

STATE OF FLORIDA

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# Public Service Commission

November 30, 2007

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Mr. Scott Boyd, Executive Director  
Joint Administrative Procedures  
Committee  
Room 120 Holland Building  
Tallahassee, FL 32399-1300

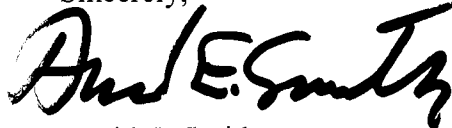
RE: Docket No. 070672-EI - Rule Nos. 25-6.0423 and 25-22.081

Dear Mr. Boyd:

Enclosed are the following material concerning the above referenced proposed rules:

1. A copy of the rules.
2. A copy of the F.A.W. notices.
3. A statement of facts and circumstances justifying the proposed rules.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

If there are any questions with respect to these rules, please do not hesitate to call me.

Sincerely,  
  
David E. Smith  
Attorney Supervisor

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Enclosures

cc: ~~Office of Commission Clerk~~

1 **25-6.0423 Nuclear or Integrated Gasification Combined Cycle Power Plant Cost**

2 **Recovery.**

3 (1) Purpose. The purpose of this rule is to establish alternative cost recovery  
4 mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction  
5 of nuclear or integrated gasification combined cycle power plants in order to promote electric  
6 utility investment in nuclear or integrated gasification combined cycle power plants and allow  
7 for the recovery in rates of all such prudently incurred costs.

8 (2) Definitions. As used in this rule, the following definitions shall apply:

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

11 (b) “Integrated gasification combined cycle power plant” is an electrical power plant  
12 that uses synthesis gas produced by integrated gasification technology, as defined in Sections  
13 403.503(13) and 366.93(c), F.S.

14 (c) “Power plant” or “plant” means a nuclear power plant or an integrated gasification  
15 combined cycle power plant.

16 (d)~~(b)~~ “Cost” includes, but is not limited to, all capital investments including rate of  
17 return, any applicable taxes and all expenses, including operation and maintenance expenses,  
18 related to or resulting from the siting, licensing, design, construction, or operation of the  
19 nuclear or integrated gasification combined cycle power plant as defined in Section  
20 366.93(1)(a) , F.S.

21 (e)~~(c)~~ “Site selection.” A site will be deemed to be selected upon the filing of a petition  
22 for a determination of need for a nuclear or integrated gasification combined cycle power  
23 plant pursuant to Section 403.519 , F.S.

24 (f)~~(d)~~ “Site selection costs” are costs that are expended prior to the selection of a site.

25 (g)~~(e)~~ “Pre-construction costs” are costs that are expended after a site has been selected

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1 in preparation for the construction of a nuclear or integrated gasification combined cycle  
2 power plant, incurred up to and including the date the utility completes site clearing work.

3 (h)(f) Site selection costs and pre-construction costs include, but are not limited to: any  
4 and all costs associated with preparing, reviewing and defending a Combined Operating  
5 License (COL) application for a nuclear power plant; costs associated with site and technology  
6 selection; costs of engineering, designing, and permitting the nuclear or integrated gasification  
7 combined cycle power plant; costs of clearing, grading, and excavation; and costs of on-site  
8 construction facilities (i.e., construction offices, warehouses, etc.).

9 (i)(g) "Construction costs" are costs that are expended to construct the nuclear or  
10 integrated gasification combined cycle power plant including, but not limited to, the costs of  
11 constructing ~~nuclear~~ power plant buildings and all associated permanent structures, equipment  
12 and systems.

13 (3) Deferred Accounting Treatment. Site selection and pre-construction costs shall be  
14 afforded deferred accounting treatment and shall, except for projected costs recovered on a  
15 projected basis in one annual cycle, accrue a carrying charge equal to the utility's allowance  
16 for funds used during construction (AFUDC) rate until recovered in rates.

17 (4) Site Selection Costs. After the Commission has issued a final order granting a  
18 determination of need for a ~~nuclear~~ power plant pursuant to Section 403.519, F.S., a utility  
19 may file a petition for a separate proceeding, to recover prudently incurred site selection costs.  
20 This separate proceeding will be limited to only those issues necessary for the determination  
21 of prudence and alternative method for recovery of site selection costs of a ~~nuclear~~ power  
22 plant.

23 (5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After  
24 the Commission has issued a final order granting a determination of need for a ~~nuclear~~ power  
25 plant pursuant to Section 403.519, F.S., a utility may petition the Commission for recovery of

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1 pre-construction costs and carrying costs of construction cost balance as follows:

2 (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost  
3 Recovery Clause, its actual and projected pre-construction costs. The utility may also recover  
4 the related carrying charge for those costs not recovered on a projected basis. Such costs will  
5 be recovered within 1 year, unless the Commission approves a longer recovery period. Any  
6 party may, however, propose a longer period of recovery, not to exceed 2 years.

