



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: September 6, 2000

TO: Craig B. Hewitt, Economic Analyst, Division of Economic Regulation

FROM: Mary Anne Helton, Senior Attorney, Division of Appeals *may*

RE: Docket No. 000543-EI - Proposed Rule 25-6.04365, F.A.C., Nuclear Decommissioning

Attached is the Rulemaking Request Form and Consensus Draft of Rule 25-6.04365, F.A.C., Nuclear Decommissioning. As we discussed at our last meeting, please prepare a Statement of Estimated Regulatory Costs. Also as we discussed, the due date for the SERC will be November 1, 2000.

cc: Ann Causseaux
Bob Elias
Pat Lee
Hurd Reeves
Katrina Tew
Docket File

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RECORDS AND REPORTING

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November 29, 1999

FLORIDA PUBLIC SERVICE COMM.
DIVISION OF APPEALS

TO: CHRISTIANA T. MOORE (RULES COORDINATOR, APPEALS)

FROM: DALE MAILHOT (RULES COORDINATOR, AUDITING AND FINANCIAL ANALYSIS DIVISION) DM TJS

RE: RULEMAKING REQUEST

1. The following rule(s) should be (adopted/amended/repealed):
A nuclear decommissioning rule should be adopted to codify the Commission's policies implicit in its orders.
2. Name of person originating rules / other staff assigned:
Pat Lee
3. Other divisions affected:
Electric and Gas, Policy and Intergovernmental Liaison
4. Other rules affected:
None.
5. a. What is the specific legal authority for the rule, i.e., what statute says you can adopt rules?
Authorization is provided under Section 350.127 (2), F. S., for adoption of rules necessary to administer any law administered by the commission.

b. What law is being implemented, interpreted, or made specific?
The commission is charged with the responsibility of fixing just, reasonable and compensatory rates for services provided by regulated public utilities. The commission is to consider, among other things, the cost of providing such services, as required in Section 366.041, F. S. The procedures for fixing and changing rates are set forth in Section 366.06(1). Specifically, the commission is required to "...investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service..." Essentially, this Decommissioning Rule 24-30.140, Florida Administrative Code, documents the rational methodology used for implementation of Section 366.06(1).

6. **Summary of rules:**
The rule requires the filing of a nuclear decommissioning study at least once every five years and also sets forth the information to be included in the study
7. **Are any forms or other material such as statutes or rules referenced in the rules?**
No.
8. **Purpose and effect of the rule adoption/amendment/pepeal:**
The purpose of this rule is to set forth requirements for an external funded reserve for the accumulation of decommissioning accruals, for filing nuclear decommissioning studies, for information to be included in the studies, and for the determination of the annual decommissioning accrual.
9. **Facts and circumstances justifying rule:**
Currently, the Commission's policy regarding nuclear decommissioning studies and resulting accruals are set forth in its orders. The rule will codify that incipient policy.
10. **Will these rules affect small businesses as defined in Section 288.703(1)?**
No.
11. **Identify the benefits that should result from the rule adoption/amendment/pepeal to:**
- a. **utilities:** To codify nuclear decommissioning study requirements, accrual calculations, and funding requirements found in numerous Commission orders.
 - b. **ratepayers:** To codify nuclear decommissioning study requirements, accrual calculations, and funding requirements found in numerous Commission orders.
 - c. **Commission staff:** To codify nuclear decommissioning study requirements, accrual calculations, and funding requirements found in numerous Commission orders.
 - d. **small business:** None.
 - e. **state and local government entities, small counties (unincorporated population of less than 75,000) and cities (unincorporated population of less than 10,000):** None.
 - f. **other parties directly affected:** None.

*ease of filing of
known, prediction in the future*

12. Identify the number of individuals and entities affected and the types of costs associated with the rule adoption/amendment/repeal:

a. Utilities: The rule should produce minimal cost to the utilities as the rule simply codifies existing Commission practice.

b. ratepayers: None.

c. Commission staff: Minimal cost.

d. small business: None.

e. state and local government entities, small counties (unincorporated population of less than 75,000) and cities (unincorporated population of less than 10,000): None.

f. other parties directly affected: None.

13. a. Describe reasonable lower cost alternative methods for achieving the purpose of the rule, and explain why each alternative was rejected.

The alternative is to not promulgate a rule. However, this would not be consistent with the requirements of the Administrative Procedures Act. Section 120.52, Florida Statutes, defines a rule as "an agency statement that implements, interprets or prescribes law or policy or describes the procedure of practice requirements of an agency." Decommissioning study requirements fit this definition. If the Commission's policy is not adopted in a rule, the policy is not enforceable.

b. What are the probable costs and benefits of not having this policy? Probable costs would be that the Commission is required to pay attorney's fees for failure to comply with the Administrative Procedures Act in codifying its policies in rulemaking. There are no benefits of not having the rule.

c. In order to reduce the impact on small businesses, small counties, and small cities, did staff consider the methods listed in Section 120.54(3)(b)2.a.(I) through (V)? No. This rule only effects IOUs owning nuclear power plants.

