

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-**

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**DATE:** February 1, 2007

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

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

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

**AGENDA:** 02/13/07 – Regular Agenda – Rule Adoption – Participation is Limited to Commissioners and Staff

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Carter

**RULE STATUS:** Adoption Should Not Be Deferred

**SPECIAL INSTRUCTIONS:** None

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

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### 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 electric supply reliability by encouraging utility investment in nuclear power plants. Section 366.93(2) states: "[w]ithin 6 months after the enactment of this act, the commission (sic) 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. Such mechanisms shall be designed to promote utility investment in nuclear power plants and allow for the recovery in rates of all prudently incurred costs...."

No new nuclear power plants have been built in the United States in several decades. This is in part due to the extraordinary obstacles faced by electric utilities wishing to construct new nuclear power plants, that are not present for other types of generation like coal and natural gas. These obstacles include the requirement of an intensive federal application, permitting, and review process, including oversight by the federal Nuclear Regulatory Commission;<sup>1</sup> an extremely long permitting and construction period;<sup>2</sup> and a public perception of nuclear generation which can pose significant challenges. The clear intent of the 2006 Florida Legislation is to promote new nuclear generation in Florida by providing Florida utilities the incentives needed to overcome these obstacles; the Legislature was clearly concerned that without these incentives, Florida utilities will continue to build natural gas and coal fired generation to meet Florida's growing energy needs.<sup>3</sup> The provisions of the rule which staff is recommending for adoption were designed to address the intent of the statute and these concerns, which are unique to construction of nuclear power plants.

Staff drafted a proposed rule and a notice of rule development workshop was published in the August 4, 2006, Florida Administrative Weekly. Written comments were filed on August 14, 2006, and August 28, 2006. Staff held the rule development workshop on August 30, 2006. On September 12, 2006, post-workshop comments were filed. On October 12, 2006, staff filed a recommendation that the Commission propose new Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery. Subsequent to the filing of the Recommendation, staff concluded there were several unresolved issues with the rule text as recommended, and over the next six weeks, and in consultation with the participants in the docket, made numerous revisions to the rule text. The Office of Public Counsel (OPC), American Association of Retired Persons (AARP), Florida Industrial Power Users Group (FIPUG), Florida Retail Federation (FRF), Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF) have participated in this docket.

Staff filed a Recommendation on December 7, 2006, with a significantly revised rule. At the December 19, 2006, Agenda Conference, the Commission voted to propose new Rule 25-6.0423, F.A.C., but directed staff to continue to work with participants in the docket to resolve the concerns raised at the Agenda Conference. A Notice of Rule Proposal was published in the December 29, 2006, Florida Administrative Weekly. On January 10, 2007, FIPUG filed written comments and on January 19, 2007, FPL and PEF filed a Joint Request for Hearing.

Staff and the participants in the docket have held a number of intensive meetings since the rule was proposed, and were able to reach agreement on revisions to the rule text that result in a rule that all participants agree should be adopted. Further, FPL and PEF agree that if the rule is adopted with the changes recommended herein, they will immediately withdraw their

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<sup>1</sup> This Nuclear Regulatory Commission review is in addition to the other state and federal reviews and permits which are required for the construction of electric generation, by agencies such as the State Departments of Environmental Protection and Community Affairs, the Governor and Cabinet as the siting board, and the Federal Environmental Protection Agency.

<sup>2</sup> It is estimated that, from announcement of the facility to commercial operation, nuclear plant design, permitting and construction will exceed 10 years, approximately 33% longer than a coal plant, which can be placed into commercial operation in approximately 6 years.

<sup>3</sup> For example, in the past 2 decades Florida utilities have constructed approximately 5,071 MW of coal fired generation capacity without the need for special treatment by the Florida Legislature. Another 5,273 MW of coal fired generation capacity are planned or under construction today.

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Request for Hearing. Accordingly, staff recommends that the Commission adopt new Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery, with the changes recommended below, which are agreed to by all participants in this docket. The Commission has rulemaking authority pursuant to Sections 120.54, 366.05(1), and 366.93(2), Florida Statutes.