7 1. Actual pre-construction costs incurred by a utility prior to the issuance of a final  
8 order granting a determination of need pursuant to Section 403.519, F.S., shall be included in  
9 the initial filing made by a utility under this subsection for review, approval, and a finding  
10 with respect to prudence.

11 2. The Commission shall include pre-construction costs determined to be reasonable  
12 and prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as  
13 specified in subparagraph (5)(c)3. of this rule. Such costs shall not be subject to disallowance  
14 or further prudence review.

15 (b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover,  
16 through the utility's Capacity Cost Recovery Clause, the carrying costs on the utility's annual  
17 projected construction cost balance associated with the ~~nuclear~~ power plant. The actual  
18 carrying costs recovered through the Capacity Cost Recovery Clause shall reduce the  
19 allowance for funds used during construction (AFUDC) that would otherwise have been  
20 recorded as a cost of construction eligible for future recovery as plant in service.

21 1. For ~~nuclear~~ power plant need petitions submitted on or before December 31, 2010,  
22 the associated carrying costs shall be computed based on the pretax AFUDC rate in effect on  
23 June 12, 2007~~19, 2006~~;

24 2. For ~~nuclear~~ power plant need petitions submitted after December 31, 2010, the  
25 utility's pretax AFUDC rate in effect at the time the petition for determination of need is filed

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1 is presumed to be appropriate unless the Commission determines otherwise in its need  
2 determination order;

3 3. The Commission shall include carrying costs on the balance of construction costs  
4 determined to be reasonable or prudent in setting the factor in the annual Capacity Cost  
5 Recovery Clause proceedings, as specified in paragraph (5)(c) of this rule.

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

8 1. Each year, a utility shall submit, for Commission review and approval, as part of its  
9 Capacity Cost Recovery Clause filings:

10 a. True-Up for Previous Years. By March 1, a utility shall submit its final true-up of  
11 pre-construction expenditures, based on actual preconstruction expenditures for the prior year  
12 and previously filed expenditures for such prior year and a description of the pre-construction  
13 work actually performed during such year; or, once construction begins, its final true-up of  
14 carrying costs on its construction expenditures, based on actual carrying costs on construction  
15 expenditures for the prior year and previously filed carrying costs on construction  
16 expenditures for such prior year and a description of the construction work actually performed  
17 during such year.

18 b. True-Up and Projections for Current Year. By May 1, a utility shall submit for  
19 Commission review and approval its actual/estimated true-up of projected pre-construction  
20 expenditures based on a comparison of current year actual/estimated expenditures and the  
21 previously-filed estimated expenditures for such current year and a description of the pre-  
22 construction work projected to be performed during such year; or, once construction begins,  
23 its actual/estimated true-up of projected carrying costs on construction expenditures based on  
24 a comparison of current year actual/estimated carrying costs on construction expenditures and  
25 the previously filed estimated carrying costs on construction expenditures for such current

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1 year and a description of the construction work projected to be performed during such year.

2 c. Projected Costs for Subsequent Years. By May 1, a utility shall submit, for  
3 Commission review and approval, its projected pre-construction expenditures for the  
4 subsequent year and a description of the pre-construction work projected to be performed  
5 during such year; or, once construction begins, its projected construction expenditures for the  
6 subsequent year and a description of the construction work projected to be performed during  
7 such year.

8 2. The Commission shall, prior to October 1 of each year, conduct a hearing and  
9 determine the reasonableness of projected pre-construction expenditures and the prudence of  
10 actual pre-construction expenditures expended by the utility; or, once construction begins, to  
11 determine the reasonableness of projected construction expenditures and the prudence of  
12 actual construction expenditures expended by the utility, and the associated carrying costs.  
13 Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the  
14 Commission shall make a prudence determination of the prior year's actual construction costs  
15 and associated carrying costs. To facilitate this determination, the Commission shall conduct  
16 an on-going auditing and monitoring program of construction costs and related contracts  
17 pursuant to Section 366.08, F.S. In making its determination of reasonableness and prudence  
18 the Commission shall apply the standard provided pursuant to Section 403.519(4)(e) , F.S.

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

24 4. The final true-up for the previous year, actual/estimated true-up for the current year,  
25 and subsequent year's projected ~~nuclear~~ power plant costs as approved by the Commission

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1 pursuant to subparagraph (5)(c)2. will be included for cost recovery purposes as a component  
2 of the following year's capacity cost recovery factor in the Fuel and Purchased Power Cost  
3 Recovery. The utility must file all necessary revisions to the fuel and purchased power cost  
4 recovery filings no later than October 15 of the current year.

5 5. By May 1 of each year, along with the filings required by this paragraph, a utility  
6 shall submit for Commission review and approval a detailed analysis of the long-term  
7 feasibility of completing the power ~~nuclear~~ plant.

