The remaining contested issues pertain to FPL's TP Project. Section I of this order addresses the prudence of FPL's 2015 and 2016 project management while Section II identifies the associated costs and final true-up amounts. Section III presents FPL's proposal to defer recovery and file annual reports during the deferral period. The focus of Section IV is whether deferred costs remain eligible for NCRC treatment. Section V addresses the reasonableness of FPL's decision to continue its pursuit of a COL. Section VI addresses the requirement for an analysis of the long-term feasibility of completing the TP Project. Section VII addresses whether

²Order No. PSC-07-0119-FOF-EI, issued February 8, 2007, in Docket No. 060642-EI, In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C. and for cost recovery through fuel clause, by Progress Energy Florida, Inc.; Order No. PSC-08-0518-FOF-EI, issued August 12, 2008, in Docket No. 080148-EI, In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

³Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, in Docket No. 070650-EI, In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company.

FPL has complied with the requirements of Order No. PSC-16-0266-PCO-EI. In Section VIII, we present FPL's net NCRC amount for the 2018 period based on the resolution of all prior issues. Sections IX and X are fact-based issues addressing the current estimated TP Project total cost and commercial operation date.

We have jurisdiction over these matters pursuant to Section 366.93, F.S., as well as Sections 366.04, 366.041, 366.05, 366.06 and 366.07, F.S.

Decision

Duke Energy Florida, LLC

As discussed above, we approved the proposed stipulations on all of DEF's CR3 Uprate Project issues, as reflected in Attachment A of this order, at the hearing held on August 15, 2017. DEF's Levy Project issues were approved in a separate proceeding, held on October 25, 2017, in which we approved DEF's 2017 Second Revised and Restated Settlement Agreement.

Florida Power & Light Company

I. Turkey Point Units 6 & 7 – 2015 and 2016 Project Management, Contracting, Accounting, and Cost Oversight Controls

This Section addresses whether FPL's 2015 and 2016 project management, contracting, accounting and cost oversight controls for the Turkey Point Units 6 & 7 were prudent.

PARTIES' ARGUMENTS

FPL

FPL argues that Section 403.519(4)(e), F.S., states that the "right of a utility to recover any costs incurred prior to commercial operation . . . shall not be subject to a challenge unless and only to the extent the Commission finds based on a preponderance of the evidence . . . that certain costs were imprudently incurred."

FPL maintains that all TP Project costs were incurred as a result of a deliberately managed process at the direction of a well-informed, properly qualified management team. Its management decisions and costs were subject to a robust system of internal controls. FPL asserts that these controls are regularly assessed and audited. FPL notes that the Commission's Office of Auditing and Performance Analysis audited FPL's costs and found no exceptions. Additionally, no intervening party presented any testimony or elicited any evidence supporting the imprudence of any TP Project management decisions or actions in 2015 or 2016. FPL asserts that it has complied with all filing requirements related to demonstrating its prudence.

Delays in the first wave of new nuclear construction projects by other electric utilities prompted FPL's 2016 decision to pause the TP Project upon receipt of its license. At the time of its decision, FPL was cognizant of the historically low natural gas price forecasts and delays in

emission compliance costs. FPL asserts that the combination of these factors reduced the financial imperative for beginning post-licensing preconstruction work. FPL contends that recent events, such as the Westinghouse bankruptcy, reduce the certainty of prior cost estimates and schedules for the first wave projects and underscore the appropriateness of FPL's plan.

In its brief, FPL asserts that the intervenors relied solely on legal arguments based on the perceived need for FPL to file a feasibility analysis in an attempt to persuade us that we should disallow costs. However, when FPL sought recovery of its projected 2015 costs in 2014, it filed a feasibility analysis. FPL filed a feasibility analysis again in 2015, when FPL sought cost recovery of its projected 2016 costs.

According to FPL, use of a 2017 feasibility analysis to assess prudence of costs incurred in 2015 and 2016 would be hindsight review. FPL argues that in Florida, a management decision is prudent if it is within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. Consequently, hindsight review is prohibited. FPL notes that we have refused to use a forward-looking feasibility analysis to judge the prudence of historic costs in NCRC dockets in the past.

OPC and FRF

OPC and FRF took no position and did not brief this issue.

FIPUG

FIPUG argues that we should not allow FPL to recover 2015 and 2016 costs through the NCRC due to the lack of a feasibility analysis.

SACE

SACE's brief provided no arguments in support of its position.

ANALYSIS

FPL's 2015 and 2016 activities consisted primarily of licensing and permitting. FPL witness Scroggs provided a general description of FPL's project management structure, staffing approach, and elements of its project management process. FPL's project management process includes elements of periodic internal reports, risk management, flow of information, procurement process, and expenditure authorizations.

Commission audit staff witnesses Lehmann and Rich independently reviewed FPL's 2015 and 2016 project management controls. Their review examined the adequacy of FPL's project management and internal controls with respect to planning, management and organization, cost and schedule controls, contractor selection and management, and auditing. Witnesses Lehmann and Rich testified that the information gathered was questioned, cross verified with relevant documentation, and analyzed against best industry practices. Only information known and knowable at the time of any action taken by FPL was considered.

Witnesses Lehmann and Rich reported that FPL's TP Project internal controls were adequate, reasonable, effective, and responsive to the current project requirements. Their review did not present any findings.

FPL's TP Project accounting and related controls were generally described by FPL witness Grant-Keene. Witness Grant-Keene noted that the 2015 and 2016 costs and controls were subject to audits.

Commission staff accounting audit witness Piedra provided testimony and sponsored an accounting audit report of FPL's 2015 and 2016 costs associated with the TP Project. Commission staff's audit activities included tracing and verification of the 2015 and 2016 costs and the final true-up amounts. Witness Piedra also verified that FPL's final true-up NCRC filings were consistent with, and in compliance with, Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Witness Piedra did not report any findings.

SACE maintains its position that we should not find FPL prudent. However, SACE's brief did not provide support for this position. FIPUG also maintains a position that we should not find FPL's project management, accounting, and cost oversight controls prudent. However, FIPUG's argument focused on the fact that FPL did not file a feasibility analysis. In a footnote, FIPUG notes that FPL would be free to seek recovery of such costs in its next base rate case, assuming it could prove that such costs were prudently incurred. FIPUG also asserts that future analysis of deferred costs would "arguably be limited to only reviewing whether FPL's nuclear costs were prudent." Thus, based on the entirety of FIPUG's arguments, a prudence determination of FPL's 2015 and 2016 project management and oversight does not rest on whether FPL filed a 2016 or 2017 feasibility analysis because FIPUG acknowledges cost recovery can be sought outside of Section 366.93, F.S. FPL acknowledged it did not file a feasibility analysis in 2016 and 2017.

Our standard for determining prudence is consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or reasonably should have been known, at the time the decision was made.⁴ As discussed in Sections III, IV, and VI below, a feasibility analysis is forward looking. As a result, we agree with FPL that use of a feasibility analysis prepared and filed after 2015 and 2016 to assess prudence of costs incurred in 2015 and 2016 would require the application of a hindsight review which is inappropriate because a feasibility analysis is forward looking. Furthermore, our Commission audit staff witnesses reviewed FPL's 2015 and 2016 actions and reported no

⁴ Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million, at 3; Order No. PSC-08-0749-FOF-EI, issued November 12, 2008, in Docket No. 080009-EI, In re: Nuclear cost recovery clause, at 28; Order No. PSC-09-0783-FOF-EI, issued November 19, 2009, Docket No. 090009-EI, In re: Nuclear cost recovery clause, at 11, 13; Order No. PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 26, 28, 57, 61, 91, 93; Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, In re: Nuclear cost recovery clause, at 23, 24, 32, 59, 60; Order No. PSC-13-0493-FOF-EI, issued October 18, 2013, in Docket No. 130009-EI, In re: Nuclear cost recovery clause, at 26; Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket No 150009-EI, In re: Nuclear cost recovery clause, at 22-23.

findings. There is no record evidence identifying any FPL 2015 and 2016 TP Project management decisions or accounting practices as imprudent.

Conclusion

We hereby find FPL's 2015 and 2016 Turkey Point Units 6 & 7 project management, contracting, accounting and cost oversight controls reasonable and prudent.

II. Turkey Point Units 6 & 7 – Jurisdictional and Final True-Up Amounts

This Section addresses whether FPL's 2015 and 2016 actions, incurred costs, and resultant final true-up amounts that will either be refunded or collected during 2018 were prudent.

PARTIES' ARGUMENTS

FPL

FPL asserts that during 2015 and 2016, it continued to make progress on the TP Project licensing and permitting activities and maintained costs within the annual budget. FPL asserts that it achieved important milestones in all aspects of the licensing process. In particular, FPL received a final recommendation letter from the Advisory Committee on Reactor Safeguards, and the Final Safety Evaluation Report and the Final Environmental Impact Statement from the NRC, all supporting NRC approval of the TP Project on FPL's anticipated timeline. FPL also asserts that it completed a land exchange resulting in completion of a key step in finalizing the western transmission lines associated with the TP Project. FPL further states that it continued work with the U.S. Army Corp of Engineers to obtain necessary authorizations for the TP Project.

FPL argues that no intervenor presented any direct evidence that any particular cost was imprudently incurred. FPL argues that the intervenors instead attempted to commingle all of the elements of our review into one, "do not file feasibility, do not pass go" argument. FPL maintains that this argument is inconsistent with the law of prudence and the process by which the NCRC rule's annual filing requirements are made each year. FPL notes that each year the utility's final true-up and prudence support are due to be filed around the first of March. Filing requirements for the utility's current and subsequent year projects and feasibility analysis are filed separately around the first of May. There is no language in the rule linking the feasibility analysis filing requirement to a determination that historical costs were prudently incurred.

FPL maintains that the only record evidence in this case supports a determination that FPL's 2015 and 2016 costs should be found to have been prudently incurred.

