

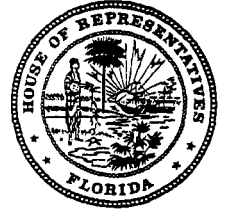
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November 2, 2006

Ms. Kathy Lewis
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Tallahassee, Florida 32399-1400

Mr. Larry Harris
General Counsel's Office
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-1400

Re: Docket No. 060508-EI
Proposed Adoption of New Rule Regarding Nuclear Power Plant Cost Recovery
Rulemaking Re Recovery of Nuclear Power Plant Construction Costs

Dear Ms. Lewis and Mr. Harris:

The Office of Public Counsel submits the following additional comments concerning the proposed rule in the October 12, 2006 Staff Recommendation. All page and line number references are to that document.

CMP _____ The changes in the proposed rule OPC supports are founded on two general principles that are
DOM _____ unique to this rulemaking. First, because no new nuclear capacity has been constructed in the
TR _____ United States, let alone Florida, in more than 25 years, there is a great degree of uncertainty
CR _____ about the ultimate cost of many aspects of a nuclear project. What is known at this point is that
CL _____ the project will be capital intensive relative to other generation options, and the construction
PC _____ process is lengthy, on the order of eight to ten years. OPC understands and accepts that adoption
CA _____ of Sec. 366.93, Fla. Stats, is meant to encourage the construction of additional nuclear capacity
CR _____ in Florida. But in implementing this legislative mandate the Commission should recognize that
EA _____ one effect of the new statute is to shift a significant amount of risk of cost uncertainty and
IC _____ ultimate completion from the utility company to its customers and take reasonable measures,
TH _____ where they are available, to ensure a thorough and fair scrutiny of costs proposed to be recovered.
OPC's specific comments are as follows:

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1. Require an up-dated analysis of the wisdom of continuing the project.

On page 11, Line 20 insert new Section (8) as follows:

(8) On an annual basis, in conjunction with the adjustment clause proceedings on nuclear projects, a utility shall submit an in-depth analysis of the long-term feasibility of completing the nuclear plant, taking into account significant changes, if any, in the factors considered by the Commission in the granting the determination of need for the proposed plant.

Because there is so much uncertainty regarding nuclear construction, because customers will directly underwrite development risk, the Commission should take special care to consciously review the wisdom of continuing to pursue a nuclear option. This goes to the very heart of the Commission's overriding statutory mission to ensure an adequate, reliable supply of electricity at a reasonable cost. It will certainly cost time and money to update and review information on this point, but in view of the magnitude of the dollars at stake and the uncertainty of the ultimate cost, the Commission should affirmatively design the proceedings to include both a short-term look at costs for the next year and a long-term look at how those costs add up, or not, to overall project feasibility. OPC does not mean to suggest that the Commission has or should attempt to exercise any authority to retrospectively disallow recovery of sunk costs, but a proceeding designed to look at costs prospectively should embrace both a short and long term view.

2. Require scheduling that is separate and apart from other adjustment clause hearings for adjustment clause recovery of nuclear costs.

On Page 10, Line 2 insert a new section as follows:

(e) Hearings on adjustment clause recovery of nuclear plant costs of any kind shall be scheduled by the Office of the Chairman at a time that is separate from other adjustment clause hearings so as to promote thorough and fair review of all matters associated with the adjustment clause recovery of the costs of nuclear plants.

To promote a thorough review that is fair to both the customers and the utilities the Commission should schedule the hearings on clause recovery of nuclear preconstruction and construction costs at a time that does not coincide with the other adjustment clause hearings. The types of costs that will be up for review in the nuclear proceedings will be very distinct from those considered in the fuel or environmental clause hearings. The costs will be unique, non-recurring, for the most part not fungible, and benchmarks will not be readily at hand. Relative to the other clauses there will be more uncertainty and an exponentially higher level of capital investment at stake. It is simply not realistic to think that other parties, particularly OPC, charged with protecting the interests of customers, will be able to give adequate time and resources to a review of these matters if they occur in the same time frame as other adjustment clause proceedings.

3. Clarify the impact of recovery of pre-construction costs on a projected basis.

On Page 8, Line 7 amend the following phrase as follows:

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A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected preconstruction costs. The utility may also recover the related carrying charge, for those costs not recovered on a projected basis.

Once a company has obtained Commission approval for the recovery of preconstruction costs through the clause, costs incurred from that point forward will be recovered on a projected basis. That is, in any given year customer dollars will be collected in anticipation of cost incurrence. In a traditional clause cycle, projected costs and revenues will be trued-up to actual costs and revenues. Any under- or over- recoveries are subject to interest at the commercial paper rate. The treatment is exactly symmetrical to customers and to the utility. Pre-construction costs recovered on a projected basis should receive the same treatment. This means it would not be appropriate to accrue AFUDC on projected costs.