8 (6) Failure to Enter Commercial Service. Following the Commission's issuance of a  
9 final order granting a determination of need for the ~~nuclear~~ power plant, in the event the utility  
10 elects not to complete or is precluded from completing construction of the ~~nuclear~~ power  
11 plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction  
12 costs, and construction costs.

13 (a) The utility shall recover such costs through the Capacity Cost Recovery Clause  
14 over a period equal to the period during which the costs were incurred or 5 years, whichever is  
15 greater.

16 (b) The amount recovered under this subsection will be the remaining unrecovered  
17 Construction Work in Progress (CWIP) balance at the time of abandonment and future  
18 payment of all outstanding costs and any other prudent and reasonable exit costs. The  
19 unrecovered balance during the recovery period will accrue interest at the utility's overall  
20 pretax weighted average midpoint cost of capital on a Commission adjusted basis as reported  
21 by the utility in its Earnings Surveillance Report filed in December of the prior year, utilizing  
22 the midpoint of return on equity (ROE) range or ROE approved for other regulatory purposes,  
23 as applicable.

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

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1 (a) The utility shall file a petition for Commission approval of the base rate increase  
2 pursuant to Section 366.93(4), F.S., separate from any cost recovery clause petitions, that  
3 includes any and all costs reflected in such increase, whether or not those costs have been  
4 previously reviewed by the Commission; provided, however, that any actual costs previously  
5 reviewed and determined to be prudent in the Capacity Cost Recovery Clause shall not be  
6 subject to disallowance or further prudence review except for fraud, perjury, or intentional  
7 withholding of key information.

8 (b) The utility shall calculate the increase in base rates resulting from the jurisdictional  
9 annual base revenue requirements for the ~~nuclear~~ power plant in conjunction with the Capacity  
10 Cost Recovery Clause projection filing for the year the ~~nuclear~~ power plant is projected to  
11 achieve commercial operation. The increase in base rates will be based on the annualized base  
12 revenue requirements for the ~~nuclear~~ power plant for the first 12 months of operations  
13 consistent with the cost projections filed in conjunction with the Capacity Cost Recovery  
14 Clause projection filing.

15 (c) At such time as the ~~nuclear~~ power plant is included in base rates, recovery through  
16 the Capacity Cost Recovery Clause will cease, except for the difference between actual and  
17 projected construction costs as provided in subparagraph (5)(c)4. above.

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

24 (e) The jurisdictional net book value of any existing generating plant that is retired as a  
25 result of operation of the ~~nuclear~~ power plant shall be recovered through an increase in base

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1 rate charges over a period not to exceed 5 years. At the end of the recovery period, base rates  
2 shall be reduced by an amount equal to the increase associated with the recovery of the retired  
3 generating plant.

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

8 (a) Subject to suitable confidentiality agreements or, to the extent necessary, protective  
9 orders issued by the Commission, a utility will ensure reasonably contemporaneous access,  
10 which may include access by electronic means, for review by parties of all documents relied  
11 on by utility management to approve expenditures for which cost recovery is sought. Access  
12 to any information that is “Safeguards Information” as defined in 42 U.S.C. 2167 and 10  
13 C.F.R. 73.21, incorporated by reference into this Rule, shall only be in accordance with  
14 applicable Nuclear Regulatory Commission requirements.

15 (b) Regarding technology selected, a utility shall provide a description of the  
16 technology selected that includes, but is not limited to, a review of the technology and the  
17 factors leading to its selection.

18 (c) The annual true-up and projection cost filings shall include a list of contracts  
19 executed in excess of \$1 million to include the nature and scope of the work, the dollar value  
20 and term of the contract, the method of vendor selection, the identity and affiliation of the  
21 vendor, and current status of the contract.

22 (d) Final true-up filings and actual/estimated true-up filings will include monthly  
23 expenditures incurred during those periods for major tasks performed within Site Selection,  
24 Preconstruction and Construction categories. A utility shall provide annual variance  
25 explanations comparing the current and prior period to the most recent projections for those

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periods filed with the Commission.

(e) Projection filings will include monthly expenditures for major tasks performed within Site Selection, Preconstruction and Construction categories.

(f) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following issuance of the final order granting a determination of need and until commercial operation of the ~~nuclear~~ power plant, a utility shall include the budgeted and actual costs as compared to the estimated in-service costs of the ~~nuclear~~ power plant as provided in the petition for need determination in its annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates provided in the petition for need determination are non-binding estimates. Some costs may be higher than estimated and other costs may be lower. A utility shall provide such revised estimated in-service costs as may be necessary in its annual report.

Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 366.93 FS.

History--New 4-8-07.