OPC

OPC asserts that without an economic feasibility study, we lack the evidence and information necessary to make prudence and reasonableness determinations concerning the TP Project. OPC argues that because FPL failed to file the required feasibility study in 2017, or

obtain a waiver of the rule, we should not approve any new costs associated with the Turkey Point Units 6 and 7 Project in this year's NCRC proceeding. We should only approve for recovery FPL's actual 2015 prudently incurred costs and a final over-recovery of \$1,306,211 as the true-up amount for the Turkey Point Units 6 and 7 Project. Further, OPC states that we should approve returning to ratepayers the amount identified as an over-recovery of \$5,998,991.

FIPUG

FIPUG states that we should not approve any amount as FPL's actual 2015 and 2016 prudently incurred costs or final true-up amounts for the Turkey Point Units 6 & 7 Project. FIPUG asserts that FPL has failed to file a feasibility analysis for its 2016 cost recovery request and failed to offer its 2015 feasibility study as evidence in this case to support its request of recovery of 2015 costs. Therefore, FIPUG argues we should disallow FPL's request to recover 2015 and 2016 dollars through the nuclear cost recovery clause proceeding due to FPL's failure to comply with our feasibility analysis rule.

FRF

FRF states that we should order FPL in 2018 to refund to customers \$53,964,509 as the final true-up amount of 2015 and 2016 Turkey Point Nuclear Project incurred costs. FRF argues that FPL failed to comply with applicable requirements of, and failed to meet its burden of proof as required by, Section 366.93, F.S., and Rule 25-6.0423, F.A.C. FRF further argues that to qualify for any cost recovery, pursuant to Section 366.93(3)(f)3., F.S., a utility must prove that it intends to construct its proposed plant and that its intent is realistic and practical. FRF argues that FPL did not meet its burden to prove the required intent and therefore, by law, is not entitled to any order by this Commission approving cost recovery for any expenditures associated with its proposed Turkey Point Nuclear Project.

SACE

SACE argues that we should not approve any 2015 or 2016 Turkey Point Units 6 & 7 Project costs as being prudently incurred. SACE states that FPL did not complete a properly analyzed and realistic feasibility analysis in 2015, and that the requested cost recovery flowing from the deficient feasibility analysis is neither reasonable nor prudently incurred, and should be denied. SACE argues that FPL has not met its burden of proof concerning intent, and that FPL has provided no evidence in 2016 that its costs were prudently incurred. However, SACE did not provide specific arguments to support its position on the TP Project jurisdictional and final true-up amounts.

ANALYSIS

2015 and 2016 TP Project Activities and Jurisdictional Amounts

FPL witness Scroggs provided summary descriptions of the 2015 and 2016 TP Project activities and costs for licensing, permitting, engineering and design, reevaluation of the project schedule, and data on executed contracts. The licensing category of activities consisted of FPL

employee and contractor labor as well as specialty consulting services necessary to support the COL and state certification applications. The permitting category of activities consisted of additional support provided by employees and legal services. The engineering and design category of activities included employee and/or consulting services supporting the continued permitting of the underground injection exploratory well, and membership fees for Electric Power Research Institute's advanced nuclear technology working group and the AP1000 Owners Group. Witness Scroggs testified that FPL did not incur any costs during 2015 or 2016 for long-lead procurement advance payments, power block engineering and procurement, or transmission facilities.

In Exhibit 4, witness Scroggs provided a listing of 57 different federal, state, and local licenses, permits, and authorizations necessary for the TP Project. Witness Scroggs testified that in 2014, the Power Plant Siting Board approved the Site Certification for the TP Project and issued its Final Order. This Final Order was appealed by Miami-Dade County, the City of Miami, the City of South Miami, and the Village of Pinecrest.⁵ The Third District Court of Appeal (3rd DCA) heard arguments from the parties in 2015. In April 2016, the 3rd DCA reversed and remanded certain elements of the Site Certification. FPL petitioned for a rehearing en banc, which was denied. The 3rd DCA Mandate was issued in December 2016. FPL sought certiorari review by the Florida Supreme Court in late 2016. Other events regarding FPL's progress toward obtaining a COL for the Turkey Point 6 & 7 Project in 2015 included the NRC publishing its Draft Environmental Impact Statement, receiving comments from a range of stakeholders, and finalizing technical information on the Safety Evaluation.

FPL provided a series of schedules in its Exhibits 2 and 3 detailing its final 2015 and 2016 project costs that included a calculation of its requested 2015 and 2016 recovery amount. FPL witnesses Grant-Keene and Scroggs testified that the jurisdictional expense amount for 2015 was \$17,309,494. The associated carrying costs totaled \$6,828,817. This results in total jurisdictional costs of \$24,138,311 for 2015. The jurisdictional expense amount for 2016 was \$15,673,982. The associated carrying costs totaled \$7,166,446. This results in total jurisdictional costs of \$22,840,428 for 2016. Consequently, FPL's total 2015 and 2016 jurisdictional amount, including carrying costs, is \$46,978,739 ($\$24,138,311 + \$22,840,428 = \$46,978,739$).

FPL witness Scroggs presented a review of FPL's 2015 and 2016 internal project controls, processes, and procedures and opined that FPL appropriately and prudently managed the TP Project. Commission audit staff witnesses Lehmann and Rich reported no findings based on their review of FPL's 2015 and 2016 project management oversight and controls.

As discussed in Section I of this order, no record evidence was presented challenging the prudence of FPL's 2015 and 2016 project oversight.

Final 2015 and 2016 True-up of Recoverable Amounts

In support of the final 2015 and 2016 true-up recovery amount, witness Scroggs described variances in project activities compared to FPL's May 2015 filings. FPL reported a

⁵Miami-Dade County v. Florida Power & Light Co., 208 So. 3d 111 (Fla. 3d DCA 2016).

decrease in costs for licensing activities in 2015 due to unused contingency, partially offset by additional NRC fees and engineering costs associated with completing the seismic reviews and additional legal costs associated with addressing the single admitted contention at the NRC. Decreased costs for licensing activities in 2016 were due to lower than anticipated software license costs and unused contingency. Costs for permitting decreased in 2015 due to reductions in employee support and legal services. Decreased costs for permitting activities in 2016 were due to reduced project development and legal support. FPL witness Scroggs noted a net decrease in engineering and design costs compared to prior projections due to lower than anticipated AP1000 Owners Group costs and reduced support requirements for both 2015 and 2016.

FPL witness Grant-Keene provided additional support for the reported costs and methods used to determine the requested 2015 and 2016 final true-up recovery amounts. Witness Grant-Keene explained that actual 2015 project costs were compared to the prior estimate of 2015 project costs to determine the final true-up amount of \$1,306,211 over recovery. The requested 2015 final true-up amount includes \$1,328,727 over recovery of pre-construction expenses and an under recovery of \$22,516 for associated carrying charges. Witness Grant-Keene gave a similar explanation for the actual 2016 project costs compared to the prior estimate of 2016 project costs to determine the final true-up as an over recovery of \$5,998,991. The requested 2016 final true-up amount includes \$5,383,328 over recovery of pre-construction expenses and \$615,662 over recovery of associated site selection carrying charges. The result is a combined final true-up over recovery amount for 2015 and 2016 of \$7,305,202 ($\$1,306,211 + \$5,998,991 = \$7,305,202$).

Commission staff accounting audit witness Piedra provided testimony and sponsored accounting audit reports of FPL's 2015 and 2016 actual costs associated with the TP Project. As noted in witness Piedra's testimony, Commission staff's audit activities included tracing and verification of the 2015 and 2016 costs and the final true-up amounts. Witness Piedra also verified that FPL's final true-up NCRC filings were consistent with and in compliance with Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Witness Piedra did not report any findings.

We reviewed the intervenors' arguments in support of a denial or refund of costs incurred during 2015 and 2016. We find that these arguments are legal in nature and do not directly address the prudence of the requested final true-up amounts. FIPUG, FRF, and SACE stated that FPL's failure to file a feasibility analysis in 2016 and 2017 must, by law, allow us to make only a decision to deny FPL's cost recovery request because FPL did not comply with the requirements of Section 366.93 F.S., and Rule 25-6.0423 F.A.C. Similarly, FIPUG, FRF, and SACE also state that we cannot approve any recovery of costs in 2018 because FPL did not meet its burden of proof concerning its intent to construct as required by Section 366.93(3)(f)3., F.S.

OPC argues that we may not approve future cost recovery due to FPL's failure to file a feasibility analysis. However, OPC did not join with the other intervenors who took positions that we should deny recovery of costs or order refunds of costs that were incurred in past periods.

As discussed in Section IV below, non-compliance with statute and rule requirements can be grounds for us to deny requests for the recovery of future costs. However, consistent with our decision in Section I, FPL has complied with the NCRC statute and rule concerning the final

true-up and prudence determination requested in this Section. As noted by FPL's witnesses Scroggs and Grant-Keene, FPL initially presented its projections of activities and costs in the 2014 and 2015 NCRC proceedings. These projections were supported with feasibility analyses and all other required filings. In March of this year, these witnesses also filed the required true-up data and testimony to support the prudence of FPL's project activities and the actual level of incurred costs related to these project activities.

The standard for determining prudence is consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or reasonably should have been known, at the time the decision was made.⁶ A feasibility analysis is forward looking. Therefore, we agree with FPL that the use of a feasibility analysis to assess prudence of costs incurred in 2015 and 2016 would require the application of a hindsight review, which is prohibited.

None of the intervening parties presented testimony or elicited any evidence supporting the imprudence of any TP Project management decision or action in 2015 and 2016, or that the resulting costs from those actions were imprudently incurred. In addition, we found no evidence that FPL did not comply with all filing requirements as they relate to the demonstration of prudence during this time period. Thus, no adjustment to FPL's final true-up of 2015 and 2016 TP Project costs shall be made.

Conclusion

Consistent with our verification of FPL's calculations, a preponderance of the evidence in the record, and our determination in Section I of this order, we find FPL's final combined 2015 and 2016 prudently incurred TP Project costs were \$46,978,739 (jurisdictional) for the TP Project. We also find that FPL appropriately identified a combined 2015 and 2016 final true-up amount as an over recovery of \$7,305,202.

