

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: October 12, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Harris)
Division of Economic Regulation (Hewitt, Kummer, Lester, Lewis, McNulty, Slemkewicz)

RE: Docket No. 060508-EI – Proposed adoption of new rule regarding nuclear power plant cost recovery.

AGENDA: 10/24/06 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

RULE STATUS: Proposal Should Not Be Deferred

SPECIAL INSTRUCTIONS: Rule must be adopted by December 28, 2006

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060508.RCM.DOC

Case Background

Section 366.93, Florida Statutes, which became law on June 19, 2006, codified the Florida Legislature's desire to promote fuel diversity and supply reliability by promoting utility investment in nuclear power plants. The statute is intended to ensure that investor-owned electric utilities are able to recover the cost of planning and constructing nuclear power plants in a fair and timely manner. Section 366.93(2) states "[w]ithin 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." This recommendation brings specific rule language to the Commission for consideration.

The statute provides that alternative cost recovery mechanisms to allow all prudently incurred costs to be recovered in rates shall include, but are not limited to, recovery through the Capacity Cost Recovery Clause (CCRC) of nuclear plant preconstruction costs and carrying costs on the utility's projected construction cost balance associated with the nuclear power plant. The statute also provides that a utility shall be allowed to increase its base rate charges after the nuclear power plant is placed in commercial service.

Staff is mindful of the Florida legislature's instruction that alternative mechanisms for the recovery of costs associated with nuclear power plant siting, design, licensing and construction are to be established through this rulemaking. The methods the Commission previously used to review and approve costs associated with nuclear power plant construction would not effectively encourage the investment and construction of new nuclear power plants. Construction of a nuclear power plant requires large investments of capital over a long period of time. Therefore, risks must be minimized as much as possible to encourage the necessary investment. Prior to enactment of Section 366.93, F.S., a utility company's concerns about recovering costs may have caused it not to pursue the siting and construction of a nuclear power plant. Because the legislature determined that Florida should increase the diversity of its fuel supply and that doing so would create greater reliability, alternatives to the cost recovery methods the Commission has traditionally used are being established through this rulemaking for investor-owned utilities electing to build new nuclear power plants. With respect to the statutory mandate to establish alternative cost recovery mechanisms, the Commission will be able to consider alternatives during its annual hearing on the capacity cost recovery clause. This may involve a rate structure different than what is traditionally used in this proceeding. Staff considers recovery of preconstruction costs and carrying charges associated with construction work in progress through the capacity cost recovery clause an "alternative cost recovery mechanism." Typically, these costs are included in the cost of the power plant and addressed in a base rate proceeding.

Staff drafted a proposed rule and a notice of rule development workshop was published in the August 4, 2006, Florida Administrative Weekly. Staff held the rule development workshop on August 30, 2006, to discuss the proposed rule and receive comments from interested persons. Progress Energy Florida (PEF) provided written comments in the form of revisions to staff's draft rule in advance of the workshop on August 14, 2006. On August 28, 2006, PEF and Florida Power and Light (FPL) jointly provided joint revised draft rule language for consideration. Representatives of the Office of Public Counsel (OPC), FPL, PEF, Florida Industrial Power Users Group, Florida Retail Federation, Tampa Electric Company, Radey Thomas Yon and Clark law firm, and the Nuclear Energy Institute attended the workshop. Interested persons were also invited to provide written comments after the workshop. On September 13, the Office of Public Counsel filed written comments and PEF and FPL made a joint filing in the form of a revised rule.

This recommendation addresses whether the Commission should propose Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery, included as Attachment A. The Commission has rulemaking authority pursuant to sections 366.05(1) and 366.93(2), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission propose Rule 25-6.0423, Florida Administrative Code, Nuclear Power Plant Cost Recovery?

Recommendation: Yes. (Harris, Hewitt, Kummer, Lester, Lewis, McNulty, Slemkewicz)

Staff Analysis: Rule 25-6.0423 establishes alternative cost recovery mechanisms for the siting, design, licensing, and construction of nuclear power plants as required by Section 366.93, Florida Statutes, which was signed into law by Governor Bush on June 19, 2006.

Prior to enactment of Section 363.93, Florida Statutes, the costs of planning and constructing a new nuclear power plant, including an allowance for funds used during construction, would normally be capitalized during the construction period. The costs of the completed plant would not be included in base rates until a subsequent proceeding, such as a base rate proceeding, was concluded. As a result, recovery of costs for a nuclear unit could be delayed for some time, discouraging utilities from pursuing the more expensive investment in nuclear generation.

