

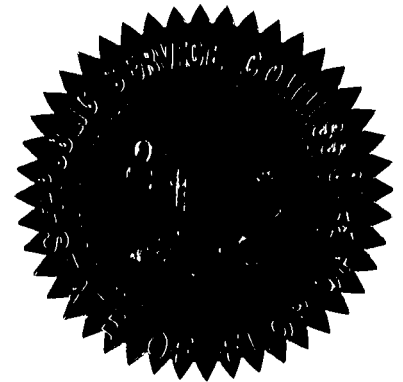
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080083-EI

In the Matter of:

PETITION FOR DECLARATORY STATEMENT
REGARDING APPLICABILITY OF RULE
25-6.0423, F.A.C., BY FLORIDA POWER
& LIGHT COMPANY.

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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 5

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
 COMMISSIONER LISA POLAK EDGAR
 COMMISSIONER KATRINA J. McMURRIAN
 COMMISSIONER NANCY ARGENZIANO
 COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, April 8, 2008

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
 LINDA BOLES, RPR, CRR
 Official FPSC Reporters

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1 APPEARANCES:

2 BRYAN S. ANDERSON, ESQUIRE, appearing on behalf of
3 Florida Power & Light Company.

4 MICHAEL B. TWOMEY, ESQUIRE, appearing on behalf of
5 AARP.

6 JOHN W. McWHIRTER, JR., ESQUIRE, appearing on behalf
7 of Florida Industrial Power Users Group.

8 JOSEPH A. MCGLOTHLIN, ESQUIRE, Office of Public
9 Counsel, appearing on behalf of the citizens of the State of
10 Florida.

11 RICHARD BELLAK, ESQUIRE, MICHAEL COOKE, GENERAL
12 COUNSEL, and CAYCE HINTON, appearing on behalf of the Florida
13 Public Service Commission Staff.

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P R O C E E D I N G S

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CHAIRMAN CARTER: Commissioners, we are now on Item 5. Let's give staff a moment to get set up here.

Commissioners, on this item it's at our discretion on whether or not we want other parties to participate. So as everyone is getting in their seats and all, I just wanted to bring that to your attention. And, Commissioners, what is your pleasure on whether or not we have the parties participate?

Commissioner Argenziano, you're recognized.

COMMISSIONER ARGENZIANO: You're asking me whether -- yes, I agree, they should participate.

CHAIRMAN CARTER: Commissioner Argenziano makes the motion that we allow parties to participate.

COMMISSIONER McMURRIAN: (Inaudible. Microphone off.)

CHAIRMAN CARTER: Second by Commissioner McMurrian. All those in favor let it be known by the sign of aye.

(Unanimous affirmative vote.)

CHAIRMAN CARTER: Show it done.

Staff, you're recognized to introduce the issue, and then we'll hear from the parties.

MR. BELLAK: Thank you, Mr. Chairman.

Item 5 concerns Florida Power and Light Company's petition for declaratory statement concerning Turkey Point Units 6 and 7 of their nuclear plant.

1 The recommendation encompasses three issues. Issue
2 1 is OPC's request for a hearing separate and in addition to
3 the ability of the parties to address you here today. Staff
4 recommends denial of the request for a separate hearing.

5 Issue 2 concerns whether or not to grant or deny
6 FPL's petition, and staff recommends that the petition for
7 declaratory statement be granted. Issue 3 is whether the
8 docket should be closed, and the staff recommends that the
9 docket be closed.

10 Subsequent to having filed the recommendation, the
11 Florida Industrial Power Users Group, FIPUG, and AARP
12 petitioned to intervene and intervention was granted by
13 administrative orders to both FIPUG and AARP.

14 As you noted, the parties are here to address you and
15 you have the discretion to hear them. Thank you.

16 **CHAIRMAN CARTER:** Thank you.

17 Commissioners, before we get into any of our
18 questions or anything like that, we will just give the
19 parties -- just recognize them for five minutes so they can be
20 heard and then we will get into our questioning phase.