III. Suspension of FPL's Participation in NCRC Hearings

This Section addresses FPL's request to suspend future NCRC hearings for up to five years during an extended pause in TP Project development. Rather than annual recovery of costs, FPL requests to defer cost recovery beginning January 1, 2017.

⁶ Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million, at 3; Order No. PSC-08-0749-FOF-EI, issued November 12, 2008, in Docket No. 080009-EI, In re: Nuclear cost recovery clause, at 28; Order No. PSC-09-0783-FOF-EI, issued November 19, 2009, in Docket No. 090009-EI, In re: Nuclear cost recovery clause, at 11, 13; Order No. PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 26, 28, 57, 61, 91, 93; Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, In re: Nuclear cost recovery clause, at 23, 24, 32, 59, 60; Order No. PSC-13-0493-FOF-EI, issued October 18, 2013, in Docket No. 130009-EI, In re: Nuclear cost recovery clause, at 26; Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket No. 150009-EI, In re: Nuclear cost recovery clause, at 22-23.

PARTIES' ARGUMENTS

FPL

FPL argues that the annual cost recovery allowed by Section 366.93, F.S., and Rule 25-6.0423, F.A.C., is optional. Section 366.93(3)(a), F.S., as well as Rule 25-6.0423(6), F.A.C., state “a utility may petition for cost recovery.” FPL could exit the NCRC process entirely and continue with the TP Project as a base rate project. Alternatively, FPL could continue to seek annual cost recovery, despite the significant near-term uncertainty and without meaningful updates to its total non-binding cost estimate range or feasibility analysis.

FPL ultimately proposes to suspend the annual NCRC process for up to five years. FPL asserts that its proposal is aligned with its plan to pause the TP Project upon receipt of its license. The TP Project pause was anticipated to last four to six years. Costs that otherwise would be recovered each year through the NCRC would remain eligible for recovery at a later time, inclusive of associated carrying costs and deferred return on the deferred tax asset. TP Project costs would continue to be tracked and accounted for in the same manner and with the same level of detail as before. Intervening parties would have the same opportunity to challenge FPL’s TP Project expenditures afforded by the rule at a future date.

FPL states that its current costs pertain to obtaining the combined operating license and other approvals. After receipt of the license, costs will be incurred to keep the license current and for activities associated with the Florida Site Certification. Over the four to six year deferral period, the estimated total cost would be about \$90 million. Approximately \$45 million of the total is carrying costs. Approximately \$35 million of the carrying cost total represents FPL return on its deferred tax asset that is associated with its historical costs recovered through 2016. FPL notes that the incremental carrying costs that would result from the deferral over a five-year period would be close to \$10 million based on the above figures.

FPL contends that Intervenors’ claim that we cannot legally allow a deferral of cost recovery without a feasibility analysis is not supported by statute, rule, or logic. FPL maintains that there is no basis for their argument in Section 366.93, F.S. Arguments that FPL has not made a sufficient showing pursuant to Section 366.93(3)(f)3., F.S., are misplaced. Paragraph (3)(f) addresses two scenarios where a utility has not begun construction after receiving the license from the NRC, one 10 years and the other 20 years. Accordingly, paragraph (3)(f) cannot apply until, at the earliest, 10 years after FPL has received its combined license.

FPL argues that Rule 25-6.0423(6)(a), F.A.C., addresses a proposed “recovery period” or “period of recovery” and not a deferral period. The rule section will apply when FPL returns and seeks cost recovery. FPL also asserts that a feasibility analysis is only required within the context of Rule 25-6.0423(6), F.A.C., addressing the manner in which a utility may petition for cost recovery. FPL has not requested cost recovery. FPL has only requested suspending cost recovery up to five years.

FPL states that during the deferral period, it will continue to file the information required by Section 366.93(5), F.S., and Rule 25-6.0423(9)(f), F.A.C. FPL contends that these are filing requirements that are separate from the cost recovery process.

OPC

OPC argues that FPL has sought a determination of reasonableness to incur costs in 2017 and in future years. OPC argues that this request invokes all of the requirements of Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs “will be recovered within 1 year, unless the Commission approves a longer period. Any party may, however, propose a longer period of recovery, not to exceed 2 years.” Rule 25-6.0423, F.A.C., further requires FPL to submit each year for our review and approval, as part of its cost recovery filing, “a detailed analysis of the long-term feasibility of completing the power plant.”

OPC contends that the NCRC process is structured to allow for annual recovery of preconstruction costs and discourage the year-to-year accrual of carrying costs. FPL proposed to defer costs incurred in 2017 and afterwards for a minimum of 4 years. Because carrying costs would accrue in each year, OPC argues that FPL’s request is contrary to the requirements of the rule. OPC argues that the rule caps the period of carrying cost accrual at two years.

OPC also asserts that, pursuant to the rule, FPL is obligated to file a long-term feasibility analysis of completing the power plant. FPL failed to make this filing in 2017. OPC maintained that, contrary to FPL’s assertion that a feasibility study serves no purpose at this point in the project, the analysis is absolutely necessary for us to make an informed and reasoned decision as to whether the project should move forward. OPC contends that without the information, it is inappropriate to find that incurring costs, and deferring them for later recovery, is reasonable.

FIPUG

FIPUG argues that this Commission should decline or defer our response to FPL’s request for multiple reasons. First, the duration of FPL’s pause is unclear. Secondly, the carrying costs during the undefined pause period are significant and a burden on FPL’s customers. Half of the annual costs are carrying costs. FIPUG argues that if we approve FPL’s request, these carrying costs will compound and accrue, and the statute was put in place to implement a “pay as you go” approach.

Third, FPL’s approach is not reasonable at this time because FPL has not submitted a feasibility analysis since May 1, 2015. FIPUG argues that we cannot make a finding of reasonableness as requested based on such outdated information, and we should not embark upon a two-step rate increase methodology where the future review would be limited to only a prudence determination.

FRF

FRF argues that FPL is not entitled to any Commission ordered relief without satisfying the statutory burden of proof that it has realistic and practical intent to construct the TP Project. FRF maintains that Section 366.93(3)(f)3., F.S., expressly requires that, in order to qualify for any cost recovery, FPL must prove that it intends to construct its proposed plant. Section 366.93(3)(f)3., F.S., states:

Beginning January 1, 2014, in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to construct a nuclear or integrated gasification combined cycle power plant only if the utility proves by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

In Order No. PSC-15-0521-FOF-EI, we explained, stating at page 19, the intent and requirements of the rule:

The January 29, 2014 amendment to Rule 25-6.0423(6)(c)5., F.A.C., requires that FPL provide evidence of intent to construct the TP Project. The rule specifies that the utility show “it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.”

FRF argues that notwithstanding the clear, express, and specific requirements, FPL provided no evidence of intent to construct the TP Project. In the context of the rule, the possibility that the TP Project would or could be built is untested because of FPL’s failure to provide the feasibility analysis. FRF contends that FPL has failed to give us the information that we need to fulfill our duty under Section 366.93, F.S., and Rule 25-6.0423, F.A.C.

FRF maintains that the deferral period is unknown and the deferred amount is unspecified. FRF argues that the only “intent” FPL has is to pause its consideration of whether to construct the TP Project. Thus, FRF contends that FPL is not entitled to an order authorizing deferral of costs for future recovery.

SACE

SACE maintains that as a matter of law, we cannot grant FPL’s request. SACE contends that FPL’s request is not consistent with the statute controlling cost recovery, Section 366.93, F.S., nor our rule for cost recovery, Rule 25-6.0423, F.A.C. Therefore, SACE concludes, as a matter of law, this Commission cannot grant the relief requested by FPL.

SACE states that Section 366.93(2), F.S., requires us to establish a rule to implement the statute. The statute also provides that a utility may petition us for cost recovery as permitted by Section 366.93, F.S., and Rule 25-6.0423, F.A.C. SACE maintains that Rule 25-6.0423(6)(c)5., F.A.C., states “along with the filing 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 combine 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.” Additionally, Rule 25-6.0423(6)(c)1.c., F.A.C., requires a utility to “submit, for Commission review and approval its projected preconstruction expenditures.” Further, Rule 25-6.0423,(6)(c)2., F.A.C., states that the “Commission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures.”

SACE argues that FPL failed to file a feasibility analysis and projected expenditures. SACE argues that without such filings it has not provided us with the facts necessary to render the required determination.

ANALYSIS

FPL decided to pause TP Project development after the COL is secured in late 2017 or early 2018. FPL currently estimates the pause period could be four to six years. During the pause period, FPL requested deferred review and deferred recovery of costs associated with obtaining and maintaining its licenses and permits beginning with its 2017 incurred costs. FPL’s request includes deferral of all of our NCRC reviews for four to six years.

Granting FPL’s deferral would preclude any prospective Commission reviews that would otherwise occur during the deferral period. Consequently, resolution of this issue hinges on whether we have sufficient information to grant FPL’s deferral request pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C.

Arguments raised by the parties include our prospective reviews, a history of NCRC deferrals, estimated carrying cost impact, adjusting FPL’s carrying cost, and annual TP Project status reports. Our analysis addresses each of these topics.

Prospective Reviews

Section 366.93(2), F.S., requires:

[T]he Commission to establish by rule, alternative cost recovery mechanisms for the recovery of siting, design, licensing and construction of a nuclear power plant, including new, expanded, or relocated electrical transmission lines, and facilities that are necessary thereto, or of an integrated gasification combined cycle power plant. Such mechanisms must be designed to promote utility investment in nuclear or integrated gasification combined cycle power plants and allow for recovery in rates of all prudently incurred costs

We established Rule 25-6.0423, F.A.C., and implemented the requirements of Section 366.93, F.S. The rule describes various prospective regulatory reviews. Rule 25-6.0423(6)(c)1.b., F.A.C., states in part:

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

In addition, Rule 25-6.0423(6)(c)1.c., F.A.C., states in part that:

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

Further, Rule 25-6.0423(6)(c)5., F.A.C., states that:

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 . . . 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.

