Jessica Cano
Principal Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
(561) 304-5226
(561) 691-7135 (Facsimile)
Email: Jessica.Cano@fpl.com

July 29, 2013

VIA OVERNIGHT UPS DELIVERY

Ms. Ann Cole
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard, Room 110
Tallahassee, FL 32399-0850

Re: Docket No. 130009-EI; Nuclear Cost Recovery Clause

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") is the original and seven copies of FPL's Legal Brief on Issues 1, 2, and 3 with Exhibit 1. Also included in this filing is a compact disc containing FPL's Legal Brief on Issues 1, 2, and 3 (excluding Exhibit 1) in Microsoft Word format.

Please feel free to call me if there are any questions related to this filing.

Sincerely,

Jessica A. Cano
Fla. Bar No. 0037372

Enclosures
cc: Parties of Record (w/ enc.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Cost Recovery Clause	Docket No. 130009-EI Filed: July 29, 2013

FLORIDA POWER & LIGHT COMPANY'S
LEGAL BRIEF ON ISSUES 1, 2, AND 3

Pursuant to Order No. PSC-13-0333-PHO-EI, Florida Power & Light Company ("FPL") hereby files its legal brief on Issues 1, 2, and 3. The issues are stated in the referenced prehearing order as follows:

Issue 1: Does recently enacted Senate Bill 1472, effective July 1, 2013, change the AFUDC rate that should be used for nuclear cost recovery clause computations in this year's pending case?

Issue 2: Does recently enacted Senate Bill 1472, effective July 1, 2013, preclude a utility from continuing preconstruction work not related to obtaining a combined operating license from the Nuclear Regulatory Commission or certification, that was under contract or commenced prior to July 1, 2013?

Issue 3: Does recently enacted Senate Bill 1472, effective July 1, 2013, preclude a utility from recovering costs associated with preconstruction work not related to obtaining a combined operating license from the Nuclear Regulatory Commission or certification, that was under contract or commenced prior to July 1, 2013?

Resolution of each of these issues depends upon whether Chapter 2013-184, Laws of Florida,[1] which amended Section 366.93, Florida Statutes, may be applied to the pending Nuclear Cost Recovery ("NCR") case.

I. SUMMARY OF ARGUMENT

Florida law requires that Section 366.93, as it existed prior to the effective date of Chapter 2013-184, govern the Florida Public Service Commission's ("Commission") decisions in the pending 2013 NCR case for several reasons, including:

[1] Chapter 2013-184, Laws of Florida, includes the entirety of the amended subsections (1), (2), and (3) of Section 366.93, Florida Statutes, and is attached hereto as Exhibit 1. In Issues 1, 2, and 3, this law is referred to as Senate Bill 1472.

- The amendments to Section 366.93 constitute substantive changes to the law. It is well settled that substantive statutory changes apply prospectively, not retroactively (i.e., not to the pending, filed case which is based upon facts and law that existed prior to the effective date of the amendments).

- A Florida Supreme Court decision reversing a Commission order in an analogous situation demonstrates that these statutory changes are substantive and cannot be applied to the pending case. The Florida Supreme Court determined that statutory changes impacting the amount a utility was entitled to recover in a rate case were substantive and that the Commission's application of the new law to the pending case, which was filed consistent with the prior version of the law, constituted impermissible retroactive application of the law.

- Only express legislative intent for retroactive application coupled with constitutional permissibility would enable the current application of the amendments, and Chapter 2013-184 fails both these tests.

- Additionally, Commission rulemaking is needed before implementation of the statutory amendments. The NCR Rule, Rule 25-6.0423, Fla. Admin. Code, has not yet been amended. Application of Chapter 2013-184 to the current case would result in at least one violation of the Commission's existing NCR Rule. Disagreement that already exists with respect to the interpretation of one of the amendments also emphasizes the need for rulemaking. The plain language of the statute allows for rulemaking, which would enable implementation of Chapter 2013-184 in time for application to the 2014 NCR proceeding.

Accordingly, as explained in more detail below, the amendments to Section 366.93 contained in Chapter 2013-184 cannot apply to the pending NCR case and Issues 1, 2, and 3 should each be decided in the negative.