21 Mr. McGlothlin, you are recognized.

22 **MR. MCGLOTHLIN:** I will begin if you wish, sir, but I
23 thought perhaps that since this is FPL's petition that they
24 might want to go first.

25 **CHAIRMAN CARTER:** I was going to recognize FPL

1 because FPL -- as presented here, staff is recommending a
2 position and FPL is supportive of staff's position unless I
3 read something wrong. Did I read something wrong?

4 **MR. McGLOTHLIN:** I'll be glad to go first, if you
5 like.

6 **CHAIRMAN CARTER:** You're recognized.

7 **MR. McGLOTHLIN:** Joe McGlothlin with the Office of
8 Public Counsel.

9 Commissioners, by statute the legislature directed
10 the Commission to provide two alternative ratemaking approaches
11 to the treatment of monies expended for nuclear projects. With
12 respect to preconstruction costs, the specific alternative
13 mandated by the legislature was to allow the utility to
14 essentially expense all such expenditures in a given year and
15 to collect the entire amount through the capacity cost-recovery
16 clause. With respect to construction costs, the directive was
17 to enable the utility to collect on a current basis only the
18 carrying costs of those expenditures until the date of
19 commercial service, and thereafter to allow the utility to roll
20 the revenue requirements associated with the then balance of
21 construction costs into base rates.

22 As a preliminary matter, notice that both of these
23 alternatives are designed to provide incentives to the utility
24 and to encourage investment in nuclear facilities, which means
25 that even if you deny the petition today, the impact of that

1 will be to direct FPL to use the second of two utility favoring
2 incentives. Both of these mechanisms are attractive to the
3 utilities and are designed to encourage investment.

4 The Commission implemented this statute by rule and
5 its rule contemplates a continuum consisting of the selection
6 of a site, the finishing of site preparation, and thereafter
7 construction activities. And the question raised by FPL's
8 petition is this, what if a portion of an item that would
9 ordinarily be treated as construction costs is expended and
10 incurred prior to the end of site clearing.

11 FPL asserts that the date that the cost was incurred
12 is the governing criteria, and that if a cost associated with
13 what would ordinarily be a construction cost is incurred prior
14 to the completion of site clearing, then by operation of the
15 rule it should be treated as preconstruction and FPL should be
16 allowed to collect 100 percent of that expenditure through the
17 capacity cost-recovery clause, instead of only the carrying
18 costs. For reasons we have delineated in our position
19 statement, we believe that FPL's position is inconsistent with
20 both your rule and with logic, and represents overreaching at
21 the expense of customers. No pun intended.

22 Preliminarily, I ask that the Commission look before
23 you leap. As staff indicated, we asked for a hearing on this
24 matter because we believe that the petition does not provide
25 you sufficient facts to establish the boundaries that would be

1 impacted by your decision. Quoting from FPL's petition, FPL
2 refers to long lead procurement items which include, but are
3 not necessarily limited to heavy forgings, like the reactor
4 vessel, steam generator shell, et cetera.

5 Commissioners, I think the Commission should be wary
6 of petitions for declaratory statements that include such
7 language as not necessarily limited to and et cetera. The
8 petition itself is open-ended. While FPL does not quantify the
9 impact on customers of granting its petition, in our pleading
10 we have directed you to evidence in the determination of need
11 case which indicates that at that point FPL had identified some
12 \$100 million of long lead procurement items that by its
13 position would qualify for this immediate 100 percent
14 collection as opposed to the carrying cost treatment.

15 Now, with respect to the point that the petition is
16 consistent with your rule, the rule defines construction costs
17 to include, and I am quoting, "Power plant buildings and all
18 associated permanent structures, equipment, and systems," end
19 quote.

20 **CHAIRMAN CARTER:** Mr. McGlothlin, are you close to
21 winding up, because you are right at six minutes. Okay. Are
22 you close to ending?