FPL did not seek a waiver of any part of Rule 25-6.0423, F.A.C. Instead, FPL requested deferral of our reviews. In discussing specific considerations included in the rule, FPL witness Scroggs testified:

Annually, within the cost recovery process, the applicant must provide a full accounting for all project activities and costs for which a utility is seeking recovery. This transparency allows the FPSC to conduct in-depth oversight of the utility's actions in real time – as the project proceeds, rather than in hindsight decades after decisions are made and money is spent. The FPSC then makes a “reasonableness” determination as to the costs projected for the project (prior to any recovery of those costs), and reviews historical costs for “prudence.”

FPL witness Scroggs described the rule as requiring FPL to provide a full explanation of all project activities and costs for which it is seeking recovery on a projected basis. We agree. Our prospective reviews, as identified by rule, address future project activities and costs as well as a detailed analysis of the long-term feasibility of completing the power plant.

Future Project Activities and Costs

FPL witness Scroggs testified that FPL would, at a later date, ask for recovery of costs incurred “and be subject to reasonableness and prudence reviews at that time.” Witness Scroggs explained that FPL’s filed schedules did not provide any insight as to the possible magnitude of 2017 and 2018 expenses because FPL was not seeking cost recovery at this time. Similarly, FPL witness Grant-Keene noted that FPL “is not seeking the Commission’s review or the recovery of

2017 or 2018 activities and costs at this time.” Therefore, witness Grant-Keene did not include 2017 actual/estimated or 2018 projected schedules in her testimony.

FPL represented that in 2017, and in subsequent years, the TP Project development would be limited to activities necessary to obtain and maintain TP Project licenses and permits. FPL witness Grant-Keene estimated that over a five-year period the deferred balance would be in the range of \$90 million and about half of the total, or \$45 million, would be carrying charges. The carrying charge estimate included an annual accrual of approximately \$7 million or a total of \$35 million, associated with the deferred tax asset due to prior NCRC recoveries.

FPL did not request a reasonableness determination of its activities and costs for 2017 and beyond. Instead, FPL asked to defer our reasonableness determination for a period of up to 5 years.

FIPUG urges us not to embark on a two-step rate increase methodology where the future review would be limited to only a prudence determination. By deferring our prospective reasonableness determination, FPL may be putting at risk its ability to recover the above costs through the NCRC. Arguably, it is possible that when FPL does seek recovery, we may determine that FPL was unreasonable to undertake specific actions and incur associated costs.

Feasibility Analysis

FPL did not provide a feasibility analysis in 2016 or 2017. In 2016, FPL determined that a feasibility analysis would have no bearing on the logic to finish its near-term TP Project licensing activities. FPL witness Scroggs cautioned that he would not recommend we rely on any feasibility analysis that FPL could have put forth. He testified that FPL does not have the information that would provide an accurate, relevant update of the feasibility analysis. He also believed that the absence of a feasibility analysis does not mean the TP Project is no longer feasible. Nevertheless, witness Scroggs acknowledged that we have never made a determination of reasonableness to continue with the project without the benefit of a feasibility analysis. We inquired as to whether FPL considered submitting an updated report that explained the information FPL did and did not have. Witness Scroggs responded, “no.”

As previously noted, FPL did not request a reasonableness determination of its activities in 2017 and beyond. Instead, FPL asked to defer our reviews of reasonableness for a period of up to 5 years. FPL argues that Rule 25-6.0423(6), F.A.C., addresses the manner in which a utility may petition for cost recovery. Because FPL did not seek recovery of prospective costs and prospective review at this time, FPL argued that the rule requirement for a feasibility analysis is not applicable.

In its brief, FPL notes the structure of Rule 25-6.0423, F.A.C., indicates that a feasibility analysis is informational in nature. OPC argues that FPL’s feasibility analysis is necessary for us to make an informed and reasoned decision. FIPUG similarly asserts that without the important information found within a feasibility analysis, we should defer addressing FPL’s requested relief. FRF asserts that FPL simply failed to give us the information we need to fulfill our duty under the statute and rule. FRF also argues that in the absence of a 2017 feasibility analysis, we

cannot make a determination regarding the reasonableness of completing the TP Project. SACE also contends that FPL has not provided the requisite information for a reasonableness determination.

If FPL had filed a 2017 feasibility analysis, we would have assurance that we reviewed all pertinent matters pertaining to the TP Project. This is because a 2017 feasibility analysis is expected to contain information related to the feasibility of completing the TP Project. Under this hypothetical scenario, our determination concerning the 2017 TP Project feasibility analysis could have informed a decision in this issue concerning FPL's request to begin implementing deferred recovery of its future licensing and permitting costs.

Due to the absence of FPL's 2017 feasibility analysis there is insufficient record evidence in this proceeding for us to make an informed regulatory decision concerning prospective matters pertaining to the TP Project.

History of NCRC Deferral

FPL argues that we have previously granted deferred recovery in other NCRC proceedings. FPL further argues that its deferral request is not without precedence and listed a series of Commission Orders that granted deferred Commission review to the subsequent NCRC proceeding.⁷ In 2015, we approved deferred recovery of FPL's Initial Assessment Study costs.⁸

However, our decision in the 2015 case is distinguishable from FPL's current request because in that proceeding, we reviewed the reasonableness of FPL undertaking the Initial Assessment Studies.⁹ In the instant case, FPL is asking us to defer our reasonableness determination. In addition, deferred recovery of Initial Assessment Study costs was necessary because Section 366.93(3)(b), F.S., limits the types of costs that may be recovered prior to obtaining the COL. Section 366.93(3)(b), F.S., states:

During the time that a utility seeks to obtain a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle plant, the utility may recover only costs related to, or necessary for, obtaining such license or certification.

Consequently, once we had determined the reasonableness of undertaking the Initial Assessment Studies for purposes other than securing the COL, we appropriately addressed the timing of recovery by granting deferred treatment.¹⁰

By Order No. PSC-11-0095-FOF-EI, we articulated our authority to address options related to the timing of recovery and matters associated with rate impacts over the term of the

⁷ Order No. PSC-11-0095-FOF-EI, at 5; Order No. PSC-12-0650-FOF-EI, at 5; Order No. PSC-13-0493-FOF-EI, at 5; Order No. PSC-16-0266-PCO-EI, at 3.

⁸ Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 30-32.

⁹ Id. at 30-31.

¹⁰ Id. at 29-30.

projects.¹¹ Additionally, we have approved a one-year deferral of our reviews in response to joint motions and unopposed motions.¹² In 2016, we approved such a deferral in Order No. PSC-16-0266-PCO-EI.

The forgoing analysis demonstrates that, on a case-by-case basis, a deferral of our reviews and a decision on deferred cost recovery is permissible. However, this case is distinguishable from prior deferral requests. In this case, there is insufficient record evidence for this Commission to make an informed regulatory decision concerning prospective matters pertaining to the TP Project.

Estimated Carrying Cost Impact

In its brief, FPL argues that Rule 25-6.0141, F.A.C., sets forth requirements that a non-nuclear power plant project, like a combined cycle power plant, would be eligible for accumulated CWIP and would accrue AFUDC. Costs for a non-nuclear power plant project would annually accrue AFUDC and project expenses. When the power plant goes into service, the utility would then begin to recover the accrued and deferred costs through depreciation.

The NCRC differs from the traditional cost recovery mechanisms by affording the utility recovery of carrying costs equivalent to its AFUDC as well as recovery of preconstruction costs prior to a nuclear power plant entering commercial service. FPL, OPC, and FIPUG, in their respective briefs, assert that annual NCRC recovery of AFUDC avoids the accumulation of AFUDC. However, OPC further argues that FPL's deferral request is inconsistent with the intent of the NCRC process because the NCRC process contemplates annual recovery of AFUDC. FIPUG similarly argues that the NCRC process was put into place with a pay as you go approach rather than the compounding and accrual of carrying costs associated with FPL's request.

OPC additionally states that Rule 25-6.0423(6)(a), F.A.C., requires that preconstruction costs, which include COL costs, "be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, but not to exceed 2 years." OPC asserts that FPL's request should be denied because it is contrary to the rule. FPL contends that the rule addresses a recovery period, not a deferral of cost recovery. We agree with FPL.

FPL's proposed five year deferral period would accrue approximately \$45 million in carrying costs. Most of the carrying costs, approximately \$35 million, would not stem from costs incurred after 2016. Instead, it is the result of an annual accrual of \$7 million that is associated with deferred tax assets, a consequence of NCRC recoveries prior to 2017.

¹¹ Order No. PSC-11-0095-FOF-EI, issued February 2, 2011, in Docket 100009-EI, In re: Nuclear cost recovery clause, at 9.

¹² Id. at 5; Order No. PSC-12-0650-FOF-EI, at 5; Order No. PSC-13-0493-FOF-EI, at 5; Order No. PSC-16-0266-PCO-EI, at 3.

Adjusting FPL's Carrying Cost

In its brief, FIPUG urges us to “eliminate or greatly reduce the effective carrying costs for the TP Project. FIPUG asserts that “FPL shareholders have virtually no ‘skin in the nuclear cost recovery game’ and the sharing of carrying costs between ratepayers and shareholders is warranted and in order.”

FIPUG is merely rearguing the concept of risk sharing which we previously addressed.¹³ We have repeatedly declined to implement risk sharing because we do “not have the authority under the existing statutory framework to require a utility to implement a risk sharing mechanism that would preclude a utility from recovering all prudently incurred costs resulting from the siting, design, licensing, and construction of a nuclear power plant.”¹⁴

We have also addressed consideration of adjusting a utility's carrying cost.¹⁵ In Order No. PSC-12-0650-FOF-EI we responded to arguments that we had an inherent authority to disallow any costs found unreasonable or imprudent. We found that “the statute does not appear to provide for the partial disallowance of a portion of any prudently incurred carrying costs.” Therefore, carrying costs are either entirely prudent or entirely imprudent. Additionally, Section 366.93(2)(b), F.S., states in part:

To encourage investment and provide certainty, associated carrying costs must be equal to the most recently approved pretax AFUDC at the time an increment of cost recovery is sought.