I. Could less stringent compliance or reporting requirements be implemented? No.

II. Could there be less stringent schedules or deadlines for compliance or reporting requirements? No.

III. Could the rule's compliance or reporting requirements be consolidated or simplified? No.

IV. Could performance standards or best-management practices be established to replace design or operational standards in the rule? No.

V. Could small businesses, small counties, or small cities be exempted from any or all requirements of the rule? This rule will not apply to or affect small businesses, small counties, or small cities.

14. To whom will the rule apply?

<u> 2 </u>	Electric IOUs	_____	Local Exch.Telephone Cos.
_____	Electric Coops	_____	Interexch. Telephone Cos.
_____	Electric Munis	_____	Pay Telephone Cos.
_____	Gas utilities	_____	Shared Ten.Telephone Cos.
_____	Wastewater Utilities	_____	Alternative Access Vendors
_____	Water Utilities	_____	Other _____

15. Are there any federal standards or rules on the subject? If so, are these rules less restrictive, more restrictive, or substantively similar to the federal rules?

There are no federal standards regarding nuclear decommissioning study requirements. However, the Nuclear Regulatory Commission does require an external funded reserve for nuclear decommissioning and the Code of Federal Regulations, Part 10, Section 50.75, requires that licensees provide reasonable financial assurance that funds will be available for decommissioning through prepayment prior to the start of operation; an external sinking fund; or a surety method, insurance, or other guarantee method. Additionally, the Internal Revenue Service has minimal requirements pertaining to the control of nuclear decommissioning funds qualified under Section 468A. Further, the IRS requires specific regulatory rulings on certain issues in order to approve the company's treatment of decommissioning costs for tax purposes.

16. Does this rule relate exclusively to the Commission's organization, procedure or practice?

No.

17. If emergency rulemaking is recommended, describe the specific facts and reasons why the Commission should find an immediate danger to the public health, safety, or welfare which requires emergency action.

Not applicable.

18. Do you recommend a rule development workshop? If so, do you recommend the workshop be conducted by a neutral third person?

A rule development workshop is recommended but need not be conducted by a neutral third person. This rule should not be controversial since it simply codifies existing procedures.

19. Do you recommend negotiated rulemaking? If so, whom do you recommend to sit on the committee that negotiates the rule?

No.

Attachments:

- Draft of the rules
- Copy of any forms or material referenced in the rules
- Copy of applicable federal standards
- Copy of any Commission orders that the rule is codifying or that are helpful in understanding the basis of the rule

WP file location and name:

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cc: Chuck Hill
Joe Jenkins
Noreen Davis
Mary Bane
Craig Hewitt

1 25-6.XX Nuclear Decommissioning.

2 (1) For the purposes of this rule, the following definitions shall
3 apply:

4 (a) "Contingency". A specific provision for unforeseeable
5 elements of cost within the defined project scope; (particularly
6 important where previous experience relating estimates and actual
7 costs have shown that unforeseeable events which will increase
8 costs are likely to occur.)

really part of def?

9 (b) "Decommissioning". The process of dismantling and removing
10 materials and equipment that are no longer used and useful and
11 which remain ^{where?} following retirement of the nuclear generating unit.

12 (2) A ^{utility} company shall not change its annual nuclear decommissioning
13 accruals without prior Commission approval.

14 (3) Each ^{utility} company shall file a nuclear decommissioning study ^{define?} for
15 Commission review at least once every five years from the
16 submission date of the previous study unless otherwise required by
17 the Commission.

Does the Com. approve?

18 (4) Decommissioning studies shall be site-specific to account for
19 factors unique to the individual nuclear unit.

20 (5) Decommissioning annual accruals shall be accumulated in an
21 externally funded reserve to assure that the costs for
22 decommissioning are available at the expiration of the nuclear
23 unit's operating license.

24 (6) Contributions to the decommissioning trust fund shall be made
25 on a monthly basis.

CODING: Words underlined are additions; words in
~~struck-through~~ type are deletions from existing
law.