II. THE EFFECTIVE DATE DOES NOT END THE ANALYSIS

The effective date of July 1, 2013 contained in Chapter 2013-184 is a common effective date included in many laws passed in the 2013 legislative session. The Florida House of Representatives' "Guidelines for Bill Drafting" (issued Jan. 30, 2011) contains a section specifically on effective dates, and explains that "it has become customary over the years to include an effective date in almost every bill" despite the fact that it is not required by the Florida Constitution (p. 41). It further explains that "in the past October 1 and July 1 have been

considered standard and continue to be the most often used effective dates." (p. 42). Indeed, a cursory review of the laws passed during the 2013 legislative session reveals that at least 20 laws include an effective date of July 1, 2013, and cover topics as varied as eminent domain, the practice of optometry, and Medicaid. *See* Ch. 2013-023 § 2, Laws of Fla.; Ch. 2013-026 § 17, Laws of Fla.; and Ch. 2013-048 § 14, Laws of Fla., respectively. Clearly, the Legislature's use of the July 1, 2013 effective date does not imply any particular impact to the pending NCR case.

If one were to assume that the July 1, 2013 effective date contained in Chapter 2013-184 meant the amendments were intended to apply to the pending NCR case, one would similarly have to assume that the other laws containing the same effective date were intended to apply to pending eminent domain, optometry, and Medicaid civil cases, for example. Such a broad assumption would ignore an entire body of Florida Supreme Court (and lower Florida court) case law examining exactly this question – whether a new statute or statutory amendment enacted during a pending case can apply to that pending case. Therefore, it is the presence of the July 1, 2013 effective date that raises the question whether the amendments should apply to the pending case – it does not answer it. A proper analysis of the controlling case law on the applicability of statutory changes to pending cases is required.

III. FLORIDA LAW PROHIBITS APPLICATION OF THE AMENDMENTS TO THE PENDING CASE

There is an entire body of Florida law examining whether statutory amendments, enacted and made effective during the pendency of a related legal case, may be applied to the pending case. The answer turns first on whether the amendments are substantive in nature versus procedural or remedial in nature. As discussed below, the amendments contained in Chapter 2013-184 are clearly substantive in nature. There is a "presumption against retroactive application for substantive changes[.]" *Smiley v. State of Florida*, 966 So. 2d 330, 334 (Fla.

2007). In fact, the Florida Supreme Court has explained "the presumption against retroactive application is a well-established rule of statutory construction[.]" *Florida Insurance Guarantee Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187, 196 (Fla. 2011).[2] The Florida Supreme Court has also made clear that application of substantive changes to a pending case constitutes "retroactive" application.[3] *See Smiley*, 966 So. 2d at 334; *see also Keystone Water Company, Inc. v. Bevis*, 278 So. 2d 606 (Fla. 1973) (holding that substantive statutory changes could not be applied by the Commission in its decision on a rate case that was filed consistent with the prior version of the law that was in effect at the time of the utility's filing).

Retroactive application is only allowed if the Commission first finds express legislative intent for retroactive application, and then determines that it is constitutionally permissible to apply the statutory changes to the pending case. As discussed below, Chapter 2013-184 fails both prongs of this test. As a result, the amendments to Section 366.93 may only be applied prospectively to future NCR proceedings and not to the pending NCR case.

A. The Amendments to Section 366.93 are Substantive

Substantive changes to statutory law "create new or take away vested rights." *See Smiley* 966 So. 2d at 334. This is in contrast to remedial or procedural statutory changes which relate to remedies or modes of procedure and only operate in furtherance of the remedy or confirmation of rights already existing. *Id.* A statute that achieves a remedial purpose by creating a substantive new right or imposing new legal burdens is treated as a substantive change in the law. *Id.* (citing *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 424 (Fla. 1994)).

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[2] This concept is so settled that there is Florida Jurisprudence guidance on the topic. *See* Fla. Juris, 2d Ed, Statutes, §§ 109-110.

[3] The Office of Public Counsel attempts to create a hybrid legal position in its position on Issue 1. OPC agrees that the changes are substantive and should be applied prospectively, but then attempts to apply them to the pending case beginning with costs incurred on July 1, 2013. Any application to the pending case is "retroactive" application, as made clear by the Florida Supreme Court in *Smiley* and *Keystone*. OPC's position is legally impermissible.

The amendments to subsection (2) and subsection (3) of Section 366.93 change the amount of costs a utility is entitled to recover as well as the types of costs a utility is entitled to recover at different stages in the NCR process when pursuing new nuclear generation on behalf of its customers. They also eliminate the availability of the NCR mechanism it its entirety after a certain period of time. These changes go beyond modifying the procedural requirements for seeking cost recovery – they fundamentally alter the very substance of what a utility is entitled to recover through the NCR process.