Based on the plain and unambiguous language of the statute, FPL's carrying cost is explicitly prescribed and the statute affords no latitude for adjustment within the NCRC process.

Annual TP Project Status Reports

If FPL intends to pause its participation in the NCRC, then it should file annual budget and actual cost updates as required by Section 366.93(5), F.S. Section 366.93(5), F.S., states in part that:

The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the nuclear . . . power plant provided by the utility pursuant to s. 403.519(4), until the commercial operation of the nuclear . . . power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the

¹³ Order No. PSC-11-0095-FOF-EI, issued February 2, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause, at 7-9; Order No. PSC-11-0224-FOF-EI, issued May 16, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause, at 9-10.; PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 57.

¹⁴ Order No. PSC-11-0095-FOF-EI, issued February 2, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause, at 9.

¹⁵ Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, In re: Nuclear cost recovery clause, at 7-8

determination of need for the nuclear . . . power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

Thus, as part of the cost recovery requirements of Rule 25-6.0423, F.A.C., FPL is required to annually update us with cost information. Simply requiring FPL to only state total cost numbers is not meaningful; to be informative, the annual updates shall include a summary presentation of what is causing or expected to cause the project costs to change.

In its response to discovery, FPL supports the concept of a summary annual status report consistent with the requirements of Section 366.93(5), F.S. Additionally, witness Scroggs described factors influencing the TP Project. In its brief, FPL asserted it will continue to file information required by Section 366.93(5), F.S., and Rule 25-6.0423(9)(f), F.A.C. FPL asserts that these filings are separate from the cost recovery process. Additionally, FPL confirmed its offer to include a brief update on the status of the TP Project and factors influencing FPL's review. None of the Intervenor's post-hearing briefs addressed annual project status reports.

Based on the foregoing, we find that if FPL intends to suspend participation in the NCRC, then it shall file annual budget and actual cost updates as required by Section 366.93(5), F.S. The annual updates shall include a summary presentation of what is causing or expected to cause the project costs to change.

Conclusion

At this time, we choose not to approve FPL's request to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C. There is insufficient record evidence in this proceeding for us to make an informed decision concerning prospective matters pertaining to the TP Project.

If, however, FPL still intends to pause its participation in the NCRC, then it shall file annual budget and actual cost updates as required by Section 366.93(5), F.S. The annual updates shall include a summary presentation of what is causing or expected to cause the project costs to change.

IV. Future Recovery of Deferred Costs

This Section addresses the eligibility of costs for recovery pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C., in the event FPL continues to seek its COL but defers the review and recovery of associated costs to a future time.

PARTIES' ARGUMENTS

FPL

FPL argues that annual TP Project expenditures and carrying costs on its deferred tax asset (DTA), accrued during FPL's proposed pause period, would remain eligible for recovery at a later time. FPL has committed to return to this Commission within five years to present the costs incurred during that time for a prudence review. During the pause period, FPL states that

the only types of costs it expects to incur after it receives its COL would be processing fees to the NRC that are required for all licenses as well as costs associated with keeping FPL's license current. FPL affirms that during its proposed pause period it would continue to file all information required by Section 366.93(5), F.S., and Rule 25-6.0423(9)(f), F.A.C., as well as the budgeted and actual costs of a nuclear power plant project as compared to the estimated in-service costs of the power plant as it was provided in the need determination.

FPL states that while the annual cost recovery allowed by the NCR statute and rule is optional, FPL intends to maintain all the protections and oversight afforded to us, intervening parties, and itself under Section 366.93, F.S., and Rule 25-6.0423, F.A.C., while deferring review and recovery of costs for a period of five years. FPL argues that deferred accounting treatment is expressly contemplated within Rule 25-6.0423(4), F.A.C., and should be considered by us in evaluating FPL's requested deferral. Rule 25-6.0423(4), F.A.C., states, in part, that site selection and pre-construction costs shall be afforded deferred accounting treatment and accrue carrying costs until recovered in rates. FPL relies on Order Nos. PSC-11-0095-FOF-EI, PSC-12-0650-FOF-EI, PSC-13-0493-FOF-EI, PSC-15-0521-FOF-EI, and PSC-16-0266-PCO-EI to support its contention that deferral is not without precedent within the NCRC docket, and our authority to grant prior deferral requests has never been challenged.

FPL also rebuts potential legal arguments that Intervenors either have made in advance of FPL's filing, or could make within their post-hearing filing. In response to a potential argument by OPC and other Intervenors concerning the language of Rule 25-6.0423(6)(a), F.A.C., allegedly limiting deferrals to a period of two years, FPL characterizes such purported interpretation of the rule as incorrect. Alternatively, FPL contends that Rule 25-6.0423(6)(a), F.A.C., refers only to the manner in which a utility may petition for cost recovery, and that the "recovery period" as used within the rule has nothing to do with FPL's proposal to defer review and cost recovery. FPL asserts that the "two year" provision is only applicable when FPL returns after its five-year pause period and petitions this Commission for cost recovery. FPL also contends that the requirements of Section 366.93(3)(f)3., F.S., do not apply until a utility begins construction 10 or 20 years after receipt of its license from the NRC. Accordingly, FPL argues that Section 366.93(3)(f)3., F.S., cannot apply until, at the earliest, 10 years after FPL has received its combined license.

FPL further asserts that a feasibility analysis is not required in order for this Commission to find in favor of a deferral of cost recovery. FPL contends that Section 366.93, F.S., requires a feasibility analysis only at such a time when a utility petitions to begin preconstruction work, and that Rule 25-6.0423(6)(c)5., F.A.C., addresses only the manner in which a utility may petition for cost recovery. FPL concludes that nothing in Section 366.93, F.S., or Rule 25-6.0423, F.A.C., precludes us from granting FPL's request for deferral of cost recovery.

OPC

OPC states that Section 366.93(3)(f)3., F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to complete the project and that the intent to complete must be realistic and practical. Further, OPC argues

that FPL's request to defer costs for a minimum of four years is contrary to Rule 25-6.0423(6)(a), F.A.C., and, therefore, should be denied.

FIPUG

FIPUG agrees with the arguments propounded by OPC. In response to the question: "[i]f FPL continues to seek its combined operating license and defers the associated costs, are these costs eligible for cost recovery in a future time period pursuant to Section 366.93, F.S., and Rule 25-6.4023, F.A.C.?" FIPUG answered "no."

FRF

In addition to its arguments made within Sections II and III, FRF argues that we must deny "FPL's request for advance approval for its proposal to create a regulatory asset for recovery of costs that it intends to incur but defer for recovery from customers at some unspecified future date." FRF characterizes FPL's request to defer recovery to future NCRC proceedings as a request for approval of cost recovery; an action that FRF argues is barred by the NCRC statute and rule. FRF further states that FPL's request should "be rejected as a matter of common sense, given the grave doubt surrounding the future of FPL's chosen technology and further given the fact that FPL has no clear intent to build the Turkey Point Project."

SACE

SACE argues that, as a matter of law, we cannot grant FPL's request. SACE states that Section 366.93, F.S., tasks us with establishing rules to implement the law, and provides that a utility may petition us for cost recovery as permitted by this section and our rules. SACE argues the tenets of statutory construction and that according to the plain reading of Section 366.93, F.S., and Rule 25-6.0423, F.A.C., we must reject FPL's request.

ANALYSIS

The Florida Legislature enacted Section 366.93, F.S., in 2006 to encourage utilities' investment in nuclear electric generation. Section 366.93, F.S., directed us to establish an alternative cost recovery mechanism by which investor-owned electric utilities would be able to recover certain costs during the licensing and construction process of new nuclear generation. This statute was subsequently amended in 2007 and 2008 in order to expand the category of costs eligible for recovery under this statutory provision. The statute was last amended in 2013, requiring additional Commission approvals prior to utilities being able to commence certain activities and purchases.

Section 366.93(2), F.S., tasked this Commission, within 6 months of the effective date of the act, to establish by rule alternative cost recovery mechanisms for the recovery in rates of all costs prudently incurred in the siting, design, licensing, and construction of a nuclear power plant. We did as we were statutorily mandated, and adopted Rule 25-6.0423, F.A.C., effective April 8, 2007, to implement the statute. In developing the alternative cost recovery mechanism, we adopted a recovery clause methodology whereby we would approve costs and activities on a

projected basis. As part of the evaluation process we require utilities to file each year a detailed analysis of the long-term feasibility of completing the power plant. In 2013, the Legislature amended the statute, creating Section 366.93(3)(f)3., F.S., which states:

Beginning January 1, 2014, in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to construct a nuclear or integrated gasification combined cycle power plant only if the utility proves by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

Following the 2013 statutory amendment, we amended Rule 25-6.0423, F.A.C., effective January 29, 2014, adding the following language to the feasibility analysis requirement:

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.

FPL argues that the first time Section 366.93, F.S., requires a feasibility analysis is when a utility seeks to begin preconstruction work and not when the utility is in the licensing phase. FPL also argues that subparagraph 3 of Section 366.93(3)(f), F.S., must be read in context with all of paragraph (f) of subsection (3) of Section 366.93, F.S., and therefore only applies when a utility has failed to begin construction of a plant within ten years of receipt of a combined license from the NRC.

However, even if FPL is correct in its contention that an annual feasibility analysis is not explicitly required within the statute, a feasibility analysis is required by Rule 25-6.0423(6)(c)5., F.A.C., and the filing requirements expressed in our rules need not be explicitly stated within its authorizing statute in order to be applicable or necessary. Section 120.52(18), F.S., states that agency rules are meant to be a “statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.” When adopting Rule 25-6.0423, F.A.C., to implement the statute, we required utilities to make several filings that are not explicitly required within the statute. Among them, we determined a feasibility analysis was necessary to inform our evaluation of the reasonableness of projected activities and costs.