1. Each year, a utility shall submit, for Commission review and approval, as part of its Capacity Cost Recovery Clause filings:

a. – 2. No change.

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

4. The final true-up for the previous year, actual/estimated true-up for the current year, and subsequent year's projected ~~nuclear~~ power plant costs as approved by the Commission pursuant to subparagraph (5)(c)2. will be included for cost recovery purposes as a component of the following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than October 15 of the current year.

5. By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power ~~nuclear~~ plant.

(6) Failure to Enter Commercial Service. Following the Commission's issuance of a final order granting a determination of need for the ~~nuclear~~ power plant, in the event the utility elects not to complete or is precluded from completing construction of the ~~nuclear~~ power plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction costs, and construction costs.

(a) – (b) No change.

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

(a) No change.

(b) The utility shall calculate the increase in base rates resulting from the jurisdictional annual base revenue requirements for the ~~nuclear~~ power plant in conjunction with the Capacity Cost Recovery Clause projection filing for the year the ~~nuclear~~ power plant is projected to achieve commercial operation. The increase in base rates will be based on the annualized base revenue requirements for the ~~nuclear~~ power plant for the first 12 months of operations consistent with the cost projections filed in conjunction with the Capacity Cost Recovery Clause projection filing.

(c) At such time as the ~~nuclear~~ power plant is included in base rates, recovery through the Capacity Cost Recovery Clause will cease, except for the difference between actual and projected construction costs as provided in subparagraph (5)(c)4. above.

(d) No change.

(e) The jurisdictional net book value of any existing generating plant that is retired as a result of operation of the ~~nuclear~~ power plant shall be recovered through an increase in base rate charges over a period not to exceed 5 years. At the end of the recovery period, base rates shall be reduced by an amount equal to the increase associated with the recovery of the retired generating plant.

(8) – (e) No change.

(f) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following issuance of the final order granting a determination of need and until commercial operation of the ~~nuclear~~ power plant, a utility shall include the budgeted and actual costs as compared to the estimated in-service costs of the ~~nuclear~~ power plant as provided in the petition for need determination in its annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates provided in the petition for need determination are non-binding estimates. Some costs may be higher than

estimated and other costs may be lower. A utility shall provide such revised estimated in-service costs as may be necessary in its annual report.

Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 366.93 FS.

History--New 4-8-07, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathy Lewis, Division of Economic Regulation, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6594.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 20, 2007

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2007.

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1 25-22.081 Contents of Petition.

2 (1) Petition for Fossil, Integrated Gasification Combined Cycle, or Nuclear Fuel  
3 Electric Plants. Petitions submitted to commence a proceeding to determine the need for a  
4 proposed fossil, integrated gasification combined cycle, or nuclear fuel electrical power plant  
5 or responses to the Commission's order commencing such a proceeding shall comply with the  
6 other requirements of Chapter 25-22, F.A.C., as to form and style except that a utility may, at  
7 its option, submit its petition in the same format and style as its application for site  
8 certification pursuant to Sections 403.501 through 403.517, F.S., so long as the informational  
9 requirements of this rule and Chapter 25-22, F.A.C., are satisfied. ~~The petition,~~ to allow the  
10 Commission to take into account the need for electric system reliability and integrity, the need  
11 for adequate reasonable cost electricity, the need for fuel diversity and supply reliability, ~~and~~  
12 the need to determine whether the proposed plant is the most cost effective alternative  
13 available, and the need to determine whether renewable energy sources and technologies, as  
14 well as conservation measures, are utilized to the extent reasonably available, the petition shall  
15 contain the following information:

16 (a) A general description of the utility or utilities primarily affected, including the load  
17 and electrical characteristics, generating capability, and interconnections.

18 (b) A general description of the proposed electrical power plant, including the size,  
19 number of units, fuel type and supply modes, the approximate costs, and projected in-service  
20 date or dates.

21 (c) A statement of the specific conditions, contingencies or other factors which indicate  
22 a need for the proposed electrical power plant including the general time within which the  
23 generating units will be needed. Documentation shall include historical and forecasted  
24 summer and winter peaks, number of customers, net energy for load, and load factors with a  
25 discussion of the more critical operating conditions. Load forecasts shall identify the model or

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1 models on which they were based and shall include sufficient detail to permit analysis of the  
2 model or models. If a determination is sought on some basis in addition to or in lieu of  
3 capacity needs, such as fuel diversity, then detailed analysis and supporting documentation of  
4 the projected costs and benefits is required. Where a determination is sought for a nuclear or  
5 integrated gasification combined cycle power plant, the nonbinding estimate provided for in  
6 paragraph (2)(b) below shall be considered to be sufficient for purposes of this paragraph.