Summary of Rule 25-6.0423

Subsection (1) sets forth the purpose of the rule: to promote electric utility investment in nuclear power plants and allow for the recovery in rates of all prudently incurred costs; and, to establish alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear power plants.

Subsection (2) establishes definitions for the terms “nuclear power plant,” “cost,” “preconstruction costs,” and “construction costs.”

Subsection (3) provides for the costs expended in preparation for the construction of a nuclear power plant to be afforded deferred accounting treatment and to accrue a carrying charge equal to the utility’s allowance for funds used during construction (AFUDC) until recovered in rates.

Subsection (4) describes the procedures that the utility shall follow to file for cost recovery after the Commission has issued a final order granting a determination of need pursuant to Section 403.519, Florida Statutes. Subsection (4) also describes the types of costs that are eligible for recovery, the parameters of such recovery, and the method that will be used to accomplish the cost recovery.

Subsection (5) codifies a utility’s ability to recover all prudent preconstruction costs and construction costs in the event that a utility elects not to complete or is precluded from completing construction of a nuclear power plant after the Commission has issued a final order determining need for the nuclear power plant. The Capacity Cost Recovery Clause is identified as the mechanism for cost recovery. The time period during which such recovery shall be accomplished is specified. The method of calculating interest accrual on the unrecovered balance is also specified.

Subsection (6) establishes the procedures that the utility shall follow to file for an increase in its base rates after a nuclear power plant and associated systems are placed in commercial service. The method for calculating the increase in base rates is codified as being 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 utility's CCRC projection filing. Once the nuclear power plant is included in rate base, recovery through the CCRC will cease, except for the difference between actual and projected construction costs as provided for in Subsection (4)(d). The method for calculating the rate of return on capital investments is codified as being the utility's rate of return last approved by the Commission prior to the date the nuclear power plant is placed in commercial service. If an existing generating plant is retired as a result of operation of a nuclear power plant, the jurisdictional net book value of the retired plant shall be recovered through an increase in base rate charges over a period not to exceed five 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.

Subsection (7) codifies the manner in which a utility shall provide the Commission with the budgeted and actual costs of the nuclear power plant following the final order granting a determination of need and until commercial operation of the plant begins.

Inclusion of Post-Workshop Comments

In consideration of the joint comments provided by Progress Energy Florida, Inc. and Florida Power and Light Company, staff revised the initial draft of the rule and organized the subsections in the sequence suggested by the joint comments for purposes of greater clarity. Other revisions made to the rule as a result of comments made at the workshop and/or post-workshop written comments are discussed below.

At Subsection (2)(c) (Attachment A, p. 7, lines 13-19), the joint comments of PEF/FPL included a definition of "preconstruction costs." OPC recommended that the definition of "preconstruction costs" be limited to those costs incurred after a site has been selected, consistent with the provisions of Section 366.93(1)(d), Florida Statutes. Staff agrees with OPC and has revised the definition to clarify that preconstruction costs are limited to costs incurred after a site has been selected consistent with the way the term "preconstruction" is defined in Section 366.93(1)(d), F.S. Therefore, while the proposed draft includes PEF/FPL's definition of preconstruction costs, wording is now included that limits such costs to those costs incurred after a site has been selected.

At Subsection (2)(c) preconstruction costs, and (2)(d) construction costs, (Attachment A, p. 7, lines 13-19 and 20-22) PEF/FPL's joint comments included "litigation costs" among the costs the utility would be entitled to recover through the CCRC. Staff agrees with OPC's comments that litigation costs should not be specifically included in these definitions, as neither the rule nor the statute prohibit the Commission from considering litigation costs on a case-by-case basis, if requested.

Subsection (4)(b) (Attachment A, p. 8, lines 6-22) specifies that a utility is entitled to recover its actual and projected preconstruction costs and the related carrying charge through the CCRC. In its post-workshop written comments, OPC asked that procedural protections be

included to ensure all parties are provided an opportunity to review the preconstruction costs and projected construction costs submitted by utilities for approval by the Commission. OPC pointed out that the expedited schedule typically used for review of fuel costs, including CCRC, may not be adequate for reviewing nuclear preconstruction costs and carrying costs on projected construction costs which could reach hundreds of millions of dollars. OPC suggested that the rule be written to require utilities to file testimony and supporting cost information, and to respond to discovery requests in the CCRC docket, within a certain time frame (for example, filing testimony and supporting data 60 days before intervenor testimony is due). Staff agrees with OPC that it is important to have sufficient time to conduct a thorough review. However, given the fact that the dates for the fuel hearing change from year to year, staff cannot recommend rule language that includes time requirements without a date certain, given the requirements of the Administrative Procedure Act. Therefore, staff suggests that the pre-hearing officer, when establishing the schedule of events in the CCRC docket, give special consideration to the amount of time available for staff and all interested parties to conduct an adequate review of costs associated with nuclear units, but that this time period not be established in the rule.