### Discussion of Issues

**Issue 1:** Should the Commission adopt new Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery, with changes?

**Recommendation:** Yes. The Commission should adopt new Rule 25-6.0423, F.A.C., with the changes agreed to by participants to the docket as enumerated in this Recommendation. (Harris, Lewis, McNulty, Slemkewicz)

**Staff Analysis:** After Rule 25-6.0423, F.A.C., was proposed by the Commission on December 19, 2006, staff and the participants to the docket conducted a number of meetings in an attempt to resolve concerns with the Rule as proposed. These meetings were productive, and staff and the participants have been able to reach consensus on revisions to the Rule. The consensus rule is attached to this Recommendation as Attachment A.

#### Summary Of Changes:

25-6.0423(2) [page 8]: Changes have been made to the definition of “site selection.” Language has been deleted from the definitions of “site selection costs” and “pre-construction costs,” and a new definition has been added to capture the types of costs included in both categories.

25-6.0423(4) [page 9]: Has been revised to reflect a separate proceeding, as opposed to a statutorily defined limited proceeding.

25-6.0423(5)(a) [page 9]: Language has been modified to specify that parties may ask for recovery of pre-construction costs over a period of two years, and that the Commission may approve a period longer than 1 year.

25-6.0423(5)(b)3. [page 10]: Language deleted which referred to further prudence review “in that proceeding.”

25-6.0423(5)(c) [pages 10-13]: Has been substantially revised to require earlier filing deadlines and a later Commission hearing. The paragraph will now require annual prudence reviews of construction costs. Other editorial changes were also made.

25-6.0423(7)(a) [page 13-14]: Has been revised to reflect costs determined to be prudent will not be revisited except for cases of fraud, perjury, or intentional withholding of material information.

25-6.0423(8) [pages 15-16]: Has been substantially revised to require the annual filing of detailed project information, including contracts in excess of \$1 Million. The subsection also adds language regarding access to confidential project information.

#### Discussion

“Site Selection” and “Pre-Construction” Definitions. [Page 8, lines 13-24] FPL and PEF (“the utilities”) raised the concern that the definitions contained in subsection (2) of the rule

could be misleading, as several of the examples listed in both “site selection costs” and “pre-construction costs” were identical. The utilities proposed refining the definitions to make it clear that “site selection” and “pre-construction” are discrete time periods, and that the same on-going activity might begin as site selection and conclude as pre-construction. Accordingly, the language was revised to more clearly reflect that the terms “site selection” and “pre-construction” are intended to be definitions of specific time periods, used for recovery of costs through different mechanisms, and that both types of costs might include the same activities or projects.

Additionally, the site selection time period was changed to reflect that a site would be deemed selected when the utility filed a petition for determination of need, as opposed to the issuance of a final order granting the petition for determination of need. The effect of this change is to move the dividing line between “site selection” and “pre-construction” time frames forward by approximately five months.

Annual Prudence Review. The utilities were concerned that, as part of the annual clause proceedings to determine pre-construction costs and carrying costs on construction cost balance, there would be no review of the prudence of the underlying expenditures. After discussion, it was determined that annual prudence reviews are appropriate, with a few modifications to the rule as proposed.

First, language referring to further prudence review “in this proceeding” was deleted from several subsections of the rule.<sup>4</sup> These deletions were necessary to remove the possible inference that such review might be possible in a separate, later proceeding.

Second, the utilities agreed to file a previous year’s final true-up information by March 1 of each year (instead of May 1<sup>st</sup>) [subsection (5)(a)1.a., page 11, line 3], and the deadline for the Commission to conduct the hearing will be moved from September 15 to October 1. [subsection (5)(c)2., page 12, line 2] It was agreed that these extra months, in conjunction with the utilities’ increased reporting requirements in subsection (8), discussed below, would provide staff and parties to the annual clause docket sufficient time to review project expenditures such that a full prudence determination can be made annually.

Finally, language regarding the administrative finality of the annual prudence determinations was changed to reflect that this rule limits future review of previous prudence determinations to cases where fraud, perjury, or intentional withholding of material information is alleged. [Subsection (7)(a), page 14, lines 1-4]

Decisions of the Commission, like judicial decisions, eventually reach a point where they become final and pass out of the agency’s control. Given the public interest element of many regulatory agency decisions, however, the courts have established an exception to this “doctrine of administrative finality” for certain, narrowly defined cases. The recommended rule language could arguably be read to limit the exception, and thus the Commission’s discretion to review prior nuclear power plant prudence determinations.