7 (d) A summary discussion of the major available generating alternatives which were  
8 examined and evaluated in arriving at the decision to pursue the proposed generating unit. The  
9 discussion shall include a general description of the generating unit alternatives, including  
10 purchases where appropriate; and an evaluation of each alternative in terms of economics,  
11 reliability, long-term flexibility and usefulness and any other relevant factors such as fuel  
12 diversity and fuel supply reliability. These major generating technologies generally available  
13 and potentially appropriate for the timing of the proposed plant and other conditions specific  
14 to it shall be discussed. In addition, each investor-owned utility shall include a detailed  
15 description of the selection process used and a detailed description of the generating unit  
16 alternatives proposed by each finalist, if any, selected to participate in subsequent contract  
17 negotiations pursuant to Rule 25-22.082, F.A.C. No provision of Rule 25-22.082, F.A.C., shall  
18 be applicable to a nuclear or integrated gasification combined cycle power plant sited after  
19 June 19, 2006.

20 (e) A discussion of viable nongenerating alternatives including an evaluation of the  
21 nature and extent of reductions in the growth rates of peak demand, KWH consumption and  
22 oil consumption resulting from the goals and programs adopted pursuant to the Florida Energy  
23 Efficiency and Conservation Act both historically and prospectively and the effects on the  
24 timing and size of the proposed plant.

25 (f) An evaluation of the adverse consequences which will result if the proposed

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1 electrical power plant is not added in the approximate size sought or in the approximate time  
2 sought.

3 (g) If the generation addition is the result of a purchased power agreement between an  
4 investor-owned utility and a nonutility generator, the petition shall include a discussion of the  
5 potential for increases or decreases in the utility's cost of capital, the effect of the seller's  
6 financing arrangements on the utility's system reliability, any competitive advantage the  
7 financing arrangements may give the seller and the seller's fuel supply adequacy.

8 (2) In addition to complying with paragraphs (1)(a) through (g) above, a nuclear or  
9 integrated gasification combined cycle power plant petition shall contain the following  
10 information:

11 (a) The description required by Section 403.519(4)(a)2., F.S., including a discussion  
12 about how the proposed nuclear or integrated gasification combined cycle power plant will  
13 enhance the electric supply reliability by reducing the exposure to fossil fuel supply  
14 disruptions;

15 (b) A description of and a nonbinding estimate of the cost of the proposed nuclear or  
16 integrated gasification combined cycle power plant, including associated transmission  
17 facilities;

18 (c) The annualized base revenue requirement for the first 12 months of operation of the  
19 proposed nuclear or integrated gasification combined cycle power plant, based on the  
20 nonbinding estimate of the cost provided pursuant to paragraph (2)(b) above; and

21 (d) A summary of any discussions with other electric utilities regarding ownership of a  
22 portion of the plant by such electric utilities.

23 Specific Authority 350.127(2), 366.05(1) FS.

24 Law Implemented 403.519 FS.

25 History—New 12-22-81, Formerly 25-2.133, 25-22.81, Amended 1-10-94, 2-20-07.

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## Notice of Proposed Rule

### **PUBLIC SERVICE COMMISSION**

#### **RULE NO: RULE TITLE**

25-6.0423: Nuclear Power Plant Cost Recovery

**PURPOSE AND EFFECT:** The purpose of the rule amendment is to implement Section 366.93, F.S., to promote electric utility investment in Integrated Gasification Combined Cycle (IGCC) power plants by establishing cost recovery mechanisms that allow for the recovery in rates of all costs prudently incurred in the siting, design, licensing, and construction of an IGCC power plant. Docket No. 070672-EI.

**SUMMARY:** The rule is amended to extend the alternative cost recovery mechanisms developed for nuclear power plants to integrated gasification combined cycle (IGCC) power plants to allow the recovery of costs incurred in siting, design, licensing, and construction and allow for recovery in rates of all such prudently incurred costs.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** Investor owned electric utilities planning to build an IGCC plant should experience no significant additional costs as a result of the rule amendment and would benefit from the cost recovery mechanisms in the rule. Implementation of alternative cost recovery mechanisms will impact the timing of cost recovery from ratepayers, subject to Commission review.

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

**SPECIFIC AUTHORITY:** 350.127(2), 366.05(1), FS

**LAW IMPLEMENTED:** 366.93, FS

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 (850) 413-6770. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: David E. Smith, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6199.

THE FULL TEXT OF THE PROPOSED RULE IS:

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

(1) Purpose. The purpose of this rule is to establish alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear or integrated gasification combined cycle power plants in order to promote electric utility investment in nuclear or integrated gasification combined cycle power plants and allow for the recovery in rates of all such prudently incurred costs.

(2) Definitions. As used in this rule, the following definitions shall apply:

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

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

(c) "Power plant" or "plant" means a nuclear power plant or an integrated gasification combined cycle power plant.



(d)(b) "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 or integrated gasification combined cycle power plant as defined in Section 366.93(1)(a) , F.S.

