

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory Statement)
Regarding Applicability of Rule 25-6.0423,)
F.A.C., by Florida Power & Light Company.)
_____)

Docket No. 080083-EI

Filed: March 11, 2008

**CITIZENS' NOTICE OF INTERVENTION,
STATEMENT OF POSITION IN OPPOSITION TO PETITION FOR
DECLARATORY STATEMENT, AND REQUEST FOR HEARING**

NOTICE OF INTERVENTION

Pursuant to Section 350.0611, Florida Statutes, the Citizens of the State of Florida, through the Office of Public Counsel, hereby serve their Notice of Intervention in this docket.

**STATEMENT OF POSITION IN OPPOSITION TO
PETITION FOR DECLARATORY STATEMENT**

In Section 366.93, Florida Statutes, the Florida Legislature directed the Commission to provide alternative cost recovery mechanisms for the recovery of costs incurred in siting, designing, licensing, and construction of a nuclear power plant. The purpose of the mechanisms is to promote utility investment in nuclear or integrated gasification combined cycle power plants and for the recovery in rates of all prudently incurred costs. The Legislature directed the Commission to establish different alternative mechanisms for the categories of preconstruction costs and costs of construction. Preconstruction costs are to be collected through the requesting utility's capacity cost recovery clause as they are incurred, in lieu of traditional rate base treatment. With respect to construction costs, the alternative mechanism is to authorize

recovery through the capacity cost recovery clause of only the carrying costs associated with the construction cost balance, and only until the date the plant enters commercial service; thereafter, the construction costs themselves are to be added to rate base and collected through base rates over the lives of the assets.

The Commission implemented Section 366.93, Florida Statutes, in Rule 25-6.0423, Florida Administrative Code. Subsection 25-6.0423(h) of the rule defines site selection costs and preconstruction costs, which are those costs that qualify for the alternative of complete recovery through the capacity cost recovery clause. They are defined as any and all costs associated with preparing, reviewing and defending a Combined Operating License application for nuclear power plant; costs associated with site and technology selection; costs of engineering, designing, and permitting the nuclear or integrated gasification combined cycle power plants; costs of clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction offices, warehouses, etc.).

Under the rule, construction costs qualify for the alternative mechanism of early and ongoing recovery of the carrying costs (including return on investment) of the construction balance prior to commercial service. Subsection (i) defines them as costs that are expended to construct the nuclear or integrated gasification combined cycle power plant including, but not limited to, the costs of constructing power plant buildings and all associated permanent structures, equipment and systems.

In its petition for declaratory statement, FPL asks the Commission to apply Rule 25-6.0423 to advance payments associated with "long-lead procurement" items for FPL's proposed Turkey Point 6 and 7 nuclear plants. FPL states such long-lead

procurement items “include, but are not necessarily limited to heavy forgings like the reactor pressure vessel, steam generator shell, etc.” FPL asserts that because it may make such advance payments as early as summer of 2008, and because it plans to complete site clearing work in 2011, the Commission should deem such advance payments for such items as forgings for the reactor pressure vessel and steam generator shell to be preconstruction costs within the meaning of the rule.

However, the nature of the costs identified by FPL places them squarely and indisputably within the definition of “construction costs,” which under the rule include “the costs of constructing power plant buildings and all associated permanent structures, equipment and systems.” Citizens submit the nature and character of such costs, and the appropriate alternative ratemaking treatment that they should be afforded under the rule, are not altered by the decision to advance the timing of such investments from the more normal sequence to a point in time prior to the completion of the site clearing activities. Citizens also observe that if the classification of costs as either “preconstruction” or “construction” were merely a function of the date the cost is incurred relative to the date site clearing activities are completed, it would have been unnecessary to identify and define the categories of costs that comprise preconstruction costs and construction costs, respectively, as the Commission has done in Rule 25-6.0423(h) and (i), Florida Administrative Code.

Citizens emphasize that, as FPL points out in its petition¹, the ruling to grant or deny FPL’s petition is unrelated to the separate question of the prudence of FPL’s specific advance payments for long-lead procurement items. In opposing FPL’s

¹ Petition, page 3, paragraph 6.

proposed interpretation of the rule, Citizens express no position on the future issue of the prudence of the payments.

In addition, a decision to deny FPL's petition will not conflict with the legislative intent to encourage investment in nuclear power plants underlying Section 366.93, Florida Statutes. Both of the alternative cost recovery mechanisms identified in the statute and encompassed within the rule provide ratemaking alternatives that, relative to traditional ratemaking approaches that would apply in the absence of the rule, are extremely advantageous to the utility. If the Commission denies FPL's petition, FPL nonetheless will have the ability under the rule to collect the carrying costs of advance payments deemed prudent without having to wait until the plant enters commercial service, and the timing of those collections will move forward in time to reflect the decision to make the payments ahead of the more typical schedule. Indeed, an order directing FPL to collect through the capital cost recovery clause only the carrying costs of heavy forgings and other items obviously comprising the nuclear plant, equipment, permanent structures and systems would conform to the distinction between preconstruction items and construction costs made initially by the Florida Legislature and implemented by the Commission in the definition sections of Rule 25-6.0423, Florida Administrative Code.