FPL states that “[a] feasibility analysis is only required within the context of part (6) (specifically, the feasibility analysis filing requirement is found in Rule 25-6.0423(6)(c)5.), addressing the manner in which a utility may petition for cost recovery – and FPL has not petitioned for cost recovery.” FPL seeks to defer the review and recovery of costs to a future time. FPL states that it does intend to petition us for future review and recovery of these costs through the NCRC, yet it asks us to determine eligibility of such costs at this time.

It is the intent to seek recovery of costs through the NCRC that triggers the requirement to provide a detailed long-term feasibility analysis, not the timing of the request or the actual recovery. While FPL is not requesting contemporaneous cost recovery at this time (instead seeking to defer cost recovery), it is asking us to determine that ongoing costs associated with obtaining the COL to be incurred and recovered in the future be deemed reasonable at this time, and therefore eligible for recovery in the future. However, the “future review” contemplated by FPL would be merely a “prudence review” of costs since it would be looking back at actual costs rather than a prospective review as described by rule. Rule 25-6.0423(6)(c)5., F.A.C., requires a feasibility analysis to assess the reasonableness of all future costs, including the COL costs. The record herein is devoid of a feasibility analysis.

Our decision in this Section is distinguishable from our decision finding FPL’s 2015 and 2016 costs recoverable through the NCRC in Section II above, because FPL filed a feasibility analysis in 2014 and 2015, and we found FPL’s long-term feasibility analysis reasonable in both years.¹⁶ FPL witness Scroggs testified that FPL would next file a feasibility analysis when FPL decides to seek cost recovery. However, a feasibility analysis is a forward-looking analysis.¹⁷ Absence of the required analysis in this proceeding cannot be remedied by a future filing because such an analysis would only support the reasonableness of future project development.

Conclusion

FPL’s filings, testimony, and exhibits do not include information sufficient to support deferred cost recovery through the NCRC beginning January 1, 2017. This same information is necessary to support determinations pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Consequently, we find there is insufficient record evidence at this time to support a determination that deferred 2017 costs are recoverable through the NCRC.

The NCRC is an ongoing regulatory process that provides FPL with the discretion to make petitions and file motions that it believes are in its best interest and permissible pursuant to the NCRC statute and rule. Until such time as FPL submits a detailed analysis of the feasibility of completing the project, costs beginning January 1, 2017 are not eligible for recovery through the NCRC pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C., because they are not properly supported by a feasibility analysis. However, any costs incurred following the submission of an updated feasibility analysis pursuant to Rule 25-6.0423(6)(c)5., F.A.C., may be eligible for recovery pending our review.

This action does not conflict with the provisions of Section 366.93, F.S., allowing a utility to recover prudently incurred costs, because FPL may elect to seek recovery in rates of all prudently incurred 2017 TP Project costs, including associated carrying costs. However, the recovery mechanism would be traditional ratemaking rather than the alternative mechanism

¹⁶ Order No. PSC-14-0617-FOF-EI, issued October 27, 2014, in Docket No. 140009-EI, In re: Nuclear cost recovery clause, at 17; and Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket No. 150009-EI, In re: Nuclear cost recovery clause, at 6.

¹⁷ Order No. PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 17.

pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Additionally, such a filing need not be part of the annual NCRC proceeding. Rule 25-6.0423(3), F.A.C., states:

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 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.

V. Continued Pursuit of the Combined Operating License for Turkey Point Units 6 & 7

In this Section, we discuss whether FPL's decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 is reasonable.

PARTIES' ARGUMENTS

FPL

In its brief, FPL argues that there is no uncertainty regarding its licensing effort. Through 2016, FPL has spent \$260 million (excluding carrying costs) in the licensing effort and is now less than two months away from the NRC's mandatory hearing which is the penultimate step of the process.

FPL agrees with intervenors that the issues related to the first wave of AP 1000 projects reduced the certainty of prior cost estimates and project schedules, which reinforce its decision to pause after completing licensing. Further, FPL argues that possession of a valid COL, which may be acted upon for a period of at least 20 years once issued, will enable FPL to move forward with preconstruction work at the right time. FPL argues that stopping licensing work at this time would be a decision to abandon the amount already recovered from FPL's customers.

While FPL disagrees with the Intervenors regarding the binding effect of our decision, FPL does not dispute that a favorable determination from us on FPL's decision to continue pursuing a combined operating license would be relevant to a future cost recovery request.

OPC

OPC argues that FPL has not filed a feasibility analysis since 2015 and FPL's cost estimate has increased due to cost escalation and extension of project in-service dates. In addition, the issues related to the first wave of AP 1000 projects severely reduce the likelihood that these projects will ever be completed and further demonstrate just how important it is for us to review a feasibility analysis before rendering any further decisions on the project.

FIPUG

FIPUG argues that we should decline or defer our response to FPL's request for a favorable determination on its decision to continue pursuing a combined operating license for a

number of reasons. First, FIPUG argues that the duration of FPL's pause is unclear and could range from 4 years to 10 years, or longer. Secondly, FIPUG argues that the carrying costs during the undefined pause period are significant and a burden on FPL's customers, and if FPL's request is approved, the carrying costs will compound and accrue. Third, FIPUG argues that FPL has not submitted a feasibility analysis since May 2015, which is outdated. FIPUG also argues that a decision on FPL's request may tie the hands of future Commissions.

FRF

FRF argues that FPL is not entitled to any order from this Commission without first satisfying the statutory burden of proof that it has realistic and practical intent to construct the TP Project.

SACE

SACE argues that a reasonableness determination, because it considers projected cost, is forward looking and because FPL failed to file a rule waiver for the feasibility analysis that is required for the NCRC recovery of the projected cost, FPL's request should be rejected based on the plain reading of the rule requirements.

ANALYSIS

In Section III, we determined that TP Project costs incurred after December 31, 2016, are not eligible for deferred cost recovery through the NCRC without a feasibility analysis. In Section IV, we determined that costs incurred following the submission of a feasibility analysis pursuant to Rule 25-6.0423(6)(c)5., F.A.C., may be eligible for recovery pending our review. We do not revisit the question of cost recovery in this section. The issue we address here is simply whether it makes sense for FPL to continue to pursue its COL at this stage in the process.

As discussed above, when the Florida Legislature enacted Section 366.93, F.S., in 2006, the intent was to encourage utility investment in nuclear electric generation in Florida. Even with the statutory changes over the last decade, the Legislature's intent remains to encourage nuclear electric generation. Florida is heavily dependent on natural gas to produce electricity, and maintaining a nuclear generation option is important from a fuel diversity and infrastructure perspective.

FPL customers have already spent significant funds on the TP Project. FPL witness Grant-Keene testified FPL has spent \$308 million. FPL Witness Scroggs testified that FPL is at the "2 yard line." According to witness Scroggs, FPL is very close to the final stages of completing the work necessary to obtain FPL's COL. The NRC mandatory hearing to consider whether to approve the COL could be completed by 2017 or 2018.

FPL argues that a decision to stop licensing work now would be a decision to abandon the funds already recovered from FPL's customers. We agree. The COL is a valuable asset for FPL to possess. We believe FPL's customers would benefit from FPL obtaining the COL. Given the current stage of the project, the option provided by the COL needs to be preserved. The COL,

once received, will provide FPL with at least a twenty year option to build new nuclear generation. By pursuing the COL, FPL would be acting consistent with the legislative intent of Section 366.93, F.S., which is to encourage nuclear development in Florida. Pursuing the COL would also foster greater fuel diversity in the state of Florida.

Conclusion

Based on our analysis above, we find it reasonable for FPL to continue pursuing its combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7.

VI. Long Term Feasibility Analysis Requirement

In this Section, we discuss whether FPL is required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project, pursuant to Rule 25-6.0423(6)(c)5., F.A.C., and whether FPL complied with that requirement.

PARTIES' ARGUMENTS

FPL

FPL states that “[a] 2017 feasibility analysis was neither legally required nor substantively useful in this year’s docket.” FPL concedes that if cost recovery were sought, the filing of a feasibility analysis would not be discretionary. FPL argues that it was not seeking cost recovery for its 2017 or 2018 TP Project costs; therefore, the requirement to file an annual feasibility analysis as required by Rule 25-6.0423(6)(c)5., F.A.C., was not legally required. FPL contends that a feasibility analysis would be meaningless at this time, and would not provide us with information that would be helpful in our consideration of the issues in this docket. FPL argues that a feasibility analysis is only an “examination of whether it makes economic sense to build the Project.”

OPC

OPC argues that Rule 25-6.0423(6)(c)5., F.A.C., is not discretionary and “requires the mandatory detailed annual filing of a long-term economic feasibility [analysis] of completing the plant.” OPC states that FPL’s intention to pause the TP Project before moving from the licensing to the preconstruction phase does not circumvent the requirements of the rule. OPC continued that even if entering a pause were to negate the effectiveness of the rule, which OPC argues it does not, OPC states that performing an annual feasibility analysis still holds merit. OPC contended that the termination of SCANA’s Summer project, the bankruptcy of Westinghouse, the cost overruns of Southern Company’s Vogtle project, decreased natural gas prices, and the lack of a federal carbon emission plan for the next four years strongly suggest that, now more than ever, an economic long-term analysis is required to determine if it is realistic and practical to complete the TP Project. OPC concludes by stating that the NCRC statute and rule require that FPL show that the building of the plant remains realistic and practical, and nothing within Rule

25-6.0423(6)(c)5., F.A.C., makes the filing of a feasibility analysis contingent upon when costs are recovered.