Section 366.93(2) was amended by changing the Allowance for Funds Used During Construction ("AFUDC") rate that a utility recovers through carrying costs on its nuclear investment. It was changed from a fixed rate in existence when the NCR law was first enacted to a variable rate that has the potential to change each time a utility seeks cost recovery. *See* Ch. 2013-184, Exhibit 1. If the amendment were to be applied to the pending case, it would have the effect of reducing the amount of carrying costs that FPL is entitled to recover in 2014 by approximately $2.4 million.[4]

Section 366.93(3) was amended by eliminating a utility's right to recover licensing and preconstruction costs, and carrying costs on construction costs, as incurred consistent with the utility's project schedule. The amended statute now only permits the recovery of costs related to licensing before a license from the NRC is obtained, and the recovery of costs related to preconstruction before permission to proceed to construction from the Commission is obtained. The amendments to subsection (3) also require Commission approval before proceeding with preconstruction or construction work, and even eliminate the availability of the NCR mechanism in its entirety if construction has not commenced within 20 years of receiving a license from the

[4] The amendments to subsection (2) are at issue in Issue 1 in this proceeding.

NRC. One can hardly argue that these changes did not "take away rights" that the utilities had under the prior version of the statute.[5]

A review of Florida cases determining statutes were substantive versus procedural/remedial in nature further confirms that the amendments to Section 366.93 are substantive. For example, in *Keystone Water Company v. Bevis*, the Florida Supreme Court reviewed a Commission order that applied statutory changes to a pending rate case. *Keystone Water Company v. Bevis,* 278 So. 2d 606 (Fla. 1973). The changes became effective after Keystone filed its rate case, but before the Commission issued its order, and had the effect of changing the amount the utility would have been entitled to recover in the pending case. *Id.* The Florida Supreme Court (i) determined that the statutory changes were substantive rather than procedural, and (ii) determined that the Commission's application of the new law to the pending case "constituted retrospective application" of the law. *Id.* at 609. Similarly, the amendments to Section 366.93(2) would reduce the amount of carrying costs that could be recovered by FPL on its nuclear power plant investments. Moreover, the amendments to Section 366.93(3) would eliminate entirely the potential to recover certain types of costs during certain stages of a nuclear power plant project. These amendments are clearly substantive in nature, and application to the pending case that was filed before the amendments' effective date, consistent with the prior version of the law, would be impermissible retroactive application.

B. The Amendments to Section 366.93 Fail the Two-Prong Test that would Allow Retroactive Application

The presumption against the retroactive application of a substantive change in law is rebutted only if the statute passes a two-prong test. First, the statute must contain clear legislative intent that the law apply retroactively. If the Commission finds clear legislative

[5] The amendments to subsection (3) are at issue in Issues 2 and 3 in this proceeding.

intent for retroactive application (i.e., application to a pending case), then it must determine whether the retroactive application of the law is constitutionally permissible. *Florida Insurance Guarantee Ass'n, Inc.*, 67 So. 3d at 194. If the language of the statute does not evince an intent that the statute apply retroactively, one need not address the second prong. *Id.*

1. Amended Section 366.93 contains no express legislative intent for retroactive application

In *Basel v. McFarland & Sons, Inc.*, the Fifth District Court of Appeal summarized the level of clarity required to ascertain legislative intent for retroactive application:

> While the defendants assert that [the session law at issue] demonstrates that the legislature intended the amendment to be applied to existing causes of action, the case law dealing with legislative history speaks of "explicit" or "clear" legislative intent. . . . There is no express language in [the session law]. . . providing for its retroactive application. . . . Requiring clear intent assures that [the Legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.

815 So. 2d 687, 692-93 (Fla. 5th DCA 2002) (internal citations omitted). The fact that the retroactive application of a statute would further its purposes is insufficient to show legislative intent and rebut the presumption against retroactivity. *See Arrow Air, Inc.*, 645 So. 2d at 425 (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994)). Essentially, there must be a clear statement by the Legislature that retroactivity is intended.