Note that this comment applies only to those costs that are incurred after clause recovery begins. There will be some preconstruction costs incurred after site-selection but prior to the clause beginning which will be investments of company dollars on which AFUDC is appropriately charged, and should continue, on the declining balance, after the clause begins until the investment is fully recovered through rates.

Also note that this comment does not apply to recovery of construction costs, since only the AFUDC associated with them, and not the costs themselves, will be recovered through a clause mechanism.

4. Clarify the Commission's ability to review projected costs for prudence as well as actual costs.

On Page 8, Line 17 insert the following:

The Commission shall, after review, enter in its order with respect to a utility's Capacity Cost Recovery Clause a finding with respect to the prudence of such preconstruction costs projected to be or actually expended by the utility.

On Page 9, Line 18 insert the following:

After its review, the Commission shall enter in its order with respect to a utility's Capacity Cost Recovery Clause a finding with respect to the prudence of such construction costs projected to be or actually expended by the utility.

As currently written the proposed Rule contemplates that a finding of prudence will turn on a difference between actual and projected costs. However there may also be instances in which the Commission may conclude that a cost as projected does not appear to be prudent. Both customers and the utility would benefit from expression of that sentiment at the projected stage rather than waiting until the money is actually spent. The proposed change makes clear that the Commission may make findings on either projected or actual costs.

5. Require the utility to specify the period of time for recovery of preconstruction costs through the clause.

On Page 8, Line 8 insert the following:

Such costs will be recovered, on an annual basis, or may, as proposed by the utility in its petition and approved by the Commission, be recovered over a greater period of years, based on the utility's projection.

On Page 9, Line 2 insert the following:

The carrying costs will be recovered on an annual basis, or may, as proposed by the utility in its petition and approved by the Commission, be recovered over a greater period of years, based on the utility's projection.

As OPC understands the process laid out in the proposed rule, at the time of initial filing there will likely be a bundle of accumulated preconstruction costs and, on an on-going basis there may be years of more intense costs; in either event recovery may be better spread over more than one year. OPC suggests that the utility specify its proposed recovery period in its annual petition so as to speed the evaluation process of all interested parties.

Note that OPC does not suggest that the Rule prescribe any particular recovery period. The suggestion is to make clear that the option is available and if utilized, be specified from the outset of the request.

6. Make the definition of preconstruction costs consistent with the statute, limiting recovery through an adjustment clause mechanism to those costs incurred after site selection.

Page 7, Line 18 strike the words "site and" so the sentence would read as follows:

These costs include,.....costs associated with technology selection.....

As presently drafted the rule defines preconstruction costs as "those expended after a site has been selected "but includes "costs associated with site and technology selection" as examples of preconstruction costs. This conflict should be resolved by removing site selection costs from those eligible for recovery through an adjustment clause mechanism.

Section 366.93 (d) expressly defines preconstruction costs as "that period of time after a site has been selected through and including the date the utility completes site clearing work." Sec. 366.93(2) (a) requires the Commission to allow recovery of preconstruction costs through the Capacity Cost Recovery Clause, requires the Commission to allow recovery of the carrying charges of construction costs through the clause, and requires the Commission to allow an increase in base rates when the plant is placed in commercial operation. The statute does not require that site selection costs be recovered through a clause mechanism. The statute does provide that all prudently incurred costs related to construction of a nuclear plant may be recovered "in rates", specifically including costs related to siting and further that the

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Commission shall establish by rule alternative cost recovery mechanisms designed to promote utility investment in nuclear power plants. Thus the rule reflects the statutory ambiguity.

To give effect to the express legislative distinction between costs incurred after site selection and those incurred before it, the Rule should be that costs incurred after site selection may be recovered through a clause mechanism and prudent costs of site selection will be recovered through base rates when the plant begins commercial operation. To do otherwise renders the specific distinction established for site selection in 366.93 (d) meaningless.

This change in the proposed rule is important to customers because customers are ultimately on the hook for all reasonable and prudent expenses, many of them in advance, and all of them whether or not the plant is ultimately able to be completed. Therefore in the beginning stages when costs are the least known, the Commission should allow the pressure of fronting the money to act as some incentive to hold the overall cost when the Legislature has clearly left them the option to do so.

The comments submitted today are in addition to the post-hearing comments filed by OPC on September 13, 2006.

We would be happy to meet with Staff or other parties to discuss these comments. If we can be of further assistance please do not hesitate to call upon us.

Sincerely,



Harold McLean
Public Counsel

HMcL:bsr