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Matilda Sanders

**From:** John W. McWhirter [jmcwhirter@mac-law.com]  
**Sent:** Wednesday, January 10, 2007 5:50 PM  
**To:** Larry Harris; halmc@comcast.net; Harold Mclean; BonnieDavis2@earthlink.net; 'Mike Twomey'; Bill\_Feaster@FPL.com; Bill\_Walker@fpl.com; Wade\_Litchfield@fpl.com; paul.lewisjr@pgnmail.com; 'Javier Portuondo'; alex.glenn@pgnmail.com; Filings@psc.state.fl.us; Schef Wright  
**Cc:** Michael Cooke; Tim Devlin; Marshall Willis; Bob Trapp; John Slemkewicz; Bill McNulty; Kathy Lewis  
**Subject:** RE: Revised Nuclear Rule  
**Attachments:** 07110 FIPUG comments.doc

1. John W. McWhirter, Jr., McWhirter Reeves & Davidson, P.A., 400 N. Tampa St. Tampa, FL 33602, [jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com) is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060508-EI, In re: Proposed Rule 25-6.0423
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 7; and
5. The attached document is The Florida Industrial Power User Group's Comments.

John W. McWhirter, Jr.  
 McWhirter Reeves Davidson, PA.  
 400 N. Tampa St  
 PO Box 3350  
 Tampa, FL 33601  
 813.224.0866  
 813.221.1854 FAX

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Rule 25-6.0423,	)	Docket 060508-EI
Nuclear Plant Cost	)	
Recovery	)	Filed January 10, 2007
_____	)	

COMMENTS

The undersigned attorneys representing the Florida Industrial Power Users Group (FIPUG) submit the following comments for the record in this docket.

FIPUG supports fuel diversity and generally supports the rule drafted by PSC staff. FIPUG will not object to the rule nor demand a hearing on the proposed staff rule, but never the less submits these comments for the record to preserve FIPUG's understanding of the administrative intent of the rule as it was discussed in telephone conferences with the parties as the rule was developed.

The proposed rule conforms to the legislative mandate contained in §366.93 *Florida Statutes* to promote fuel diversity by eliminating perceived financial barriers to the construction of Nuclear power plants. The statute and rule enable utilities to recover preconstruction costs and the carrying costs on projected construction costs through the capacity cost recovery clause rather than waiting until the power plant is placed into commercial operation and recovering the charge through base rates.

The rule is necessarily broad in its perspective and will be adopted years before factual information relating to costs is submitted; therefore it is essential to know whether the language of the rule requires strict interpretation or a construction which affords some flexibility when the rule is applied to the facts as they evolve in the future. As the rule

was explained in the rule drafting discussions between the parties FIPUG believes there is sufficient flexibility to protect the interests of consumers. The concerns presently perceived by FIPUG are set out below along with FIPUG's understanding of the administrative construction allowed by the rule when the future facts are known.

#### BACKGROUND ON COST RECOVERY CLAUSES VERSUS BASE RATE CASES

The proposed rule will add significant new cost recovery charges to the consumer's bill. The charge will be imposed years before the potential benefits of any new nuclear plant will be passed through to consumers.

The basic electric utility bill sent to customers has three components, (1) base rates, (2) fuel costs which are stated independently and other cost recovery items that are stacked onto base rates without being separately identified and (3) local taxes. Local taxes are not studied by the Commission, but they add about 14% to the residential bill and over 20% to commercial bills. Each rate increase is compounded by local taxes. This important fact should not be overlooked.

When separate cost recovery clauses independent of base rates began the mechanism related only to fuel costs. The fuel charge was considerably less than half of a customer's total bill. Today cost recovery items have been extended to allow recovery for security cost charges, conservation charges, environmental charges, fuel hedging charges, purchased capacity charges, storm damage charges, generation performance incentive charges or penalties, plus capital costs the utilities can persuade the Commission to allow as part of fuel or other cost recovery items. All are compounded by local taxes, all such costs are estimated budget numbers rather than actual costs. Cost

recovery is guaranteed with interest through a true up mechanism if the budget forecast proves inaccurate.

In 2005 according to surveillance reports filed with the Commission the total regulated revenues reported to the Commission by the four major utilities was \$16.1 billion. The before tax cost recovery charge projection for this year filed in the fall of 2006 and approved by the Commission in December is \$11.2 Billion. This constitutes 69.5% of the total revenue collected for the last reported calendar year. The new rule will increase the guaranteed cost recovery percentage significantly.

Fuel costs dominate cost recovery charges. They have grown dramatically. The final fuel cost forecast by the four utilities for 2000, the first year of this century was \$2.9 Billion. The fuel cost forecast for 2007 is \$9.7 Billion, an increase of 232%.

The projected 2007 cost for nuclear fuel is less than \$4 per 1000 Kwh compared to about \$80 per 1000 Kwh for natural gas. This gives a strong impetus to promote the construction of nuclear plants by eliminating the hesitancy of the financial community to finance nuclear construction.