The Florida Legislature is clearly aware of the type of language it needs to include if it intends for a statute to apply to pending legal matters. Many times, the Legislature has expressed an intent that a statutory enactment apply retroactively. *See, e.g.,* Ch. 2006-122, § 7, Laws of Fla. ("The amendments made by this act . . . apply retroactively to July 1, 2004."); Ch. 2004-252, § 14, Laws of Fla. ("the amendment to subsec. (3) operates retroactively to January 1, 2002"); Ch. 2007-339, § 15, Laws of Fla. ("the amendment of this section by § 4 of the law applies

retroactively to the 2008 tax roll"). This includes legislation passed in the recent 2013 session. *See, e.g.,* Ch. 2013-95, § 5, Laws of Fla. ("This act shall take effect upon becoming a law and applies retroactively to January 1, 2013.").[6] There is no such language in Chapter 2013-184, providing the amendments to Section 366.93.

An effective date is not itself clear legislative intent for application to a pending case. Like the statute at issue in *Fla. Ins. Guarantee Ass'n*, the text of amended Section 366.93 is silent as to its forward or backward reach; however, it specifically includes an effective date. *See Fla. Ins. Guarantee Ass'n*, 67 So. 3d at 196. As discussed above, it includes a fairly standard effective date of July 1, 2013. The Florida Supreme Court has noted that "the Legislature's inclusion of an effective date for an amendment is considered to be evidence rebutting intent for retroactive application of a law." *Id.* (citing *State Dep't of Rev. v. Zuckerman-Vernon Corp.*, 354 So. 2d 353, 358 (Fla. 1977)). In other words, the effective date has exactly the opposite impact certain intervenors claim it has, by rebutting any perceived intent that the amendments apply to the pending NCR case.

Because the amendments to Section 366.93 contain no express legislative intent that they apply retroactively, one need not examine whether it is constitutionally permissible to apply the amendments retroactively to the pending NCR case.[7] *See Fla. Ins. Guarantee Ass'n*, 67 So. 3d at 194. However, even if one were to divine some Legislative intent for application of the amendments to the pending case, the amendments fail the second prong of the test because application to the pending case is not constitutionally permissible.

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[6] It is clear that the language FIPUG cites as expressing legislative intent for retroactive application – the language in amended subsection (2) requiring use of a particular AFUDC rate "at the time an increment of cost recovery is sought" – is quite unlike the type of language the Legislature typically uses to express intent for retroactive application.

[7] As discussed above, application even to costs incurred on or after July 1, 2013, would constitute "retroactive" application as a legal matter. The entirety of FPL's case was developed and filed before July 1, 2013, based on the facts and law that existed before July 1, 2013. *See Keystone Water Company v. Bevis,* 278 So. 2d 606 (Fla. 1973).

2. *Retroactive application of the amendments to Section 366.93 is not constitutionally permissible*

The Florida Supreme Court has refused to apply a statute retroactively if the statute "impairs vested rights, creates new obligations, or imposes new penalties". *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995). In *State Farm*, the Florida Supreme Court determined it would be unconstitutional to apply a statute to a pending case that significantly altered the language used to determine the amount of damages that might be recovered in that case. *Id.* The issues in *State Farm* can be compared to the issues presented in this docket, in which intervenors are seeking to change the amount of money FPL would recover based upon a law enacted while FPL's cost recovery request was pending. Consistent with *State Farm,* the Commission should conclude that midstream application of the changes to Section 366.93 would be unconstitutional. *See also, American Optical Corp. v. Spiewa*k, 73 So. 3d 120 (Fla. 2011) (holding that application of statutory changes to what a plaintiff must prove in an asbestos injury case to plaintiffs' causes of action filed before the statutory changes took effect was unconstitutional).

C. Because the Amendments Cannot Apply to the Pending Case, Issues 1, 2, and 3 Should be Answered in the Negative

Chapter 2013-184 contains substantive amendments to Section 366.93. There is no express legislative intent to apply the substantive amendments retroactively, and even if legislative intent were to be found, it would be unconstitutional to apply the amendments to the pending NCR case. The amendments to Section 366.93(2) impact the AFUDC rate a utility is entitled to recover through the NCR process, and Issue 1 in this proceeding asks whether the amendments change the AFUDC rate used in the pending case. Because the amendments cannot be applied to the pending case, Issue 1 should be answered in the negative. Similarly, the

amendments to Section 366.93(3) impact the types of activities a utility may undertake and the types of costs a utility is entitled to recover through the NCR process. Issues 2 and 3 ask whether a utility is precluded from continuing preconstruction work and recovering costs associated with preconstruction work that commenced prior to July 1, 2013. Because the amendments cannot be applied to the pending case, Issues 2 and 3 should also be answered in the negative.