At Subsection (6)(a) (Attachment A, p. 10, line 16 - p. 11, line 4), to clarify the process that a utility should use to file for an increase in its base rates after the nuclear plant is placed in commercial service, staff added language that states, “[t]he utility shall file a petition for base rate adjustment to include any and all costs the utility is seeking to put in base rates, whether or not those costs have been previously reviewed by the Commission.” Staff recommends that it is not appropriate to adjust base rates through an annual clause proceeding. Although the Commission will have already reviewed most costs in the annual CCRC proceeding, any costs that the utility wishes to place in base rates should be included in a petition if the Commission has not previously reviewed them. OPC concurs with staff’s position that some sort of limited proceeding should be held to adjust base rates. The IOUs disagree with this requirement and propose that the Commission simply confirm the utility’s calculations as submitted.

At Subsection (6)(c) (Attachment A, p. 11, lines 8-12), the utility is permitted to recover, through an increase in base rate charges, the jurisdictional net book value of any existing generating plant that is retired as a result of the operation of the nuclear power plant. Staff recommends language that requires base rates to be reduced by an equal amount at the end of the recovery period. In staff’s view, the utility could potentially recover more than the net book value of a retired generating plant through its base rates if the requirement to reduce base rates at the end of the recovery period is not included. OPC’s comments concur with staff’s recommended language to reduce base rates at the end of the five-year period. The joint comments filed by PEF and FPL did not include this language.

Statement of Estimated Regulatory Cost

Staff prepared a Statement of Estimated Regulatory Costs which is included as Attachment B. In summary, investor owned utilities (IOUs) should have no significant additional costs because of the new rule. IOUs currently must show that expenditures are reasonable and prudently incurred before cost recovery is allowed. IOUs will receive a significant benefit in knowing beforehand that reasonable and prudent investment in new nuclear plant will be recovered as well as allowed recovery of sunk costs if a plant is not completed. The

only estimated additional costs reported by one company would be \$10,000 per year for ongoing costs.

Small businesses, small cities, small counties, and individual customers should benefit if an IOU builds a nuclear plant with lower electricity costs and increased fuel diversity. However, there would be negative impacts on small businesses, small cities, small counties, and individual customers if a nuclear plant was started and not finished and the sunk costs were recovered through their electricity bills.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule amendments as proposed should be filed for adoption with the Secretary of State and the docket should be closed. (Harris)

Staff Analysis: Unless comments or requests for hearing are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

25-6.0423 Nuclear Power Plant Cost Recovery

(1) 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 power plants that promote electric utility investment in nuclear power plants and allow for the recovery in rates of all such prudently incurred costs.

(2) As used in this rule:

(a) "Nuclear power plant" or "plant" is an electrical power plant that utilizes nuclear materials as fuel, as defined in section 403.503(12), Florida Statutes.

(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 power plant.

(c) "Preconstruction costs" are costs that are expended after a site has been selected in preparation for the construction of a nuclear power plant, incurred up to and including the date the utility completes site clearing work. These 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; cost of engineering, designing, and permitting the nuclear power plant; costs associated with site and technology selection, clearing, grading, and excavation; and cost of on-site construction facilities (i.e. construction offices, warehouses, etc.)

(d) "Construction costs" are costs that are expended to construct the nuclear power plant including, but not limited to, the costs of constructing nuclear power plant buildings and all associated permanent structures, equipment and systems.