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<sup>4</sup> Subsection (5)(a)2., page 10; subsection (5)(b)3., page 10; subsection (5)(c)3., page 12.

With respect to nuclear power plant cost recovery, however, staff believes there are several reasons why this rule provides for alternative ratepayer protections. First, annual prudence reviews will result in timely analysis of current expenditures, which should result in greater accuracy due to proximity in time and fewer items under review. Second, the annual reviews, combined with the minimum filing requirements required in Section 8, discussed below, give staff, parties, and the Commission unprecedented information on a regular, timely basis. Finally, clearly enunciating the circumstances when the Commission will entertain challenges to prior decisions allows all parties certainty in the decision, and the ability to plan for rate effects.

Taken as a whole, while staff acknowledges the recommended consensus language could be read to limit, to a certain extent, Commission discretion to review previous prudence determinations, staff believes offsetting ratepayer protections outweigh this potential concern and support the inclusion of this language. Staff further believes the inclusion of this language in a rule applicable solely to new nuclear plants is particularly supported by the clear legislative intent to promote the construction of new nuclear generation, as expressed by the 2006 legislation.

Annual Detailed Project Information. [Page 15, line 2 – page 16, line 10] The substantially revised subsection (8) is intended to begin the process of developing annual filing requirements, conceptually similar to the Minimum Filing Requirements (MFRs) of rate cases, as requested by OPC. The docket participants agree that the utility should be required to file such detailed information as is necessary for the Commission, its staff, and any intervenors to fully understand the expenses being presented to the Commission for review, prudence determination, and recovery. The filing of the information will need to occur annually, in sufficient time to allow parties to the annual clause proceeding adequate time to make use of the information. The participants also agree that development of the exact information to be filed, its forms, format and layout, will likely require significant effort by staff, the utilities, and interested persons. This exercise cannot be completed in the short time frame before this rule should be adopted.

Staff and the participants to this docket agree, therefore, that the language in subsection (8) be included as a first step towards developing the proper detailed annual filing requirements. All participants agree that further work will continue, either in the form of a new rulemaking docket or through undocketed workshops, until such time as it is possible to bring the detailed format back to the Commission for approval. Staff recommends that, if this rule is adopted, staff schedule and notice an initial informal staff workshop within 45 days of the Commission's vote.

Comments and Request for Hearing. As noted in the case background, the time period for filing written comments or a request for hearing on the rule, as proposed, expired January 19, 2007. Only one set of written comments was received, from the Florida Industrial Power Users Group, on January 10, 2007. PEF and FPL filed a Joint Request for Hearing on January 19, 2007. No other comments or requests for hearing were filed.

FIPUG's comments are generally supportive of the consensus recommended changes to the rule, and FIPUG participated in the negotiations leading up to these recommended changes. In its comments, FIPUG indicates it is concerned with how the language of the rule may be interpreted in the future when the actual facts become known, and the comments are intended to

preserve FIPUG's concerns in the record, and also memorialize FIPUG's understanding of how these concerns were addressed in the negotiations.

The Joint Request for Hearing filed by PEF and FPL suggest that they believe the rule, as proposed, is inconsistent with the language of Section 366.93, F.S., and the Legislature's intent. The Joint Request also makes clear that PEF and FPL will withdraw their request for hearing, depending on the Commission's vote to adopt the recommended changes as the final rule.

Conclusion. At the January 9, 2007, Agenda Conference, a number of concerns were raised regarding the Commission's proposal of new Rule 25-6.0423, F.A.C. The Commission proposed the rule, but instructed staff and the participants to work together to reach consensus on final rule language. After a number of sessions, the participants are able to recommend a consensus rule for consideration and final adoption by the Commission. Further, FPL and PEF agree that if this consensus rule is adopted, they will immediately withdraw their Request for Hearing. The effect would be to have a rule that could be noticed for adoption immediately. Since the Legislature has expressed its intent that a rule for nuclear power plant cost recovery is in the best interests of the citizens of Florida, and provided a six month time limit, staff recommends the Commission adopt new Rule 25-6.0423, F.A.C., Nuclear Power Plant Cost Recovery, with the changes shown in Attachment A.