IV. COMMISSION RULEMAKING IS NECESSARY FOR PROPER IMPLEMENTATION OF THE AMENDMENTS

The plain language of Section 366.93 contemplates Commission rulemaking.[8] Subsection (2) of Section 366.93, begins with the following language: "[w]ithin 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms..." *See* Ch. 2013-184, Exhibit 1. Subsection (3) of Section 366.93 only allows for cost recovery "as permitted by this section and commission rules." *Id.* The Legislature clearly recognized the highly technical nature of nuclear cost recovery and the need for interested persons to provide input into the rulemaking process to implement the original NCR law. The amendments to the law provided by Chapter 2013-184 require the same deliberate process for proper implementation.

Additionally, the current NCR Rule contains provisions that are inconsistent with the amended statute, thus requiring rulemaking.[9] For example, the amendments to subsection (2)

[8] The entire statute must be read as a whole and meaning must be given to all parts of the statute. *See, e.g., State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002). Specifically, "[w]ords of a statute are not to be construed as superfluous if a reasonable construction exists that gives effect to all words." *State v. Bodden*, 877 So. 2d 680, 686 (Fla. 2004). Recognition of the need for rulemaking, as discussed in this section, would give effect to the rulemaking language in subsections (2) and (3), as well as to the effective date of July 1, 2013, by starting the six month clock allowed by subsection (2) for such rulemaking to occur.

[9] An administrative agency is obligated to comply with its own rules, *see, e.g., Gadsden State Bank v. Lewis*, 348 So. 2d 343 (Fla. 1st DCA 1977), but application of the amendments to Section 366.93 would require the

change the AFUDC rate that the utility would otherwise be entitled to recover through carrying costs on costs incurred for its nuclear projects. Prior to the amendments, the Commission was required to allow utilities to utilize the AFUDC rate that existed at the time Section 366.93 originally became law. *See* § 366.93(2)(b), Exhibit 1. Consistent with that statutory provision, the NCR Rule, in Section 25-6.0423(5)(b)(1), specifies that "[f]or 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." The amended Section 366.93(2) now establishes that the AFUDC rate shall reflect the utility's approved rate "at the time an increment of cost recovery is sought." *See* § 366.93(2)(b), Exhibit 1. The current NCR Rule therefore requires a computation that conflicts with the amendment to Section 366.93(2)(b), and rulemaking is needed to resolve the discrepancy.

Finally, disagreement currently exists with respect to the meaning of the phrase "at the time an increment of cost recovery is sought" contained in the amendment to Section 366.93(2)(b), demonstrating the practical need for rulemaking. It is FPL's position that it "seeks" cost recovery each May 1st, when it files a request to recover a particular NCR amount in the following year. Apparently, based on FIPUG's position on Issue 1, it is FIPUG's position that the utilities "seek" cost recovery at the time of the hearing.[10] The very fact that

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Commission and all parties to violate the existing NCR Rule. This situation is easily remedied by recognizing the need for rulemaking, and amending the NCR rule prior to implementation of the amended statute.

[10] FIPUG's interpretation presents an impracticable situation in which a company's Nuclear Filing Requirements – hundreds of pages of spreadsheets containing detailed, linked calculations – are subject to change any day up until the eve of hearing. FPL's position would not only avoid such a situation, but would be consistent with the stipulation reached last year with FIPUG and other parties for purposes of the other cost recovery clauses, which applies a Weighted Average Cost of Capital ("WACC") to those clause projection filings using a WACC calculated before the utilities make their filings. See Docket No. 120001-EI, 120002-EI, 120007-EI, Document No. 04770-12. Because the amendments do not apply to the pending NCR case, FIPUG's and FPL's differing interpretations need not be resolved at this time. It can be addressed in the rulemaking process to amend the NCR Rule.

disagreement exists over the interpretation of this language further emphasizes the need for rulemaking before this amendment can be applied.

Rulemaking is contemplated by the express language of the NCR law, needed to resolve conflicts between the existing NCR Rule and the amendments, and needed in light of the differing interpretations of the amendments that already exist. The Commission should adopt rules to implement the amendments to Section 366.93 before applying them in a NCR case. Therefore, Issues 1, 2, and 3 should be answered in the negative.