(e)(e) "Site selection." A site will be deemed to be selected upon the filing of a petition for a determination of need for a nuclear or integrated gasification combined cycle power plant pursuant to Section 403.519 , F.S.

(f)(d) "Site selection costs" are costs that are expended prior to the selection of a site.

(g)(e) "Pre-construction costs" are costs that are expended after a site has been selected in preparation for the construction of a nuclear or integrated gasification combined cycle power plant, incurred up to and including the date the utility completes site clearing work.

(h)(f) Site selection costs and pre-construction costs include, but are not limited to: any and all costs associated with preparing, reviewing and defending a Combined Operating License (COL) application for a nuclear power plant; costs associated with site and technology selection; costs of engineering, designing, and permitting the nuclear or integrated gasification combined cycle power plant; costs of clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction offices, warehouses, etc.).

(i)(g) "Construction costs" are costs that are expended to construct the nuclear or integrated gasification combined cycle power plant including, but not limited to, the costs of constructing ~~nuclear~~ power plant buildings and all associated permanent structures, equipment and systems.

(3) No change.

(4) Site Selection Costs. After the Commission has issued a final order granting a determination of need for a ~~nuclear~~ power plant pursuant to Section 403.519, F.S., a utility may file a petition for a separate proceeding, to recover prudently incurred site selection costs. This separate proceeding will be limited to only those issues necessary for the determination of prudence and alternative method for recovery of site selection costs of a ~~nuclear~~ power plant.

(5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After the Commission has issued a final order granting a determination of need for a ~~nuclear~~ power plant pursuant to Section 403.519 , F.S., a utility may petition the Commission for recovery of pre-construction costs and carrying costs of construction cost balance as follows:

(a) – 2. No change.

(b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover, through the utility's Capacity Cost Recovery Clause, the carrying costs on the utility's annual projected construction cost balance associated with the ~~nuclear~~ power plant. The actual carrying costs recovered through the Capacity Cost Recovery Clause shall reduce the allowance for funds used during construction (AFUDC) that would otherwise have been recorded as a cost of construction eligible for future recovery as plant in service.

1. For ~~nuclear~~ power plant need petitions submitted on or before December 31, 2010, the associated carrying costs shall be computed based on the pretax AFUDC rate in effect on June ~~12, 2007~~~~19, 2006~~;

2. For ~~nuclear~~ power plant need petitions submitted after December 31, 2010, the utility's pretax AFUDC rate in effect at the time the petition for determination of need is filed is presumed to be appropriate unless the Commission determines otherwise in its need determination order;

3. No change.

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

## Notice of Proposed Rule

### **PUBLIC SERVICE COMMISSION**

RULE NO: RULE TITLE

25-22.081: Contents of Petition

PURPOSE AND EFFECT: The purpose of the rule is to implement 2007 amendments to 403.519, F.S., dealing with the contents of an electric utility's petition for determination of need and extending the statute's applicability to integrated gasification combined cycle (IGCC) power plants. Docket No. 070672-EI.

SUMMARY: The rule is amended to include IGCC power plants, and to specify that a petition for determination of need must include information to allow the Commission to consider the electric utility's use of conservation measures and renewable energy sources and technologies in the determining need for new generation capacity.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The additional costs to electric utilities to comply with the rule should be minimal. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

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

SPECIFIC AUTHORITY: 350.127(2), 366.05(1), FS

LAW IMPLEMENTED: 403.519, FS

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Office of Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850 (850)413-6770. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: David E. Smith, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6199.

THE FULL TEXT OF THE PROPOSED RULE IS:

#### **25-22.081 Contents of Petition.**

(1) Petition for Fossil, Integrated Gasification Combined Cycle, or Nuclear Fuel Electric Plants. Petitions submitted to commence a proceeding to determine the need for a proposed fossil, integrated gasification combined cycle, or nuclear fuel electrical power plant or responses to the Commission's order commencing such a proceeding shall comply with the other requirements of Chapter 25-22, F.A.C., as to form and style except that a utility may, at its option, submit its petition in the same format and style as its application for site certification pursuant to Sections 403.501 through 403.517, F.S., so long as the informational requirements of this rule and Chapter 25-22, F.A.C., are satisfied. ~~The petition,~~ to allow the Commission to take into account the need for electric system reliability and integrity, the need for adequate reasonable cost electricity, the need for fuel diversity and supply reliability, ~~and~~ the need to determine whether the proposed plant is the most cost effective alternative available, and the need to determine whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available, the petition shall contain the following information:

(a) – (b) No change.