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Date: February 1, 2007

**Issue 2**: Should this docket be closed?

**Recommendation**: Yes, the rule as approved by the Commission should be filed for adoption with the Secretary of State and the docket should be closed. (Harris)

**Staff Analysis**: After a Notice of Change is published in the Florida Administrative Weekly, the rule may be filed with the Secretary of State for adoption and the docket may be closed.



1 25-6.0423 Nuclear Power Plant Cost Recovery

2 (1) Purpose. The purpose of this rule is to establish alternative cost recovery  
3 mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction  
4 of nuclear power plants in order to promote electric utility investment in nuclear power plants  
5 and allow for the recovery in rates of all such prudently incurred costs.

6 (2) Definitions. As used in this rule, the following definitions shall apply:

7 (a) "Nuclear power plant" or "plant" is an electrical power plant that utilizes nuclear  
8 materials as fuel, as defined in Section 403.503(13) and Section 366.93(1)(c), Florida Statutes.

9 (b) "Cost" includes, but is not limited to, all capital investments including rate of  
10 return, any applicable taxes and all expenses, including operation and maintenance expenses,  
11 related to or resulting from the siting, licensing, design, construction, or operation of the  
12 nuclear power plant as defined in Section 366.93(1)(a), Florida Statutes.

13 (c) "Site selection." A site will be deemed to be selected upon the filing of a petition  
14 for a determination of need for a nuclear power plant pursuant to Section 403.519, Florida  
15 Statutes.

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

17 (e) "Pre-construction costs" are costs that are expended after a site has been selected in  
18 preparation for the construction of a nuclear power plant, incurred up to and including the date  
19 the utility completes site clearing work.

20 (f) Site Selection costs and pre-construction costs include, but are not limited to: any  
21 and all costs associated with preparing, reviewing and defending a Combined Operating  
22 License (COL) application for a nuclear power plant; costs associated with site and technology  
23 selection; costs of engineering, designing, and permitting the nuclear power plant; costs of  
24 clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction

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1 offices, warehouses, etc.).

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

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

9 (4) Site Selection Costs. After the Commission has issued a final order granting a  
10 determination of need for a nuclear power plant pursuant to Section 403.519, Florida Statutes,  
11 a utility may file a petition for a separate proceeding, to recover prudently incurred site  
12 selection costs. This separate proceeding will be limited to only those issues necessary for the  
13 determination of prudence and alternative method for recovery of site selection costs of a  
14 nuclear power plant.

15 (5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After  
16 the Commission has issued a final order granting a determination of need for a nuclear power  
17 plant pursuant to Section 403.519, Florida Statutes, a utility may petition the Commission for  
18 recovery of pre-construction costs and carrying costs of construction cost balance as follows:

19 (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost  
20 Recovery Clause, its actual and projected pre-construction costs. The utility may also recover  
21 the related carrying charge for those costs not recovered on a projected basis. Such costs will  
22 be recovered within 1 year, unless the Commission approves a longer recovery period. Any  
23 party may, however, propose a longer period of recovery, not to exceed 2 years.

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

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

8 (b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover,  
9 through the utility's Capacity Cost Recovery Clause, the carrying costs on the utility's annual  
10 projected construction cost balance associated with the nuclear power plant. The actual  
11 carrying costs recovered through the Capacity Cost Recovery Clause shall reduce the  
12 allowance for funds used during construction (AFUDC) that would otherwise have been  
13 recorded as a cost of construction eligible for future recovery as plant in service.

14 1. For nuclear power plant need petitions submitted on or before December 31, 2010,  
15 the associated carrying costs shall be computed based on the pretax AFUDC rate in effect on  
16 June 19, 2006;

17 2. For nuclear power plant need petitions submitted after December 31, 2010, the  
18 utility's pretax AFUDC rate in effect at the time the petition for determination of need is filed  
19 is presumed to be appropriate unless the Commission determines otherwise in its need  
20 determination order;

21 3. The Commission shall include carrying costs on the balance of construction costs  
22 determined to be reasonable or prudent in setting the factor in the annual Capacity Cost  
23 Recovery Clause proceedings, as specified in Paragraph (5)(c) of this rule.

24 (c) Capacity Cost Recovery Clause for Nuclear Costs.

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1           1. Each year, a utility shall submit, for Commission review and approval, as part of its  
2 Capacity Cost Recovery Clause filings:

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

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

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

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1 such year.