*Purpose of
study
more
do this need
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approved
accrual*

- 1 (7) The ^{utility's} ~~company's~~ investment performance to ensure that the
2 decommissioning fund earns ^{ed} at least the rate of inflation will be
3 reviewed and evaluated as part of the decommissioning study.
- 4 (8) At a minimum, a nuclear decommissioning study shall include:
- 5 (a) A narrative describing each nuclear unit, including the in-
6 service date and the date of license expiration.
- 7 (b) A narrative explaining plans for spent nuclear fuel storage
8 and removal at each nuclear unit, including the date on-site spent
9 fuel pool storage capacity will be lost, the date spent nuclear
10 fuel is expected to be removed from the plant site, the estimated
11 costs for on-site dry storage to accommodate the decommissioning of
12 the unit, and other relevant information.
- 13 (c) The methodology selected to decommission each nuclear unit and
14 support for the selection.
- 15 (d) The method of funding selected ^{in 5 years since study} ~~each year~~ ^{prev. filed.} since the prior
16 study, and also the method assumed in the calculation of the
17 proposed annual accrual.
- 18 (e) The decommissioning study methodology.
- 19 (f) The total ^{utility} ~~company~~ and jurisdictional decommissioning cost
20 estimates in current dollars for each unit.
- 21 (g) The total ^{utility} ~~company~~ and jurisdictional decommissioning cost
22 estimates in future dollars for each unit.
- 23 (h) The years in which the nuclear trust funds for each unit will
24 be expended and the estimated amount for each year.
- 25 (i) The projected date each nuclear unit will no longer be

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1 | included in rate base for ratemaking purposes.

2 | (j) For each nuclear unit, a comparison of the current approved
3 | annual decommissioning accruals with those proposed. Current
4 | accruals shall be identified as to the effective date and proposed
5 | accruals to the proposed effective date.

6 | (k) A summary of the major assumptions used in the study.

7 | (l) The assumed fund earnings rate, net of tax, used in the
8 | calculation of the company proposed decommissioning accrual and
9 | supporting documentation for the rate. The rate shall be at least
10 | the rate of inflation measured by the Consumer Price Index over
11 | each five year review period.

12 | (m) The methodology and escalation rate used in converting the
13 | current estimated decommissioning costs to future estimated
14 | decommissioning costs and supporting documentation and analyses.

15 | (n) A list of all ^{entities} ~~companies~~ owning an interest in each nuclear
16 | unit, the percent ownership of each ^{entity} ~~company~~, and documentation
17 | showing that each ^{entity} ~~party~~ is providing its share of the total
18 | decommissioning costs.

19 | (o) The annual revenue requirement of the proposed decommissioning
20 | cost estimates.

21 | (p) A reconciliation of the decommissioning fund balance and the
22 | decommissioning reserve balance as of the effective date of the
23 | company proposed revised decommissioning accruals. The
24 | reconciliation shall show the fund balances for the qualified fund,
25 | the non-qualified fund, and the total fund. The fund balance may

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1 | involve estimates.

2 | (q) A summary and explanation of all differences between the
3 | current study and the ^{utility's} ~~company's~~ last filed study.

4 | (r) The study shall include all supporting schedules, analysis,
5 | and data used in developing the ^{utility} ~~company~~ proposed decommissioning
6 | cost estimates and annual accrual. Supporting schedules shall
7 | include the inflation and funding analysis.

8 | (9) The decommissioning annual accrual shall be calculated using
9 | the external sinking fund method. In determining the annual
10 | decommissioning accrual, the current cost estimate is escalated to
11 | the expected dates of actual decommissioning. A sinking fund
12 | annuity is then calculated to determine the annual accrual. The
13 | annual accrual plus the earnings on the annuities, net of taxes,
14 | will grow to the escalated decommissioning amount.

15 | (10) When a ^{utility} ~~company~~ decides to seek license renewal of any of its
16 | nuclear units, it shall notify the Commission. *Time Limit*

17 | *Copy w/ correspondence concerning license renewal*

18 | *NYC*
19 | *Copy of Any correspondence ^{by any utility} concerning license renewal shall be*
20 | *provided to the Director of Division of Auditing & Financial Analysis.*
21 | *within 15 days of receipt or mailing*

23 | CODING: Words underlined are additions; words in
24 | ~~struck through~~ type are deletions from existing
25 | law.

1 25-6.04365 Nuclear Decommissioning.

2 (1) Purpose. The purpose of this rule is to codify the
3 Commission's policy of requiring each utility that owns a nuclear
4 generating plant to ensure there are sufficient funds on hand at
5 the time of decommissioning to meet all required expenses by
6 establishing appropriate decommissioning accruals. This rule
7 requires each utility to file a Nuclear Decommissioning Study on a
8 regular basis, the purpose of which is to obtain sufficient
9 information to update cost estimates based on new developments,
10 additional information, technological improvements, and forecasts;
11 to reevaluate alternative methodologies; and to revise the annual
12 accrual needed to recover the costs.