(3) Preconstruction costs shall be afforded deferred accounting treatment and shall

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

3 (4) After the Commission has issued a final order granting a determination of need
4 pursuant to Section 403.519, Florida Statutes:

5 (a) A utility may petition the Commission for cost recovery as permitted under this rule;

6 (b) A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual
7 and projected preconstruction costs and the related carrying charge. Such costs will be
8 recovered, on an annual basis, based on the utility's projection. A utility shall annually submit as
9 part of its Capacity Cost Recovery projection filing its projected preconstruction expenditures for
10 the subsequent year and a description of the preconstruction work projected to be performed
11 during such year. A utility shall annually submit for Commission review and approval, as part of
12 its Capacity Cost Recovery final true-up filing, information concerning its actual preconstruction
13 expenditures in the prior year in comparison with its previously filed projected preconstruction
14 expenditures for such prior year and a description of the preconstruction work actually
15 performed during such year. The Commission shall, after review, enter in its order with respect
16 to a utility's Capacity Cost Recovery Clause a finding with respect to the prudence of such
17 preconstruction costs actually expended by the utility. In making its determination of prudence
18 the Commission shall apply the standard provided for pursuant to Section 403.519(4)(e), Florida
19 Statutes. Actual preconstruction costs incurred by a utility prior to the issuance of a final order
20 granting a determination of need pursuant to Section 403.519, Florida Statutes, shall be included
21 in the initial filing made by a utility under this section for review, approval, and a finding with
22 respect to prudence.

23 (c) A utility is entitled to recover, through the utility's Capacity Cost Recovery Clause,

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25 existing law.

1 the carrying costs on the utility's annual projected construction cost balance associated with the
2 nuclear power plant. The actual carrying costs recovered through the Capacity Cost Recovery
3 Clause shall reduce the AFUDC that would otherwise have been recorded as a cost of
4 construction eligible for future recovery as plant in service. For nuclear power plant need
5 petitions submitted on or before December 31, 2010, the associated carrying costs shall be
6 computed based on the pretax AFUDC in effect on June 19, 2006. For nuclear power plant need
7 petitions submitted after December 31, 2010, the utility's pretax AFUDC rate in effect at the
8 time the petition for determination of need is filed is presumed to be appropriate unless the
9 Commission determines otherwise in its need determination order. A utility shall annually
10 submit, as part of its Capacity Cost Recovery Clause projection filing, its projected construction
11 expenditures for the subsequent year and a description of the construction work projected to be
12 performed during such year. A utility shall annually submit, for Commission review and
13 approval, as part of its Capacity Cost Recovery Clause final true-up filing, information
14 concerning its actual construction expenditures in the prior year in comparison with its
15 previously filed projected construction expenditures for such prior year and a description of the
16 construction work actually performed during such year. After its review, the Commission shall
17 enter in its order with respect to a utility's Capacity Cost Recovery Clause a finding with respect
18 to the prudence of such construction costs actually expended by the utility. In making its
19 determination of prudence, the Commission shall apply the standard provided for pursuant to
20 Section 403.519(4)(e), Florida Statutes.

21 (d) The difference between actual and projected costs as filed in the Capacity Cost
22 Recovery Clause will be included for cost recovery purposes as a component of the over/under
23 recovered balance to be included in the following year's cost recovery proceeding for the

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25 existing law.

Capacity Cost Recovery Clause.

(5) 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 preconstruction costs, and construction costs incurred following the Commission's issuance of a final order granting a determination of need for the nuclear power plant. 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. The amount recovered under this section will be the remaining unrecovered Construction Work in Progress (CWIP) balance at the time of abandonment and future payment of all outstanding 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.

(6) As operating units or systems associated with the nuclear power plant and the nuclear power plant itself are placed in commercial service:

(a) The utility shall file a petition for base rate adjustment, separate from petitions for clause recovery, to include any and all costs the utility is seeking to put in base rates, whether or not those costs have been previously reviewed by the Commission. The utility shall calculate and submit for Commission approval 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

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1 with the cost projections filed in conjunction with the Capacity Cost Recovery Clause projection
2 filing. At such time as the nuclear power plant is included in base rates, recovery through the
3 Capacity Cost Recovery Clause will cease, except for the difference between actual and
4 projected construction costs as provided in paragraph (4)(d) above.

5 (b) The rate of return on capital investments shall be calculated using the utility's rate of
6 return last approved by the Commission prior to the commercial in-service date of the nuclear
7 power plant.

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

13 (7) On an annual basis following issuance of the final determination of need order and
14 until commercial operation of the nuclear power plant, a utility shall include the budgeted and
15 actual costs as compared to the estimated in-service costs of the nuclear power plant as provided
16 in the petition for need determination in its annual report filed pursuant to Rule 25-6.135. The
17 estimates provided in the petition for need determination are non-binding estimates. Some costs
18 may be higher than estimated and other costs may be lower. A utility shall provide such revised
19 estimated in-service costs as may be necessary in its annual report.

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

21 Law Implemented 366.93 FS.

22 History: New

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