V. CONCLUSION

The Florida Supreme Court has made clear through its decision in a similar case that changes to law impacting the amount a utility is able to recover are substantive changes, and that application to a pending case would constitute "retroactive" application. Only express legislative intent for application to the pending case coupled with constitutional permissibility would enable the current application of the amendments, and Chapter 2013-184 fails both these tests. Also, FPL's position is consistent with taking the opportunity to conduct rulemaking to resolve discrepancies between the current NCR Rule and the amended law, and to properly interpret the amendments' meaning. For the foregoing reasons, the amendments to Section 366.93 cannot apply to the pending NCR case and Issues 1, 2, and 3 should each be decided in the negative. [11]

[11] Intervenor positions on Issues 4, 5, 9, and 10 claiming FPL must "certify" its costs comply with the amendments to Section 366.93 or submit revised costs should be rejected for the same reasons Issues 1, 2, and 3 should be answered in the negative, as discussed in this legal brief.

Respectfully submitted this 29th day of July, 2013.

Bryan S. Anderson
Fla. Auth. House Counsel No. 219511
Admitted in IL; Not Admitted in FL
Jessica A. Cano
Fla. Bar No. 0037372
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 304-5226
(561) 691-7135 (fax)

By: Jessica A. Cano
Fla. Bar No. 0037372

CERTIFICATE OF SERVICE
DOCKET NO. 130009-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing Legal Brief on Issues 1, 2, and 3 was served via electronic mail this 29th day of July, 2013 to the following:

Michael Lawson, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
MLAWSON@PSC.STATE.FL.US

J. R. Kelly, Esq.
Charles Rehwinkel, Esq.
Joseph McGlothlin, Esq.
Erik L. Sayler, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399
Kelly.jr@leg.state.fl.us
Rehwinkel.Charles@leg.state.fl.us
mcglothlin.joseph@leg.state.fl.us
Sayler.Erik@leg.state.fl.us

J. Michael Walls, Esq.
Blaise N. Gamba, Esq.
Carlton Fields Law Firm
P.O. Box 3239
Tampa, Florida 33601-3239
mwalls@carltonfields.com
bgamba@carltonfields.com
Attorneys for Duke

John T. Burnett, Esq.
Dianne M. Triplett, Esq.
Duke Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, Florida 33733-4042
john.burnett@pgnmail.com
dianne.triplett@pgnmail.com
Attorneys for Duke

Matthew Bernier, Esq.
Duke Energy Florida, Inc.
106 E. College Avenue, Suite 800
Tallahassee, Florida 32301
Matthew.bernier@duke-energy.com
Attorney for Duke

Mr. Paul Lewis, Jr.
106 East College Ave., Suite 800
Tallahassee, Florida 32301-7740
paul.lewisjr@duke-energy.com

Jon C. Moyle, Jr., Esq.
Moyle Law Firm
118 North Gadsden Street
Tallahassee, Florida 32301
jmoyle@moylelaw.com
Attorneys for FIPUG

James W. Brew, Esq.
F. Alvin Taylor, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
jbrew@bbrslaw.com
ataylor@bbrslaw.com
Attorneys for PCS Phosphate

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale, FL 33334
george@cavros-law.com

Robert Scheffel Wright, Esq.
John T. LaVia, III, Esq.
Gardner, Bist, Wadsworth, et al.
1300 Thomaswood Drive
Tallahassee, FL 32308
Schef@gbwlegal.com
Jlavia@gbwlegal.com

By: /s/ Jessica A. Cano
Jessica A. Cano
Fla. Bar No. 0037372

EXHIBIT 1

CHAPTER 2013-184

Committee Substitute for Committee Substitute for Senate Bill No. 1472

An act relating to nuclear and integrated gasification combined cycle power plants; amending s. 366.93, F.S.; modifying an alternative cost recovery mechanism for the recovery of costs for the siting, design, licensing, and construction of nuclear and integrated gasification combined cycle power plants; establishing a procedure and requirements for cost recovery based on preconstruction and construction phases; providing that the commission may not determine that a utility intends to complete construction of a power plant unless the utility proves its efforts by a preponderance of the evidence; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1), (2), and (3) of section 366.93, Florida Statutes, are amended to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear and integrated gasification combined cycle power plants.—

(1) As used in this section, the term:

(a) "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, including new, expanded, or relocated electrical transmission lines or facilities of any size which ~~that~~ are necessary thereto, or of the integrated gasification combined cycle power plant.