REQUEST FOR HEARING

In its petition, FPL states its interests will be affected by the question it presents because a decision denying its interpretation will mean it will collect "only" the carrying

costs of permanent equipment prior to the plant's commercial in-service date.

Obviously, the interests of the Citizens who will foot the bills for the nuclear project will also be affected by the Commission's disposition of the petition.² If the Commission grants the declaratory statement in the form requested by FPL, the amounts that FPL will collect from customers that relate to permanent structures and equipment will not be limited to carrying costs prior to the in-service date; instead, customers' bills will reflect the full amounts expended on such capital items prior to the completion of site clearing, as well as the additional costs of funding an income tax liability that is associated with the ratemaking treatment sought by FPL, but that would not exist with the alternative mechanism devised specifically for construction costs.

Importantly, FPL's petition is devoid of any quantification of the impact of its proposed interpretation on customers' bills. Indeed, FPL's petition fails to identify the items that are potentially the subject of advance payments prior to completion of site clearing activities fully and precisely. Citizens submit that the Commission should not rule on FPL's petition without first developing a record adequate to inform the Commission as to the impact of FPL's preferred interpretation on customers' bills. Based on evidence received in Docket No. 070650-EI, on information and belief Citizens assert the portions of long lead procurement items associated with Turkey Point 6 and 7 that FPL plans to expend prior to the completion of site clearing, and therefore are the subject of FPL's petition, could amount to \$100 million or more.³ In

² Unavoidably, the Commission's interpretation will have precedential ramifications when the rule is applied to other nuclear power plant projects.

³ Citizens are attaching as Attachment A an excerpt from an exhibit from the deposition of FPL witness Scroggs, which was received as Item 15 of Exhibit 15 in Docket No. 070650-EI, the proceeding conducted to consider FPL's petition for a determination of need for proposed Turkey Point Units 6 and 7. This exhibit provides insight as to the potential scope and magnitude of "long lead procurement items" for

essence, FPL proposes to expense these enormous capital investments in the years in which they are incurred, even though the alternative mechanism devised specifically for construction costs is limited to collecting associated carrying costs prior to the commercial in-service date. Under the method contemplated by both statute and rule, the investment itself would be reflected in base rates following the commercial in-service date and collected over the 30 or 40 year lives of the assets. Allowing FPL to roll through the capacity cost recovery clause the entire amounts expended on such long lead construction items prior to completion of site clearing would result in dramatic increases in customers' bills that were not intended by the Legislature and that would contravene Rule 25-6.0423, Florida Administrative Code.

WHEREFORE, Citizens give notice of their intervention and participation in this proceeding; request the Commission to deny FPL's petition for declaratory statement; and urge the Commission to declare instead that the advance payments for long lead items that fall under the category of construction costs as that term is defined in Rule 25-6.0423 are instead eligible for the alternative mechanism of flowing through the capacity cost recovery clause the carrying costs of construction cost balances prior to the unit's commercial in-service date.

which advance payments are projected to occur prior to the completion of site clearing activities. In this exhibit, captioned "Summary of Long Lead," FPL identified eleven items as "long lead" in nature and projected that it would expend \$176 million of the costs of those items through 2011, the year in which it expects to complete site clearing activities (the value for expenditures through 2010 is \$86 million). By implication FPL's proposed interpretation would appear to include all expenditures made prior to the completion of site clearing.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the **NOTICE OF INTERVIEW, STATEMENT OF POSITION AND POSITION FOR DECLARATORY STATEMENT, AND REQUEST FOR HEARING** has been furnished by U.S. Mail and electronic mail to the following parties:

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DOCKET NO. 080083-EI

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **CITIZENS' NOTICE OF INTERVENTION, STATEMENT OF POSITION IN OPPOSITION TO PETITION FOR DECLARATORY STATEMENT, AND REQUEST FOR HEARING** has been furnished by U.S. Mail and electronic mail to the following parties on this 11th day of March, 2008.