FIPUG

FIPUG argues that FPL failed to comply with Rule 25-6.0423(6)(c)5., F.A.C., by not providing the Commission with a TP Project feasibility analysis for a second consecutive year. FIPUG contends that FPL's interpretation of Rule 25-6.0423(6)(c)5., F.A.C., is at odds with the plain language of the rule provision. FIPUG states that the rule clearly requires a long-term feasibility analysis to provide this Commission with updated information upon which to make decisions regarding cost recovery, the future of the TP Project, and other changes that affect the viability of the TP Project.

FRF

FRF argues that FPL was required to file a detailed long-term feasibility analysis as part of its annual filings pursuant to Rule 25-6.0423(6)(c)5., F.A.C. Citing to Order No. PSC-15-0521-FOF-EI, FRF states that we had defined that the purpose of this rule is for FPL to provide evidence of its intent to construct the TP Project. FRF asserts that the language from the rule requiring that the Utility show that "it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical," tracks specific language within the NCRC statute, Section 366.93, F.S. FRF concludes that FPL has failed to provide an annual feasibility study as required by the rule, and has therefore failed to provide us with the information necessary to fulfill our duty under the NCRC statute and rule.

SACE

In its brief, SACE states that "FPL has failed to follow the process established by the Florida Legislature and this Commission for cost recovery of nuclear preconstruction and construction costs pursuant to Section 366.93, F.S., or Rule 25-6.0423, F.A.C." SACE asserts that Section 366.93(2), F.S., clearly and unambiguously charged us with establishing a rule for an alternative cost recovery mechanism for the recovery of costs incurred in the siting, design, and licensing of nuclear power plants. SACE argues that while the statute and rule permissively allows recovery for nuclear related costs, it does not naturally follow that the statute and rule provides an option for a utility to recover those costs outside the framework established by the Legislature and this Commission.

SACE contends that Rule 25-6.0423, F.A.C., created specific filing requirements to implement Section 366.93, F.S., and one of the "bedrocks" of the rule is the filing of a detailed analysis of the feasibility of completing the reactors. SACE states that FPL has failed to file the required feasibility analysis in 2016 and 2017, and in so doing failed to show that its intent to build the TP Project is realistic and practical. SACE concludes by stating that in failing to file a required feasibility analysis, FPL has failed to comply with both the statute and the rule mandated process for nuclear cost recovery.

ANALYSIS

Rule 25-6.0423, F.A.C., describes a process where projected activities and costs are subject to our review for reasonableness. Analysis of the feasibility of completing a project is a requirement necessary to support a determination that future activities and the collection of projected expenses are reasonable. However, the absence of the required analysis means there is insufficient evidence for us to make an informed decision.

The absence of the required analysis cannot be remedied by a future filing because that future filing would be prospective in nature, even if it supports the reasonableness of continued project development. FPL acknowledges this fact in its brief when it argues that filing a 2017 feasibility analysis should not be used by the Commission to assess the prudence of FPL's 2015 and 2016 costs. Specifically, FPL states that "a 2017 feasibility analysis to assess the prudence of historic costs would violate this Commission's principle against hindsight review and therefore cannot support an interpretation of the Rule that such a filing is necessary to allow th[is] Commission to assess the prudence of FPL's 2015 and 2016 costs."

Section 366.93, F.S., and Rule 25-6.0423, F.A.C., sets forth an alternative cost recovery mechanism that is contemporaneous with the demonstration that proceeding with project development is reasonable. While FPL may desire better data to support the required analysis, FPL must endeavor to present the required analysis if it seeks cost recovery pursuant to the statute and rule. FPL states that performing a feasibility analysis would have "no bearing on the logic of finishing the near-term, relatively low-cost activities required to complete the licensing phase of the Project." However, while FPL may not have needed to perform a feasibility analysis for internal decision making processes or believes a feasibility analysis would not be substantively useful to this Commission, it is needed and required by us in order to perform our duties pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. While FPL claims it is not seeking cost recovery at this time and intends to seek cost recovery after its pause period, the review contemplated post-pause period is only a prudence review. FPL is effectively asking us to make a reasonableness determination at this time, which is tantamount to a "nod" or approval presently allowing cost recovery to take place sometime in the future. In the absence of a feasibility analysis the rule does not contemplate any form of substantive approval of the project which would effectively bind us as a matter of right in the future.

FPL witness Grant-Keene testified that FPL intends to petition us in the future for review and recovery of TP Project costs incurred in 2017 and 2018 through the NCR clause process. We find that in order to be eligible for cost recovery pursuant to Section 366.93, F.S., a detailed long-term analysis of the feasibility of completing the TP Project is required pursuant to Rule 25-6.0423(6)(c)5., F.A.C., prior to the time period under consideration.

Conclusion

Based on the record evidence and the analysis above, we find that FPL was required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 Project pursuant to Rule 25-6.0423(6)(c)5., F.A.C., if FPL intends to seek our review and

approval of costs incurred beginning January 1, 2017. FPL has not complied with that requirement.

VII. Compliance with Order No. PSC-16-0266-PCO-EI

This Section addresses whether or not FPL has complied with Order No. PSC-16-0266-PCO-EI.

PARTIES' ARGUMENTS

FPL

FPL states that the language in Order No. PSC-16-0266-PCO-EI, supports its argument that a 2017 feasibility analysis was neither legally required nor substantively useful in this year's docket due to FPL's inability to meaningfully revise its cost estimate and feasibility analysis until it can assess the lessons learned from the first wave construction projects. FPL argues that the order did not require it to take any particular action, the order's legal effect being to grant FPL's Motion to Defer Consideration of Issues and Cost Recovery. FPL states that it made two representations that were captured within the order; first, that it would withdraw its Petition for Waiver of Rule 25-6.0423(6)(c)5., F.A.C., and second that FPL planned to file a long-term feasibility analysis during the 2017 Nuclear Cost Recovery process. FPL asserts that its decision not to seek cost recovery in the 2017 NCRC cycle reflected a material change in its filing plans. FPL argues that its decision not to seek contemporaneous cost recovery nullified the filing requirement within Rule 25-6.0423(6)(c)5., F.A.C., and "FPL's plan to file a feasibility analysis pursuant to that rule provision became moot."

OPC

OPC argues that in granting FPL's requested deferral of recovery for its 2016 and 2017 costs to this year's proceeding, "the Commission specifically noted, in apparent reliance thereon, that 'FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket.'" OPC argues that by granting FPL's motion for deferred consideration, we incorporated FPL's representation that it would file a feasibility study, not a conditional representation that FPL "might" file a long-term study in this year's proceeding. OPC argues that FPL has failed to file a long-term feasibility study in this year's docket in accordance with Rule 25-6.0423(6)(c)5., F.A.C., and therefore has failed to comply with Order No. PSC-16-0266-PCO-EI. OPC concludes by stating that we should decline making any decision as to the reasonableness and appropriateness of FPL obtaining and maintaining the COL and approving any additional costs for recovery or later recovery until FPL files a long-term feasibility analysis demonstrating that its intent to complete the TP Project is realistic and practical.

FIPUG

FIPUG argues that FPL has not complied with Order No. PSC-16-0266-PCO-EI, and that we should deny FPL any relief that it seeks. Additionally, FIPUG adopts OPC's post-hearing

brief to the extent that OPC's brief addresses issues or makes arguments not set forth within FIPUG's own post-hearing brief.

FRF

FRF contends that while it would be difficult to determine if FPL has violated any express requirements within Order No. PSC-16-0266-PCO-EI, FPL did represent that it would file a long-term feasibility analysis within this year's docket. FRF argues that FPL's failure to deliver on its 2016 representation, upon which we relied, to provide a long-term feasibility analysis in the 2017 NCRC docket violated the spirit of the Order.

SACE

SACE asserts that Order No. PSC-16-0266-PCO-EI was predicated on the understanding that FPL would file a feasibility analysis in this year's proceeding. SACE argued that FPL failed to comply with the Order and failed to file a waiver request to be excused from the rule's requirements. Therefore, SACE argues, this Commission, as a matter of law, cannot provide FPL with its requested relief.

ANALYSIS

By Order No. PSC-16-0266-PCO-EI (Order), issued July 12, 2016, in Docket No. 160009-EI, we granted FPL's Motion to Defer Consideration of Issues and Cost Recovery (Motion) filed in last year's Nuclear Cost Recovery Clause proceeding. The effect of the Order was to defer until 2017 all NCRC issues for FPL. FPL argues that the Order did not require it to take any particular action. FRF agreed and stated that FPL did not violate any express requirements within the Order. OPC, FIPUG, and SACE argue that FPL has not complied with the Order, and that we should deny FPL the relief it seeks.

FPL made certain representations to this Commission that we memorialized within the Order. Specifically, the Order states:

Further, FPL states that following our approval of this motion, FPL will withdraw its Petition for Waiver. FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket. Additionally, FPL requests that the deferral be implemented consistent with the requirements of Section 366.93, F.S., and Rule 25-6.0423, F.A.C., which afford deferred accounting treatment and accrual of carrying charges equal to FPL's most recently approved allowance for funds used during construction rate until recovered in rates.¹⁸

FPL withdrew its rule waiver request; however, FPL did not file a 2017 feasibility analysis. FPL argues that it takes its representations made to this Commission seriously, and that its decision not to file a 2017 feasibility analysis was the result of FPL deciding not to seek

¹⁸ Order No. PSC-16-0266-PCO-EI at 2.

contemporaneous cost recovery, and independently determining that a feasibility analysis was not required.

Witness Scroggs testified that due to a significant change in circumstances, the need for a feasibility analysis had been rendered moot and not required. Witness Scroggs testified that in addition to FPL's position that a feasibility analysis is not required, the only other reason FPL did not file a feasibility analysis was because of a lack of insight into the first-wave project costs. In response to a question from this Commission asking if there was "anything that precludes the company from submitting a report, again, just based on best-available information," FPL witness Scroggs stated that "there was nothing that would preclude [FPL] from conducting an analysis . . ."