(b) "Electric utility" or "utility" has the same meaning as that provided in s. 366.8255(1)(a).

(c) "Integrated gasification combined cycle power plant" or "plant" means an electrical power plant as defined in s. 403.503(14) which ~~that~~ uses synthesis gas produced by integrated gasification technology.

(d) "Nuclear power plant" or "plant" means an electrical power plant as defined in s. 403.503(14) which ~~that~~ uses nuclear materials for fuel.

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

(f) "Preconstruction" is that period of time after a site, including ~~any~~ related electrical transmission lines or facilities, has been selected through and including the date the utility completes site clearing work. Preconstruction costs must ~~shall~~ be afforded deferred accounting treatment and ~~shall~~

accrue a carrying charge equal to the utility's allowance for funds during construction (AFUDC) rate until recovered in rates.

(2) Within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant, including new, expanded, or relocated electrical transmission lines and facilities that are necessary thereto, or of an integrated gasification combined cycle power plant. Such mechanisms must ~~shall~~ be designed to promote utility investment in nuclear or integrated gasification combined cycle power plants and allow for the recovery in rates of all prudently incurred costs, including ~~and shall include~~, but not ~~be~~ limited to:

(a) Recovery through the capacity cost recovery clause of any preconstruction costs.

(b) Recovery through an incremental increase in the utility's capacity cost recovery clause rates of the carrying costs on the utility's projected construction cost balance associated with the nuclear or integrated gasification combined cycle power plant. To encourage investment and provide certainty, ~~for nuclear or integrated gasification combined cycle power plant need petitions submitted on or before December 31, 2010,~~ associated carrying costs must ~~shall~~ be equal to the most recently approved pretax AFUDC at the time an increment of cost recovery is sought ~~in effect upon this act becoming law. For nuclear or integrated gasification combined cycle power plants for which need petitions are submitted after December 31, 2010, the utility's existing pretax AFUDC rate is presumed to be appropriate unless determined otherwise by the commission in the determination of need for the nuclear or integrated gasification combined cycle power plant.~~

(3)(a) After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules.

(b) During the time that a utility seeks to obtain a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle power plant, the utility may recover only costs related to, or necessary for, obtaining such licensing or certification.

(c) After a utility obtains a license or certification, it must petition the commission for approval before proceeding with preconstruction work beyond those activities necessary to obtain or maintain a license or certificate.

1. The only costs that a utility that has obtained a license or certification may recover before obtaining commission approval are those that are previously approved or necessary to maintain the license or certification.

2. In order for the commission to approve preconstruction work on a plant, it must determine that:

a. The plant remains feasible; and

b. The projected costs for the plant are reasonable.

(d) After a utility obtains approval to proceed with postlicensure or postcertification preconstruction work, it must petition the commission for approval of any preconstruction materials or equipment purchases that exceed 1 percent of the total projected cost for the project. Such petition shall be reviewed and completed in the annual Nuclear Cost Recovery Clause proceeding in which it is filed or in a separate proceeding by the utility.

(e) A utility must petition the commission for approval before beginning the construction phase.

1. The only costs that a utility that has obtained commission approval may recover before beginning construction work are those that are previously approved or necessary to maintain the license or certification.

2. In order for the commission to approve proceeding with construction on a plant, it must determine that:

a. The plant remains feasible; and

b. The projected costs for the plant are reasonable.

(f)1. If a utility has not begun construction of a plant within:

a. Ten years after the date on which the utility obtains a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle power plant, the utility must petition the commission to preserve the opportunity for future recovery under this section for costs relating to that plant. The commission must determine whether the utility remains intent on building the plant.

(I) If the commission finds that the utility remains intent on building the plant, the utility may continue to recover costs under this section.

(II) If the commission finds a lack of such intent, it may enter an order prohibiting recovery of any future costs relating to the plant under this section.

b. Twenty years after the date on which the utility obtains a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle power plant, the utility may not, under this section, recover future costs relating to that plant.

2. Consistent with subsection (4), nothing in this section shall preclude a utility from recovering the full revenue requirements of the nuclear power

plant or integrated gasification combined cycle power plant in base rates upon the commercial in-service date.

3. Beginning January 1, 2014, in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to construct a nuclear or integrated gasification combined cycle power plant only if the utility proves by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

Section 2. This act shall take effect July 1, 2013.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.