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Subject: Electronic Filing - Docket # 110009-EI
Attachments: Joint Petition for Variance from or Partial Waiver of Rule 25-6 0423(5)(c)4.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 110009-EI

IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of seven (7) pages.

e. The document attached for electronic filing is:

Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4

See attached file(s): Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4.pdf

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DOCUMENT NUMBER-DATE

04289 JUN 21 =

FPSC-COMMISSION CLERK

6/21/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant)
Cost Recovery Clause)

Docket No. 110009-EI
Filed: June 21, 2011

**JOINT PETITION FOR VARIANCE FROM
OR PARTIAL WAIVER OF RULE 25-6.0423(5)(c)4**

NOW BEFORE THIS COMMISSION, through undersigned Counsel, comes Florida Power & Light Company ("FPL") and Progress Energy Florida, Inc. ("PEF") and, pursuant to Section 120.542, Florida Statutes and Rule 28-104.002, Florida Administrative Code, hereby petition this Commission for a variance from or partial waiver of Rule 25-6.0423(5)(c)4 of the Florida Administrative Code. In support of this Petition, FPL and PEF ("the utilities") state as follows:

1. FPL is an investor-owned utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") pursuant to Chapter 366 of the Florida Statutes, with headquarters at 700 Universe Boulevard, Juno Beach, Florida 33408. PEF is an investor-owned utility subject to the jurisdiction of the Commission pursuant to Chapter 366 of the Florida Statutes, with headquarters at 299 1st Ave. N., St. Petersburg, Florida 33701.

2. Any pleading, motion, notice, order or other document required to be served upon the petitioners or filed by any party to this proceeding should be served upon the following individuals:

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DOCUMENT NUMBER-DATE

04289 JUN 21 =

FPSC-COMMISSION CLERK

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3. Rule 25-6.0423, Florida Administrative Code, was adopted by the Commission to implement Section 366.93, Florida Statutes, providing for alternative cost recovery for costs incurred in the development of nuclear power plants. FPL and PEF are currently engaged in cost recovery proceedings for their respective nuclear projects pursuant to this rule. Alternative cost recovery pursuant to the applicable statute and rule is achieved by incorporating the Commission-approved nuclear cost recovery (“NCR”) amount into the utility’s capacity cost recovery factor. Subsection (5)(c)4 of Rule 25-6.0423 sets forth the timeframe by which the utility must file revisions to its fuel and purchased power cost recovery filings (“fuel clause filings”). It states:

The final true-up for the previous year, actual/estimated true-up for the current year, and subsequent year’s projected 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.

4. In the instant docket, the Commission has scheduled a special agenda conference on October 31, 2011 to determine the NCR amounts that FPL and PEF will be permitted to recover. The date of the agenda conference falls outside of the timeframe established by Rule 25-6.0423(5)(c)2, Fla. Admin. Code, which provides for a Commission determination in the nuclear cost recovery docket by October 1 of each year.

5. Rule 25-6.0423(5)(c)4, Fla. Admin. Code, would require FPL and PEF to make their fuel clause filings reflecting the approved NCR amounts by October 15. However, this deadline falls more than two weeks before the date when the Commission has scheduled the special agenda conference at which the NRCR amounts are to be approved. Thus, it will be impossible for FPL and PEF to comply with the timeframe established by Rule 25-6.0423(5)(c)4.

6. Recognizing the impossibility of complying with the filing date set forth in Rule 25-6.0423(5)(c)4, FPL and PEF request that they be permitted to submit their revised clause filings on or before November 8, 2011. This will provide the utilities a minimal six working days to prepare the revised filings, three of which are scheduled for hearings in the fuel clause and other adjustment clause dockets. As such, it is a tight timetable, but FPL and PEF anticipate that they will be able to meet it. November 8 is also the date that parties' post-hearing briefs are due in the fuel and capacity cost recovery docket, Docket No. 110001-EI. This should provide Staff adequate time to review and confirm the revised filings in conjunction with the preparation of their recommendation in Docket No. 110001-EI. The utilities note that any substantive challenge to the utilities' NCR amounts is handled in the Nuclear Cost Recovery Clause docket, Docket 110009-EI. Accordingly, no party to Docket No. 110001-EI should be harmed by the proposed filing date.¹

7. This variance request is temporary, because it is only being sought for 2011. The variance request is also consistent with the underlying purpose of Rule 25-6.0423(5)(c)4, which is to provide the utility with enough time to revise its fuel clause filings (i.e., at least 15 days),

¹ There is also the possibility for a bench decision each year in the fuel and cost recovery docket. In Docket No. 110001-EI, this could result in a Commission determination on the fuel and capacity cost recovery factors as early as November 1, 2011, prior to the utilities' filings of any revisions to such factors necessitated by the Commission's determination in the Nuclear Cost Recovery docket. The October 31 date of the special agenda session for Nuclear Cost Recovery should not preclude the potential for a bench decision in Docket No. 110001-EI as early as November 1. Rather, the Commission could issue a bench decision that incorporates the October 31 Nuclear Cost Recovery decision, with Staff directed and authorized to administratively review and approve the utilities' incorporation of the Nuclear Cost Recovery decision into the capacity cost recovery factors.

and also to provide the Commission with enough time to include the utility's revisions in its order in the fuel and purchase power cost recovery docket. The requested variance or partial waiver will still achieve those purposes. In fact, the eight-day time frame proposed herein is substantially shorter than the 14 days provided for by the rule. The Commission has previously granted a similar joint petition by FPL and PEF, when the timing of the NCR decision did not enable compliance with Rule 25-6.0423(5)(c)4, Fla. Admin. Code. *Notice of Proposed Agency Action Order Approving Rule Variance*, Order No. PSC-09-0689-PAA-EI, issued October 15, 2009 (consummating Order No. PSC-09-0788-CO-EI).

WHEREFORE, for the above and foregoing reasons, FPL and PEF request a variance from or partial waiver of Rule 25-6.0423(5)(c)4, Fla. Admin. Code, so that each company may submit its fuel clause filing revisions after October 31, 2011 but not later than November 8, 2011.

Respectfully submitted this 21st day of June, 2011.

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**CERTIFICATE OF SERVICE
DOCKET NO. 110009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's and PEF's Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4 was served electronically this 21st day of June, 2011 to the following:

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