2       2. The Commission shall, prior to October 1 of each year, conduct a hearing and  
3 determine the reasonableness of projected pre-construction expenditures and the prudence of  
4 actual pre-construction expenditures expended by the utility; or, once construction begins, to  
5 determine the reasonableness of projected construction expenditures and the prudence of  
6 actual construction expenditures expended by the utility, and the associated carrying costs.  
7 Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the  
8 Commission shall make a prudence determination of the prior year's actual construction costs  
9 and associated carrying costs. To facilitate this determination, the Commission shall conduct  
10 an on-going auditing and monitoring program of construction costs and related contracts  
11 pursuant to Section 366.08, Florida Statutes. In making its determination of reasonableness  
12 and prudence the Commission shall apply the standard provided pursuant to Section  
13 403.519(4)(e), Florida Statutes.

14       3. The Commission shall include those costs it determines, pursuant to this subsection,  
15 to be reasonable or prudent in setting the Capacity Cost Recovery Clause factor in the annual  
16 Fuel and Purchased Power Cost Recovery proceedings. Such prior year actual costs associated  
17 with nuclear power plant construction subject to the annual proceeding shall not be subject to  
18 disallowance or further prudence review.

19       4. The final true-up for the previous year, actual/estimated true-up for the current year,  
20 and subsequent year's projected nuclear power plant costs as approved by the Commission  
21 pursuant to subparagraph (5)(c)2. will be included for cost recovery purposes as a component  
22 of the following year's capacity cost recovery factor in the Fuel and Purchase Power Cost  
23 Recovery proceeding. The utility must file all necessary revisions to the fuel and purchased  
24 power cost recovery filings no later than October 15 of the current year.

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1           5. By May 1 of each year, along with the filings required by this paragraph, a utility  
2 shall submit for Commission review and approval a detailed analysis of the long-term  
3 feasibility of completing the nuclear plant.

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

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

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

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

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

5 (b) The utility shall calculate the increase in base rates resulting from the jurisdictional  
6 annual base revenue requirements for the nuclear power plant in conjunction with the Capacity  
7 Cost Recovery Clause projection filing for the year the nuclear power plant is projected to  
8 achieve commercial operation. The increase in base rates will be based on the annualized base  
9 revenue requirements for the nuclear power plant for the first 12 months of operations  
10 consistent with the cost projections filed in conjunction with the Capacity Cost Recovery  
11 Clause projection filing.

12 (c) At such time as the nuclear power plant is included in base rates, recovery through  
13 the Capacity Cost Recovery Clause will cease, except for the difference between actual and  
14 projected construction costs as provided in subparagraph (5)(c)4. above.

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

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

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

6 (a) Subject to suitable confidentiality agreements or, to the extent necessary, protective  
7 orders issued by the Commission, a utility will ensure reasonably contemporaneous access,  
8 which may include access by electronic means, for review by parties of all documents relied  
9 on by utility management to approve expenditures for which cost recovery is sought. Access  
10 to any information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10  
11 C.F.R. 73.21, incorporated by reference into this Rule, shall only be in accordance with  
12 applicable Nuclear Regulatory Commission requirements.

13 (b) Regarding technology selected, a utility shall provide a description of the  
14 technology selected that includes, but is not limited to, a review of the technology and the  
15 factors leading to its selection.

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

20 (d) Final true-up filings and actual/estimated true-up filings will include monthly  
21 expenditures incurred during those periods for major tasks performed within Site Selection,  
22 Preconstruction and Construction categories. A utility shall provide annual variance  
23 explanations comparing the current and prior period to the most recent projections for those  
24 periods filed with the Commission.

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1           (e) Projection filings will include monthly expenditures for major tasks performed  
2 within Site Selection, Preconstruction and Construction categories.

3           (f) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following  
4 issuance of the final order granting a determination of need and until commercial operation of  
5 the nuclear power plant, a utility shall include the budgeted and actual costs as compared to  
6 the estimated in-service costs of the nuclear power plant as provided in the petition for need  
7 determination in its annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates  
8 provided in the petition for need determination are non-binding estimates. Some costs may be  
9 higher than estimated and other costs may be lower. A utility shall provide such revised  
10 estimated in-service costs as may be necessary in its annual report.

11 Specific Authority 350.127(2), 366.05(1), FS.

12 Law Implemented 366.93 FS.

13 History: New \_\_\_\_\_.

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