Conclusion

In granting FPL's Motion, we relied upon FPL's representation that a 2017 feasibility analysis would be filed. In failing to file a 2017 feasibility analysis, FPL has not complied with the spirit of Order No. PSC-16-0266-PCO-EI. Nevertheless, FPL and FRF are correct in their arguments that the Order did not contain any express requirements ordering FPL to take any specific actions. Therefore, we find that FPL is in compliance with Order No. PSC-16-0266-PCO-EI, and no further action shall be taken.

VIII. 2018 Capacity Cost Clause factor

In this Section, we discuss the appropriate total jurisdictional amount to be included in establishing FPL's 2018 Capacity Cost Recovery Clause factor.

ANALYSIS

This is a fall-out issue addressing the amount that shall be established as FPL's NCRC recovery amount to be collected through the 2018 Capacity Cost Recovery Clause factor. All of the arguments or concerns presented by the parties in this Section were also discussed in prior Sections. In summary, no evidence of unreasonableness or imprudence was presented by the parties and thus no adjustments to FPL's requested recovery amounts are necessary. Consistent with our analysis in Section II, a total jurisdictional over recovery amount of \$7,305,202 shall be used in establishing FPL's 2018 Capacity Cost Recovery Clause factor.

Conclusion

We hereby approve a total jurisdictional over recovery amount of \$7,305,202 as FPL's 2017 NCRC amount for use in establishing FPL's 2018 Capacity Cost Recovery Clause factor.

IX. Turkey Point Units 6 & 7 – Total Estimated All-Inclusive Cost

In this Section, we discuss the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project.

PARTIES' ARGUMENTS

FPL

FPL agrees with the intervenors that the issues related to the first wave of AP 1000 projects reduced the certainty of prior cost estimates and project schedules, which reinforce its decision to pause after completing licensing.

OPC

OPC argues that FPL's cost estimate has risen and continues to rise due to cost escalation and extension of project in-service dates. In addition, the issues related to the first wave of AP 1000 projects further impacted the uncertainty and costs of the project. The total estimated all-inclusive cost that customers will bear is unknown and we should deny FPL's request and require FPL provide its updated analysis of the long-term feasibility before rendering any further decisions on the project.

FIPUG

FIPUG argues that the all-inclusive construction cost of the TP Project will be more than FPL has estimated. FIPUG states that during the 2015 NCRC Hearing, FPL estimated the cost range of the TP project to be from \$12.6 billion to \$18.4 billion. Further, during the 2017 NCRC hearing, the same cost range had risen to \$15 billion and \$21.9 billion. Thus, in two years, the upper-end of the cost estimate range had increased approximately \$3.5 billion. FIPUG believes the increasing estimated cost of constructing the TP Project runs afoul of the concept of cost effective, reasonable, and prudent energy resources.

FRF

FRF argues that FPL has no realistic and practical intent to construct the TP Project. Further, FRF believes that it is highly speculative that the new nuclear units will ever be built, thus the estimated construction cost is unknown.

SACE

SACE asserts FPL's current cost estimate of constructing the TP Project is too low, and that any final cost would exceed the current estimated range. SACE offered that Santee Cooper, who holds an ownership interest in the first-wave new nuclear Summer project in South Carolina, has recently estimated the cost of completing its plants to be \$25.3 billion. SACE believed that the estimated cost of the Summer project is more reliable than FPL's estimate due to projected in-service dates being seven years earlier. Ultimately, SACE is of the opinion that the TP project is not economically feasible.

ANALYSIS

FPL witness Scroggs testified that including inflation and carrying costs, with the assumed commercial operation dates of 2031 and 2032, the total non-binding cost estimate range

of the project is \$14.96 to \$21.87 billion. This is higher than the range of \$13.7 to \$20.0 billion with commercial operation dates of 2027 and 2028, based on the information provided in Docket No. 150009-EI.¹⁹ The time-related costs are affected by the change in the assumed commercial operation dates.

As our decision in the 2015 NCRC proceeding noted, the cost estimate range finding is non-binding, and its significance and usefulness is with respect to assessing FPL's analysis of the long-term feasibility of the project compared to alternative resources with the best available information at that time, pursuant to Rule 25-6.0423(6)(c)5, F.A.C.²⁰ FPL did not file the feasibility analysis in this proceeding for us to make such an assessment.

Conclusion

We find that the estimated non-binding cost range is \$14.96 to \$21.87 billion for FPL's proposed TP Project.

X. Turkey Point Units 6 & 7 - Planned Commercial Operation Date

In this section, we discuss the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility.

PARTIES' ARGUMENTS

FPL

FPL assumes in-service dates of 2031 for TP Unit 6, and 2032 for TP Unit 7, for the purposes of updating its non-binding cost estimate range.

OPC

OPC argues that the current estimated planned commercial operation date of the TP Project is unknown. Further, OPC asserts that FPL had established through its own testimony and exhibits that it is uncertain as to when, or whether, the TP Project will be built.

FIPUG

FIPUG believes that that the current estimated planned in-service date of the TP Project will be longer than FPL stated. Further, FIPUG asserts that FPL does not have a projected in-service date for the TP Project.

¹⁹ Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 21.

²⁰ Id.

FRF

FRF maintains that FPL has no realistic and practical intent to construct the TP Project. FRF claimed that the projected operation dates of 2031 and 2032 are for the purposes of updating FPL's non-binding cost estimate range, thus FPL had no planned commercial operation dates.

SACE

SACE argues that the TP Project will likely never come into service and that FPL's current estimated planned in-service dates for the TP Project are placeholder dates only.

ANALYSIS

For the purposes of updating its non-binding cost estimate range, FPL assumes commercial operation dates of 2031 for TP Unit 6, and 2032 for TP Unit 7. This compares with the commercial operation dates of 2027 and 2028 based on the information provided in Docket No. 150009-EI.²¹ The record in this proceeding did not contain similar analysis by FPL for a feasibility assessment. As discussed in Section IX, the finding of the cost estimate range, including the impact of the assumed commercial operation dates, is non-binding, and its significance and usefulness is with respect to assessing FPL's analysis of the long-term feasibility of the project compared to alternative resources with the best available information at that time.

Conclusion

FPL's current, non-binding, assumed commercial operation dates are 2031 and 2032 for the planned TP Project.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that all findings set forth in the body of this Order are hereby approved. It is further

ORDERED that Florida Power & Light Company is hereby authorized to include the nuclear cost over recovery amount of \$7,305,202 to be used in establishing its 2018 Capacity Cost Recovery Clause factor. It is further

ORDERED that Duke Energy Florida, LLC, is hereby authorized to include \$49,648,457 in the calculation of its 2018 Capacity Cost Recovery Clause factor.

²¹ Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 21.

By ORDER of the Florida Public Service Commission this 17th day of November, 2017.



HONG WANG
Chief Deputy Commission Clerk
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KRM

COMMISSIONER CLARK DISSENTS WITH OPINION:

Commissioner Clark dissents with opinion from the Commission's decision in Section III that there is insufficient record evidence in this proceeding to make an informed decision concerning prospective matters pertaining to the Turkey Point Units 6 and 7 Project.

Section 366.93, F.S., was designed to incentivize greater investment in nuclear power generation. Nuclear power plays a key role in the diversity and reliability of Florida's electrical grid, particularly in limiting our dependence on natural gas and coal for base load generation.

In implementing this policy, the Commission must balance the interests of rate payers with the challenges of bringing new nuclear power to market. This Commission is tasked with making difficult determinations that directly impact the finances of each and every Floridian. While the Commission decided there was insufficient evidence, I believe that a definitive answer to the deferral request would have provided more clarity to the parties. Furthermore, Florida ratepayers would have more certainty about the value gained from the significant costs already incurred in the Turkey Point Units 6 and 7 Project.

Section III and Section IV were decided on a single motion and vote. While I desired to reach a different compromise on Section III, I concur with the Commission's decision on Section IV.

Therefore, I respectfully dissent on Section III.

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

**COMMISSION-APPROVED TYPE 2 STIPULATIONS ON
DEF'S CR3 UPRATE PROJECT ISSUES**

ISSUE 11: Should the Commission find that during 2016, DEF's accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

APPROVED STIPULATION

Yes, for 2016, DEF's accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project (EPU).

ISSUE 12: What jurisdictional amounts should the Commission approve as DEF's actual 2016 prudently incurred costs for the Crystal River Unit 3 Uprate project?

APPROVED STIPULATION

The Commission should approve the following amounts as DEF's actual 2016 prudently incurred costs for the Crystal River Unit 3 Uprate project:

Wind-Down & Exit Costs (Jurisdictional, net of joint owners)-- \$36,123

Carrying Costs-- \$14,219,464

The over-recovery of \$608,728 should be included in setting the allowed 2018 NCRC recovery.

ISSUE 13: What jurisdictional amounts should the Commission approve as reasonably estimated 2017 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

APPROVED STIPULATION

The Commission should approve the following amounts as DEF's reasonably estimated 2017 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate project consistent with Section 366.93(6), Fla. Stat., and Rule 25-6.0423(7), F.A.C.:

Wind-Down & Exit Costs (Jurisdictional, net of joint owners)-- \$37,087

Carrying Costs -- \$10,077,523

The over-recovery of \$175,014 should be included in setting the allowed 2018 NCRC recovery.

ISSUE 14: What jurisdictional amounts should the Commission approve as reasonably projected 2018 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

APPROVED STIPULATION

The Commission should approve the following amounts as DEF's reasonably estimated 2018 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate project consistent with Section 366.93(6) and Rule 25-6.0423(7):

Wind-Down & Exit Costs (Jurisdictional, net of joint owners)-- \$38,750

Carrying Costs-- \$6,084,679

Amortization of 2013 Regulatory Asset -- \$43,681,007

ISSUE 15: What is the total jurisdictional amount for the Crystal River Unit 3 Uprate Project to be included in establishing DEF's 2018 Capacity Cost Recovery Clause Factor?

APPROVED STIPULATION

The total jurisdictional amount for the CR3 EPU project to be included in establishing DEF's 2018 Capacity Cost Recovery Clause factor should be \$49,648,457.