

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-

DATE: January 9, 2014
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Kathryn Cowdery, Office of the General Counsel
RE: Docket No. 130222-EI

Please file the attached rule certification packet for Rule 25-6.0423, F.A.C., in the docket file listed above.

Thank you.

Attachment

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14 JAN -9 PM 1:09
COMMISSION
CLERK

COMMISSIONERS:
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LISA POLAK EDGAR
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EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

January 9, 2014

Ms. Liz Cloud
Florida Department of State
Administrative Code and Register Section
Room 701, the Capitol
Tallahassee, FL 32399-0250

VIA HAND DELIVERY

Re: Rule Certification Packet for Rule 25-6.0423, Florida Administrative Code

Dear Ms. Cloud:

Enclosed for filing is a complete rule certification packet for Rule 25-6.0423, Florida Administrative Code, consisting of:

- (1) One compact disc containing the coded text of the rule;
- (2) One original and two copies of the e-mail approval confirmation with the certification form required by Rule 1-1.013, F.A.C., for the materials incorporated by reference that were filed electronically;
- (3) One original and two copies of the signed rule certification form;
- (4) One original and two copies of the coded text of the rule, including the legal citations and history notes;
- (5) One original and two copies of the summary of the rule;
- (6) One original and two copies of the detailed written statement of the facts and circumstances justifying the rule; and
- (7) One original and two copies of the summary of the hearings held on the rule.

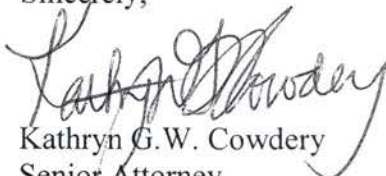
2014 JAN -9 AM 11:45
OFFICE OF THE GENERAL COUNSEL
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

FILED

Page 2

Please let me know if you have any questions. The contact name and information for this rule are Kathryn G.W. Cowdery, Florida Public Service Commission, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0250, (850) 413-6216, kcowdery@psc.state.fl.us.

Sincerely,



Kathryn G.W. Cowdery
Senior Attorney

Enclosures

Julie Phillips

From: FL-Rules@dos.state.fl.us
Sent: Thursday, December 19, 2013 2:05 PM
To: Julie Phillips
Cc: flrules@dos.state.fl.us
Subject: 25-6.0423 Reference Material for Rule Adoption Approved

Dear JPhillips:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Register Staff.

The approved material is available in the [Review/Modify Agency Reference Material](#) list (Agency Main Menu page).

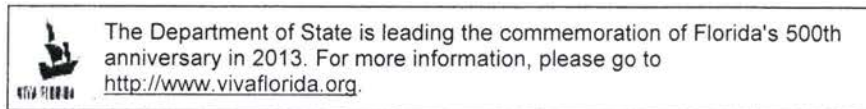
Rule Number: 25-6.0423

Reference Number: Ref-03632; Reference Name: 42 U.S.C. Sec. 2167(2012)

Click [here](#) to log in.

Administrative Code and Register Staff
Division of Library and Information Services
Florida Department of State

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The Department of State is committed to excellence.
Please take our [Customer Satisfaction Survey](#).

Julie Phillips

From: FL-Rules@dos.state.fl.us
Sent: Wednesday, December 18, 2013 2:37 PM
To: Julie Phillips
Cc: flrules@dos.state.fl.us
Subject: 25-6.0423 Reference Material for Rule Adoption Approved

Dear JPhillips:

The reference material for rule adoption you submitted has been approved by the Administrative Code and Register Staff.

The approved material is available in the [Review/Modify Agency Reference Material](#) list (Agency Main Menu page).

Rule Number: 25-6.0423

Reference Number: Ref-03577; Reference Name: 10 C.F.R. Sec. 73.21(2013)

Click [here](#) to log in.

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CERTIFICATION OF MATERIALS INCORPORATED

BY REFERENCE IN RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify pursuant to Rule 1-1.013, Florida Administrative Code:

(1) That materials incorporated by reference in Rule 25-6.0423, F.A.C., have been electronically filed with the Department of State.

(2) That because there would be a violation of federal copyright laws if the submitting agency filed the incorporated materials described below electronically, a true and complete paper copy of the incorporated materials are attached to this certification for filing. Paper copies of the incorporated materials below may be obtained at the agency by [include address(es)/location(s)].

List form numbers and form titles, or title of documents below:

42 U.S.C. §2167 (2012), Safeguards Information.

10 C.F.R. §73.21 (2013), Protection of Safeguards Information: Performance Requirements.

Under the provisions of Section 120.54(3)(e)6., F. S., the attached material(s) take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.

Carlotta S. Stauffer

Carlotta S. Stauffer

Commission Clerk

CERTIFICATION OF FLORIDA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and

(2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and

(a) Are filed not more than 90 days after the notice; or

(b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or

(c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

(d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

(e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

(f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

(g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

(h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

(i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No. 25-6.0423

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Carlotta S Stauffer
CARLOTTA S. STAUFFER

Commission Clerk _____

Title 8

Number of Pages Certified _____

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" is an electrical power plant which ~~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 which ~~that~~ uses synthesis gas produced by integrated gasification technology, as defined in Sections 403.503(14)(13) and 366.93(1)(c), F.S.

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

(d) "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 are necessary thereto, or of the integrated gasification combined cycle power plant, as defined in Section 366.93(1)(a), F.S.

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

(g) "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) 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) "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 power plant buildings and all associated permanent structures, equipment and systems.

(j) "Carrying Costs" shall be calculated using the utility's most recently approved pretax allowance for funds used during construction (AFUDC) rate at the time an increment of cost recovery is sought.