13 (2) Definitions. For the purpose of this rule, the following
14 definitions shall apply:

15 (a) "Contingency Costs." A specific provision for
16 unforeseeable elements of cost within the defined project scope,
17 which is particularly important where previous experience relating
18 estimates and actual costs has shown that unforeseeable events that
19 will increase costs are likely to occur.

20 (b) "Decommissioning." The process of safely managing,
21 dismantling, removing, or converting for reuse the materials and
22 equipment that remain at the nuclear generating unit following its
23 retirement that results in an amendment to the licensing status of
24 a nuclear power plant from operational to possession-only and
25 possibly unrestricted use.

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1 (3) Nuclear Decommissioning Study. Each utility shall file
2 a site-specific nuclear decommissioning study at least once every
3 five years from the submission date of the previous study unless
4 otherwise required by the Commission. At a minimum, each
5 utility's nuclear decommissioning study shall include:

6 (a) A narrative describing each nuclear unit, including the
7 in-service date and the date of operating license expiration.

8 (b) A list of all entities owning an interest in each nuclear
9 unit, the percentage of ownership by each entity, and documentation
10 showing the status of each entity in providing its share of the
11 total decommissioning costs.

12 (c) A narrative explaining plans for spent nuclear fuel
13 storage and removal at each nuclear unit, including, at a minimum,
14 the date on-site spent fuel pool storage capacity will be lost, the
15 date spent nuclear fuel is expected to be removed from the plant
16 site, and the estimated costs for on-site dry storage to
17 accommodate the decommissioning of the unit.

18 (d) The decommissioning study methodology.

19 (e) A summary of the major assumptions used in the study.

20 (f) The methodology selected to decommission each nuclear
21 unit and support for the selection.

22 (g) The method of providing financial assurance. If funding
23 is selected, show the amounts qualified and nonqualified for each
24 year since the prior study, and also the method assumed in the
25 calculation of the proposed annual accrual.

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1 (h) The total utility and jurisdictional decommissioning cost
2 estimates in current dollars for each unit.

3 (i) The total utility and jurisdictional decommissioning cost
4 estimates in future dollars for each unit.

5 (j) For each year, the estimated amount of decommissioning
6 expenditures and the sources of funds.

7 (k) The projected date each nuclear unit will no longer be
8 included in rate base for ratemaking purposes.

9 (l) For each nuclear unit, a comparison of the current
10 approved annual decommissioning accruals with those proposed.
11 Current accruals shall be identified as to the effective date and
12 proposed accruals to the proposed effective date.

13 (m) The assumed fund earnings rate, net of tax, used in the
14 calculation of the decommissioning accrual and supporting
15 documentation for the rate proposed by the utility.

16 (n) The methodology and escalation rate used in converting
17 the current estimated decommissioning costs to future estimated
18 decommissioning costs and supporting documentation and analyses.

19 (o) The annual revenue requirement of the proposed
20 decommissioning cost estimates.

21 (p) A reconciliation of the decommissioning fund balance and
22 the decommissioning reserve balance as of the effective date of the
23 revised decommissioning accruals proposed by the utility. The
24 reconciliation shall show the fund balances by category. The fund
25 balance may involve estimates.

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1 (g) A summary and explanation of material differences between
2 the current study and the utility's last filed study including, at
3 a minimum, changes in methodology and assumptions.

4 (r) Supporting schedules, analyses, and data, including the
5 contingency allowance, used in developing the decommissioning cost
6 estimates and annual accruals proposed by the utility. Supporting
7 schedules shall include the inflation and funding analyses.

8 (4) Accumulation of Annual Accruals.

9 (a) The decommissioning annual accrual shall be calculated
10 using the current cost estimates escalated to the expected dates of
11 actual decommissioning.

12 (b) Decommissioning accruals shall be accumulated monthly
13 based on a Commission approved method to assure that the costs for
14 decommissioning are provided for at the expiration of the nuclear
15 unit's operating license.

16 (c) A utility shall not change its annual nuclear
17 decommissioning accruals without prior Commission approval.

18 (5) Nuclear Decommissioning Fund Performance. The Commission
19 will review and evaluate each utility's investment performance to
20 determine whether the decommissioning fund earned at least the rate
21 of inflation.

22 (6) License Renewal. Each utility shall provide the Director
23 of the Division of Economic Regulation with a written summary of
24 communications concerning major milestones between the Nuclear
25 Regulatory Commission and the utility concerning license renewal

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1 within 21 days of receipt or mailing by the utility. Major
2 milestones include notice of intent to request a license renewal,
3 submittal of application, issuance of renewal license, and decision
4 to continue or cease operations.

5 Specific Authority: 350.127(2), F.S.

6 Law Implemented: 366.041, 366.06(1), F.S.

7 History: New.

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