(c) A statement of the specific conditions, contingencies or other factors which indicate a need for the proposed electrical power plant including the general time within which the generating units will be needed. Documentation shall include historical and forecasted summer and winter peaks, number of customers, net energy for load, and load factors with a discussion of the more critical operating conditions. Load forecasts shall identify the model or models on which they were based and shall include sufficient detail to permit analysis of the model or models. If a determination is sought on some basis in addition to or in lieu of capacity needs, such as fuel diversity, then detailed analysis and supporting documentation of the projected costs and benefits is required. Where a determination is sought for a nuclear or integrated gasification combined cycle power plant, the nonbinding estimate provided for in paragraph (2)(b) below shall be considered to be sufficient for purposes of this paragraph.

(d) A summary discussion of the major available generating alternatives which were examined and evaluated in arriving at the decision to pursue the proposed generating unit. The discussion shall include a general description of the generating unit alternatives, including purchases where appropriate; and an evaluation of each alternative in terms of economics, reliability, long-term flexibility and usefulness and any other relevant factors such as fuel diversity and fuel supply reliability. These major generating technologies generally available and potentially appropriate for the timing of the proposed plant and other conditions specific to it shall be discussed. In addition, each investor-owned utility shall include a detailed description of the selection process used and a detailed description of the generating unit alternatives proposed by each finalist, if any, selected to participate in subsequent contract negotiations pursuant to Rule 25-22.082, F.A.C. No provision of Rule 25-22.082, F.A.C., shall be applicable to a nuclear or integrated gasification combined cycle power plant sited after June 19, 2006.

(e) – (g) No change.

(2) In addition to complying with paragraphs (1)(a) through (g) above, a nuclear or integrated gasification combined cycle power plant petition shall contain the following information:

(a) The description required by Section 403.519(4)(a)2., F.S., including a discussion about how the proposed nuclear or integrated gasification combined cycle power plant will enhance the electric supply reliability by reducing the exposure to fossil fuel supply disruptions;

(b) A description of and a nonbinding estimate of the cost of the proposed nuclear or integrated gasification combined cycle power plant, including associated transmission facilities;

(c) The annualized base revenue requirement for the first 12 months of operation of the proposed nuclear or integrated gasification combined cycle power plant, based on the nonbinding estimate of the cost provided pursuant to paragraph (2)(b) above; and

(d) No change.

Specific Authority 350.127(2), 366.05(1) FS.

Law Implemented 403.519 FS.

History—New 12-22-81, Formerly 25-2.133, 25-22.81, Amended 1-10-94, 2-20-07, \_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kathy Lewis, Division of Economic Regulation, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850) 413-6594.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: November 20, 2007

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: August 31, 2007

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STATEMENT OF FACTS AND CIRCUMSTANCES  
JUSTIFYING RULE

In 2007, the Florida legislature amended Section 366.93, FS, to make IGCC power plants eligible for cost recovery under the same conditions as nuclear power plants. The Statute directs the PSC to establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of an IGCC power plant.

The Florida legislature amended Section 403.519, Florida Statutes, to require the PSC to consider whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available when making its determination of need for a proposed power plant. The PSC's existing Rule 25-22.081, F.A.C., contains a description of what the PSC shall take into account when it reviews applications for determination of need. Therefore, the existing rule must be amended to include the new requirements the legislature has dictated. The PSC's existing Rule 25-22.081, F.A.C., also contains a description of what applications for fossil and nuclear power plants must contain. Therefore, the rule must be amended to include applications for IGCC power plants so that applicants for such plants will be aware of what their petition should contain.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

State of Florida



**Public Service Commission**  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** October 24, 2007  
**TO:** Office of General Counsel (Smith)  
**FROM:** Division of Economic Regulation (Hewitt) *[Handwritten initials]*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Rule Amendments to 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery; and, 25-22.081, F.A.C., Contents of Petition

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DETAILED DESCRIPTION OF THE PROPOSED RULE AMENDMENTS

*1. Why it is being proposed?*

*New policy mandated by statute*

The proposed amendments to Rule 25-6.0423, F.A.C, Nuclear Power Plant Cost Recovery, would implement changes to Section 366.93, Florida Statutes, which adds Integrated Gasification Combined Cycle (IGCC) plants to the expedited cost recovery.

Rule 25-22.081, F.A.C., Contents of Petition, implements changes to Section 403.519, Florida Statutes, which adds IGCC plants. Section 403.519 contains the issues the PSC must take into account when there is a petition or proceeding for determination of need for a proposed fossil or nuclear fuel electric power plant.

*2. What do the rules do and how do they accomplish the goals?*

The current rule gives detailed requirements for creating an alternative cost recovery mechanism for all prudently incurred costs for investment in new nuclear plants. These costs include those expenditures for siting, design, licensing, and construction of a nuclear power plant. The rule allows preconstruction costs to be recovered through the Capacity Cost Recovery Clause (CCR). When a plant is placed in service, the utility is allowed to increase base rate charges by the projected annual revenue requirement. The proposed rule amendments would add IGCC power plants to the allowed recovery process and add "... or Integrated Gasification Combined Cycle..." to the title of the rule.