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ATTACHMENT A

Scroggs Deposition
Dkt #070650
Late Filed Exhibit #2

Summary of Long Lead

Rounded (2007\$) from Westinghouse Info

Item Description	Estimated Expenditure Schedule (2007\$, MM)											Component Total (2007\$, MM)	
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018		2019
Forging Reservation Fee	15	0	0	0	0	0	0	0	0	0	0	0	15
Reactor Pressure Vessel (Unit 1)	0	0	5	10	15	15	5	5	0	5	0	0	60
Reactor Pressure Vessel (Unit 2)	0	0	5	0	0	10	15	15	5	5	0	5	60
Pressurizer Vessel (Unit 1)	0	0	0	2	2	2	2	2	0	0	0	0	10
Pressurizer Vessel (Unit 2)	0	0	0	2	2	0	0	2	2	2	0	0	10
Steam Generator Vessels (Unit 1)	0	0	15	20	35	30	20	15	0	10	0	0	145
Steam Generator Vessels (Unit 2)	0	0	15	20	0	0	35	30	20	15	0	10	145
Containment (Unit 1)	0	0	0	1	5	1	5	3	0	0	0	0	15
Containment (Unit 2)	0	0	0	1	5	0	0	1	5	3	0	0	15
Reactor Coolant Pumps (Unit 1)	0	0	15	25	15	15	15	10	0	5	0	0	100
Reactor Coolant Pumps (Unit 2)	0	0	15	10	15	15	15	10	10	5	0	5	100
Annual Total	15	0	70	91	94	88	112	93	42	50	0	20	
Cumulative Total	15	15	85	176	270	358	470	563	605	655	655	875	

Escalation factor @ 2.5% annually 1.025 1.051 1.077 1.104 1.131 1.16 1.189 1.218 1.249 1.28 1.312 1.345

Escalated - precise

Item Description	Estimated Expenditure Schedule (Year Spent \$, MM)											Component Total (Year Spent \$, MM)	
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018		2019
Forging Reservation Fee	15.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	15
Reactor Pressure Vessel (Unit 1)	0.0	0.0	5.4	11.0	17.0	17.4	5.9	6.1	0.0	6.4	0.0	0.0	69
Reactor Pressure Vessel (Unit 2)	0.0	0.0	5.4	0.0	0.0	11.6	17.8	18.3	6.2	6.4	0.0	6.7	72
Pressurizer Vessel (Unit 1)	0.0	0.0	0.0	2.2	2.3	2.3	2.4	2.4	0.0	0.0	0.0	0.0	12
Pressurizer Vessel (Unit 2)	0.0	0.0	0.0	2.2	2.3	0.0	0.0	2.4	2.5	2.6	0.0	0.0	12
Steam Generator Vessels (Unit 1)	0.0	0.0	16.2	22.1	39.6	34.8	23.8	18.3	0.0	12.8	0.0	0.0	167
Steam Generator Vessels (Unit 2)	0.0	0.0	16.2	22.1	0.0	0.0	41.6	36.6	25.0	19.2	0.0	13.4	174
Containment (Unit 1)	0.0	0.0	0.0	1.1	5.7	1.2	5.9	3.7	0.0	0.0	0.0	0.0	18
Containment (Unit 2)	0.0	0.0	0.0	1.1	5.7	0.0	0.0	1.2	6.2	3.8	0.0	0.0	18
Reactor Coolant Pumps (Unit 1)	0.0	0.0	16.2	27.6	17.0	17.4	17.8	12.2	0.0	6.4	0.0	0.0	115
Reactor Coolant Pumps (Unit 2)	0.0	0.0	16.2	11.0	17.0	17.4	17.8	12.2	12.5	6.4	0.0	6.7	117
Annual Total	15	0	75	100	106	102	133	113	52	64	0	27	
Cumulative Total	15	15	91	191	298	400	533	646	699	763	763	789	

Escalated & Rounded

Item Description	Estimated Expenditure Schedule (Year Spent \$, MM)											Component Total (\$MM)	
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018		2019
Forging Reservation Fee	16	0	0	0	0	0	0	0	0	0	0	0	16
Reactor Pressure Vessel (Unit 1)	0	0	6	11	17	18	6	6	0	7	0	0	71
Reactor Pressure Vessel (Unit 2)	0	0	6	0	0	12	18	18	6	7	0	7	74
Pressurizer Vessel (Unit 1)	0	0	0	2	2	2	2	2	0	0	0	0	10
Pressurizer Vessel (Unit 2)	0	0	0	2	2	0	0	2	2	3	0	0	11
Steam Generator Vessels (Unit 1)	0	0	16	22	40	35	24	20	0	13	0	0	170
Steam Generator Vessels (Unit 2)	0	0	16	22	0	0	42	37	25	20	0	14	176
Containment (Unit 1)	0	0	0	1	6	1	6	4	0	0	0	0	18
Containment (Unit 2)	0	0	0	1	6	0	0	1	6	4	0	0	18
Reactor Coolant Pumps (Unit 1)	0	0	16	28	17	18	18	12	0	7	0	0	118
Reactor Coolant Pumps (Unit 2)	0	0	16	11	17	18	18	12	13	7	0	7	119
Annual Total	16	0	76	100	107	104	134	114	52	68	0	28	
Cumulative Total	16	16	92	192	299	403	537	651	703	771	771	799	

Notes: The above charts are based on the data provided on the sheet entitled "FPL AP1000 COD July 2018 and July 2020"