23 **MR. MCGLOTHLIN:** Well, I was not aware of the
24 five-minute deadline, but I'll try to --

25 **MR. TWOMEY:** Mr. Chairman, could I ask you to please

1 be openminded and liberal with the clock on this matter? As we
2 are all aware, you all just spent an hour and a half on a water
3 related issue. This issue is of extreme importance in terms of
4 precedential value you'll establish today, as well as the
5 dollar amounts that might be impacted on the customers, so I
6 would urge you to give a little bit more flexibility to not
7 just Mr. McGlothlin and the Office of Public Counsel, but Mr.
8 McWhirter, myself on behalf of AARP. And, of course, give the
9 company as much time as they need to be on an even standing as
10 us. I would request that of you.

11 **CHAIRMAN CARTER:** Well, I appreciate your request,
12 but here is the way we're going to operate. I'm going to give
13 each one of you five minutes, then that will give the
14 Commissioners the greater amount of time to ask questions, to
15 go into our debate and all. I think that the issues that you
16 are raising are not so unique that they can't be explained
17 within five minutes.

18 Mr. McGlothlin.

19 **MR. MCGLOTHLIN:** Yes, sir. I'll speed along, if I
20 may.

21 **CHAIRMAN CARTER:** Yes, sir.

22 **MR. MCGLOTHLIN:** With respect to the points that the
23 petition is inconsistent with the rule, the rule defines
24 construction cost to include power plant buildings and
25 structures, equipment, and systems. If FPL's position were

1 right in its petition, there would have been no need for
2 including any such definitions. The rule would simply say at
3 this point in time it's preconstruction, anything after that is
4 construction. So, if you start with the proposition that each
5 provision has a purpose, FPL is trying to read the purpose of
6 that provision out of the rule.

7 And in terms of inconsistent with logic, the rule
8 defines site selection costs as costs that are expended prior
9 to selection of a site. What if the forging advanced payments
10 had predated the ultimate site selection? According to FPL,
11 that would render the forging advanced payments site selection
12 costs. An absurd result, but it depends on the statement logic
13 on which FPL depends for its petition and its position.

14 One point about the staff's recommendation. Staff
15 notes that the definition of construction costs within the rule
16 is not bounded by any time frame as is the definition of
17 preconstruction costs, but I would submit to you that the
18 proper inference to be drawn from that is that construction
19 costs remain construction costs regardless of whenever they are
20 incurred. So I'm mindful of your admonition, Chairman, and I
21 will close on that note.

22 **CHAIRMAN CARTER:** Thank you.

23 Mr. McWhirter, you're recognized.

24 **MR. McWHIRTER:** Mr. Chairman, I will tell you in
25 general the principal concerns we have and then perhaps it will

1 trigger a question that will give the elaboration that it
2 requires.

3 When you adopt this rule, you need to take into
4 consideration the fact how the statute has evolved from 366.06,
5 when that was enacted that guided what you do in ratemaking.
6 It said you will give the utility a return on its assets which
7 are in use and useful service. They are already operating and
8 providing the benefits to customers. The evolution as we get
9 down to 366.93 says you will give the utility projected costs
10 of a planned unit that is not necessarily committed to be
11 built, and it will be given to the utility 10 to 12 years
12 before it is built. I won't elaborate further on that.

13 At the time you adopted your rule, the legislature
14 gave you six months to do it, and the then Chairman was pretty
15 ticked off because we hadn't done it after eight months. And
16 the reason we hadn't done it was because we were fussing about
17 how you interpret that rule, and the staff was very careful in
18 defining construction costs and other costs that would be
19 considered.

20 The difference is if you get construction costs you
21 only get the carrying costs on the investment whereas if it's
22 treated as a pre-site clearing construction cost that is to be
23 identified then you get the total cost. So the problem, as I
24 see it, is what you are doing is charging customers today a lot
25 of money for the benefit of customers 10 to 12 years down the

1 pike.

2 And the Commission has dealt with this before. You
3 had a rule of fairness, and you concluded years ago that a
4 utility, if it was taking fast write-off for tax purposes, it
5 was unfair to future customers to let the current customers get
6 the benefit of the fast tax write-off. So what happens was you
7 came up with the concept of deferred taxes.