Guaranteed prompt cost recovery through a cost recovery charge to customers that allows utilities to immediately recover for part of its capital investment rather than amortizing the cost over the useful life of the equipment and covers current financing costs accompanied by an immediate return on construction work in progress should give comfort to prospective lenders and equity investors. Never the less this comfort should be provided without promoting windfall profits to electric utility holding companies. A proper construction of the proposed rule can achieve this end.

From a consumers perspective base rate review gives greater protection than cost recovery proceedings for the following reasons among others: (1) base rate reviews provide ample time for discovery after receipt of detailed minimum filing documents from utilities; (2) base rate cases are accompanied by cost of service studies that allocate charges to customers based upon the cost to provide service; (3) base rate cases survey the full operations of the utility rather than a single segment of its operation; (4) base rate cases provide a full review of the utility's capital structure rather than a snapshot so that the Commission can determine how much of the rate base is composed of cost free capital supplied by customers, how much is relatively low cost debt and how much of the rate base is attributable to equity investment which is entitled to an after tax return; (5) base rate cases evaluate the depreciated rate base and set a new depreciation charge customers must pay to enable utilities' to recover their investment; (6) base rate cases give a thorough examination as to the cost of capital under current market conditions; (7) base rate cases amortize costs over the period the investment is in use and useful service rather than before it comes into service.

FIPUG examined the rule to determine if some of the base rate case safeguards could be incorporated into the provisions of the rule or at least into a mutual understanding of how the rule would be construed. The review of the proposed rule gave rise to several concerns:

1. § 25-6.0423(2)(b) defines nuclear costs:

“Cost” includes, but is not limited to, all capital investments including rate of return, any applicable taxes and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant as defined in Section 366.93(1)(a).

Does this definition prohibit consumer advocates from objecting to double recovery of utility salaries and costs that are already covered in base rates? FIPUG understands that it is the administrative intent of the rule that consumers will not be prohibited from challenging double recovery of costs.

2. § 25-6.0423(5) (a) as now proposed provides:

(a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected pre-construction costs. The utility may also recover the related carrying charge for those costs not recovered on a projected basis. Such costs will be recovered on an annual basis. Any party may, however, propose a longer period of recovery, not to exceed 2 years.

FIPUG's initial concern was that monumental costs, such as, engineering costs that might constitute 15% of the total project cost combined with site selection costs and other preconstruction planning would be imposed on customers in one year. The revised language offers a degree of respite and gives consumers the right to seek relief from potential rate shock.

3. § 25-6.0423(7) (d) provides:

(d) The rate of return on capital investments shall be calculated using the utility's most recent actual Commission adjusted basis overall weighted average rate of return as reported by the utility in its most recent Earnings Surveillance Report prior to the filing of a petition as provided in subparagraph (7)(a). The return on equity cost rate used shall be the midpoint of the last Commission approved range for return on equity or the last Commission approved return on equity cost rate established for use for all other regulatory purposes, as appropriate.

FIPUG had two concerns about this section of the proposed rule.

(1) Because the rule refers to the utility's most "recent surveillance report" for determining the utility's weighted average rate of return. A utility holding company can modify the capital structure of its subsidiary regulated utility by borrowing money and then temporarily investing it as equity in the regulated utility's capital structure. This

ability to modify the regulated utility's capital structure in current surveillance reports could have a drastic impact on consumers. For example for regulatory purposes a regulated utility with an authorized return of 12% on equity and 6% on debt is entitled to a 19.5% before income tax return in the rates it charges customers on the equity portion of rate base whether or not the holding company pays this amount of tax, but only a 6% return on the debt component, and a zero return on taxes prepaid by customers. FIPUG believes the Commission should not by rule restrict its authority to periodically examine the components of rate structure for the protection of consumers.

(2) FIPUG's second concern was whether the rule contemplates a multiplicity of rate bases or whether the nuclear plant will be folded into the utility's overall rate base. Does the rule contemplate one rate base on which the utility may be earning profits beyond its overall authorized return and a separate nuclear rate base using the Commission's last authorized return even though that return may have been set 20 years before?

The rule development negotiation discussions give this FIPUG representative comfort that by the express language of the rule, the Commission does not abandon its authority to review the components of the regulated utility's capital structure for nuclear plants when they become commercially operable. Neither does the rule prevent the Commission from rolling the nuclear plant into the overall rate base should circumstances warrant.

**DOCKET NO. 060508-EI**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 11th day of January 2007.

Charles J. Beck  
Harold McLean  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison St., Room 812

Larry Harris  
Office of General Counsel  
FL Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

R. Alexander Glenn  
Progress Energy Florida, Inc.  
106 E. College Avenue, Suite 800  
Tallahassee, FL 32301

Lee Willis  
Ausley Law Firm  
P.O. Box 391  
Tallahassee, FL 32302

R. Wade Litchfield, Esquire  
Florida Power & Light Company  
700 Universe Blvd.  
Juno Beach, FL 33408-0420

Susan D. Ritenour  
Richard McMillan  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0780

s/JohnW.McWhirter,Jr.  
John W. McWhirter, Jr.  
McWhirter,Reeves&Davidson,P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33602  
Telephone: (813) 224-0866  
Fax: (813) 221-1854  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)  
Attorneys for the Florida  
Industrial Power Users Group