The proposed amendments to Rule 25-22.081, F.A.C., Contents of Petition, would implement the addition of IGCC plants in the statute and the requirement that the Commission determine whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available, by the applying IOU.

### IMPACT ON THE PSC

*Rule implementation and enforcement costs and impact on revenues  
For the agency and other state and local government entities*

#### *Incremental costs*

After the PSC has issued a final order granting a determination of need, a utility planning to build an IGCC plant would be allowed to petition the PSC for recovery of prudently incurred site selection costs. After the PSC has issued a final order granting a determination of need, a utility planning to build an IGCC plant would be allowed to petition the PSC for recovery of pre-construction costs and carrying costs of construction cost balances. These additional petitions and subsequent hearings would add significant additional Commissioners' and staff time.

An additional incremental cost to the Commission would be the usual costs of promulgating a rule. The utilities currently file the information required by the rule changes and the Commission currently considers the petitions for additional generation need determinations.

#### *Incremental benefits*

Commission staff would benefit by having the latest statute requirements available in Commission rules when reviewing a petition for determination of need, along with the necessary information required of the petition. There should be no significant impact on FPSC revenues. Other state and local government entities should not be negatively impacted.

### WHO BESIDES THE PSC WILL BE AFFECTED BY ADOPTION OF THE PROPOSALS

*Estimated number of entities required to comply and General description of individuals affected*

#### *Utilities*

Any of the five IOUs in Florida that plans to build an IGCC plant would be under the jurisdiction of the Commission for cost recovery. Electric cooperatives and municipal operated electric companies that petition the PSC for a need determination must comply with the contents of the petition rule. Only a few of the 34 municipals and 18 cooperatives currently generate electricity. The utilities sell electricity to industrial, commercial, and residential customers throughout the state who may be affected by a new plant.

### *Customers*

All ratepayers of a utility company that files a request for a determination of need would be affected when the pre-construction costs are passed through the CCRC and the construction cost of an IGCC plant is placed into the ratebase.

### *Impact on small businesses, small cities, or small counties*

There should be no impact from the rule changes on small businesses, small cities, or small counties

### *Outside business and local governments*

There should be no impact from the rule changes on businesses, cities, or counties.

## HOW ARE THE PARTIES ABOVE AFFECTED BY THE ADOPTION OF THE PROPOSAL

### *Estimated transactional costs to individuals and entities*

#### *Utilities*

Section 366.936(2) (a) and (b), Florida Statutes, provide for the recovery of pre-construction costs and the carrying costs on the utility's projected construction costs through the Capacity Cost Recovery Clause. The rule sets forth the procedure for including these costs in the annual cost recovery clause proceedings.

IOUs should have no significant additional costs because of the new rule. IOUs currently must show that expenditures are reasonable and prudently incurred before being allowed to be recovered. There would be some additional accounting and filing costs associated with new IGCC plant planning and construction expenditures that would be recovered through the CCRC. There would be additional hearings for Commission review of associated costs of a new IGCC plant before they are passed through to customers. There would be a significant benefit for a petitioning utility in being able to collect preconstruction costs through the CCRC before a plant is in service and in knowing that reasonable and prudent investment in new IGCC plants will be allowed to be recovered in rates as well as the recovery of sunk costs if a plant is not completed. This could encourage the building of new plants. The only estimated additional costs reported by one company for new nuclear generation under these rules would be \$10,000 per year for on-going costs.

Customers could benefit from an IOU building a nuclear plant which has lower electricity costs and contributes to fuel diversity. However, customers could be impacted negatively from preconstruction costs passed through the CCRC, and if a plant is not completed and they subsequently have to pay for the sunk costs through their electricity bills.

There should be no new transactional costs for requiring renewable and conservation issues' information. IOUs filing a petition of need for a new power plant already submit information on their efforts in utilizing renewable energy sources and technologies, as well as conservation measures, to the extent reasonably available.

*Customers*

As a result of this statutory requirement, ratepayers including local government entities and small businesses would incur higher energy bill costs associated with the IGCC plant before any benefits of the expected fuel savings from the plant operation are realized. However, the long term benefits of diversification of energy supply should mitigate future impacts from fuel price volatility.

*Outside business including specifically small businesses*

Outside businesses or small businesses would have the same benefits and costs as the other ratepayers in their rate class.

*Local governments*

Small cities or small counties would have the same benefits and costs as the other ratepayers in their rate class.

ANY OTHER PERTINENT COMMENTS REGARDING THE APPLICATION OF THE PROPOSED RULE

None.

CH:kb

cc: Mary Andrews Bane  
Chuck Hill  
Kathy Lewis  
Hurd Reeves