(3) After the Commission has issued a final order granting a determination of need for a power plant pursuant to Section 403.519, F.S., a utility may file a petition for Commission approvals pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification combined cycle cost recovery proceeding, or a separate proceeding limited in scope to address only the petition for approval.

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

(5)(4) Site Selection Costs. After the Commission has issued a final order granting a determination of need for a 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 power plant.

(6)(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 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) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected pre-construction costs. The utility may also recover the related carrying ~~costs~~ charge for those costs not recovered on a projected basis. Such costs will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, not to exceed 2 years. Actual pre-construction costs incurred by a utility prior to the issuance of a final order granting a determination of need pursuant to Section 403.519, F.S., shall be included in the initial filing made by a utility under this subsection for review, approval, and a finding with respect to prudence.

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

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

(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 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 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;~~

~~2. For 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. The Commission shall include carrying costs on the balance of construction costs determined to be reasonable or~~

prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as specified in paragraph (5)(c) of this rule.

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

1. Each year, pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit, for Commission review and approval, as part of its cost recovery Capacity Cost Recovery Clause filings:

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

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

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

2. The Commission shall, ~~prior to October 1 of each year,~~ conduct an annual a hearing to and determine the

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

~~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. Upon a determination of prudence, Such prior year actual costs associated with 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 power plant costs as approved by the Commission pursuant to subparagraph ~~(6)(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 Clause. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than eight business days after the Commission's vote ~~October 15 of the current year.~~

5. ~~By May 1 of each year,~~ Along with the filings required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

~~(7)~~(6) Failure to Enter Commercial Service. Following the Commission's issuance of a final order granting a determination of need for the power plant, in the event the utility elects not to complete or is precluded from completing construction of the power plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction costs, and construction costs.

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

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

~~(8)~~(7) Commercial Service. As operating units or systems associated with the power plant and the power plant itself are placed in commercial service:

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

(b) The utility shall calculate the increase in base rates resulting from the jurisdictional annual base revenue requirements for the power plant in conjunction with the Capacity Cost Recovery Clause projection filing for the year the power plant is projected to achieve commercial operation. The increase in base rates will be based on the annualized base revenue requirements for the 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 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 ~~(6)(5)~~(c)4. above.

(d) The rate of return on capital investments shall be calculated using the utility's most recent actual Commission adjusted basis overall weighted average rate of return as reported by the utility in its most recent Earnings Surveillance Report prior to the filing of a petition as provided in paragraph ~~(8)(7)~~(a). The return on equity cost rate used shall be the midpoint of the last Commission approved range for return on equity or the last Commission approved return on equity cost rate established for use for all other regulatory purposes, as appropriate.

(e) The jurisdictional net book value of any existing generating plant that is retired as a result of operation of the 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.

~~(9)(8)~~ A utility shall, contemporaneously with the filings required by paragraph ~~(6)(5)~~(c) above, file a detailed statement of project costs sufficient to support a Commission determination of prudence, including, but not limited to, the information required in paragraphs ~~(9)(8)~~(b) – ~~(9)(8)~~(e), below.

(a) Subject to suitable confidentiality agreements or, to the extent necessary, protective orders issued by the Commission, a utility will ensure reasonably contemporaneous access, which may include access by electronic means, for review by parties of all documents relied on by utility management to approve expenditures for which cost recovery is sought. Access to any information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10 C.F.R. 73.21, incorporated by reference into this Rule, shall only be in accordance with applicable Nuclear Regulatory Commission requirements. 42 U.S.C. §2167 (2012) may be accessed at <http://www.flrules.org/Gateway/reference.asp?No=Ref-03632> . 10 C.F.R. §73.21 (2013) may be accessed at <http://www.flrules.org/Gateway/reference.asp?No=Ref-03577>.

(b) Regarding technology selected, a utility shall provide a description of the technology selected that includes, but

is not limited to, a review of the technology and the factors leading to its selection.

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

(d) Final true-up filings and actual/estimated true-up filings will include monthly expenditures incurred during those periods for major tasks performed within Site Selection, Preconstruction and Construction categories. A utility shall provide annual variance explanations comparing the current and prior period to the most recent projections for those 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 power plant, a utility shall include the budgeted and actual costs as compared to the estimated in-service costs of the 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), 366.93(2) FS. Law Implemented 366.93 FS. History—New 4-8-07,

Amended 2-3-08, _____.

SUMMARY OF THE RULE

Rule 25-6.0423, F.A.C., is amended to implement changes made by Chapter 2013-184, Laws of Florida, to Section 366.93, F.S. In order to implement the statutory changes, the rule is amended to provide that after the Commission has issued a final order granting a determination of need for a power plant, a utility may file a petition for Commission approvals pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification combined cycle cost recovery proceeding or in a separate proceeding limited in scope to address only the petition for approval. Certain due dates and deadline time frames are eliminated to provide flexibility in establishing the docket schedule. The rule is amended to provide that the annual utility-filed analysis of the long-term feasibility of completing the power plant shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. In addition, the term "Carrying Costs" is added to the definition section for clarity, and the rule is amended to eliminate duplicative, obsolete, and unnecessary language.

WRITTEN STATEMENT OF THE FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Subsection 366.93(2), F.S., requires the Commission to 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. Rule 25-6.0423, F.A.C., implements Section 366.93, F.S. The Legislature amended Section 366.93 in 2013 by Ch. 2013-184. The amendments modified the alternative cost recovery mechanism set forth in the statute; established a procedure and requirements for cost recovery based on preconstruction and construction phases; and provided 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. The proposed rule amendments implement these statutory changes.

SUMMARY OF ANY HEARINGS HELD ON THE RULE

No timely request for a hearing was received by the agency, and no hearing was held.