8 FPL has collected \$2.3 billion from current customers
9 for the benefit of future customers. And what we're asking you
10 to do is the corollary of that. We're asking you to consider
11 the fact that under this legislation, this far-going
12 legislation, you are going to impact current customers with
13 costs that are going to hurt future -- I mean, are going to
14 help future customers.

15 You aren't going to have factual hearings. You spent
16 an hour and a half on this water and sewer matter for mom and
17 pop water and sewer companies because you didn't have adequate
18 facts. You said that you can look at the facts in the
19 petition. Well, I would suggest to you, you ought to also look
20 at the facts in the pending petition of 08148, which is the
21 Florida Progress power plant operation. It has a certificate
22 of need that's going to come up for hearing. It has filed
23 testimony, and I'm taking an extract from Mr. Portuondo's
24 Exhibit JP-2. He tells you what the impact of their operation
25 is going to be on customers in the Florida Progress area. And

1 in 2009, the estimated rate impact is going to be \$272 million
2 on customers. That will be \$6.43 on a customer that uses 1,000
3 kilowatt hours a month. But, of course, as you know, customers
4 use more than that. And if you use more than 1,000 you have an
5 inverted rate. And then on top of that you pay a 10 percent
6 utility tax, and you pay a 4-1/2 percent franchise fee, and
7 then the rate base is an automatic adjustment for ad valorem
8 taxes, and then there is a markup for the income tax impact.

9 So customers of Progress Energy ought to consider
10 what this broad rule is going to do on all nuclear plant
11 customers. And I would suggest to you that the additional
12 revenue from nuclear plants may cure the budget problems that
13 local governments have been complaining about because the
14 electric customers are going to be picking up the bill.

15 I would suggest to you that there is a lot more to
16 talk about, and if you want to ask me some questions I will be
17 happy to answer them.

18 **CHAIRMAN CARTER:** Did you complete your thoughts, Mr.
19 McWhirter?

20 **MR. McWHIRTER:** No, sir, but I completed it within
21 the time frame you gave.

22 **CHAIRMAN CARTER:** Well, I did say five minutes, but
23 Mr. McGlothlin went for eight. So, if you want to take those
24 other three --

25 **MR. McWHIRTER:** If I have triggered any thoughts that

1 might give you concern about the rate impact on customers, you
2 feel free to ask me about them.

3 **CHAIRMAN CARTER:** Okay, then. Mr. Twomey, you're
4 recognized.

5 **MR. TWOMEY:** Yes, sir, Mr. Chair. And if you would
6 not start the clock until Mr. McGlothlin passes my little
7 handout. And I set the stage, us both being former Army guys,
8 Mr. Chair, you're often used to -- in that environment you hear
9 about people getting up and doing dog and pony shows and all of
10 that. Well, I'm here to tell you this is not going to be a dog
11 and pony show.

12 **CHAIRMAN CARTER:** Okay.

13 **MR. TWOMEY:** It's not a dog and pony.

14 **CHAIRMAN CARTER:** Just a dog show, not the pony. We
15 couldn't afford the pony for this one?

16 **COMMISSIONER ARGENZIANO:** This is supposed to be a
17 cow, but it's a steer.

18 **MR. McWHIRTER:** You're not sure it's a bull?

19 **MR. TWOMEY:** I'm not looking.

20 **CHAIRMAN CARTER:** Maybe we need to get Commissioner
21 Bronson to help us out on this one. Okay.

22 Do all parties and staff have a copy of this handout
23 that Mr. Twomey passed out?

24 **MR. TWOMEY:** Mr. Chairman.

25 **CHAIRMAN CARTER:** One second.

1 **MR. TWOMEY:** Yes, sir.

2 **CHAIRMAN CARTER:** Let me make sure that everybody --

3 **MR. TWOMEY:** I think I had enough for everybody.

4 **CHAIRMAN CARTER:** -- Mr. Anderson gets one, as well.

5 **MR. TWOMEY:** Mr. Chairman, what I have asked Mr.
6 McGlothlin to pass out is a copy of the statute we are
7 concerned with here, a copy of the rule promulgated by the
8 Commission recently that both Mr. McGlothlin and Mr. McWhirter
9 mentioned, and an off the Internet summary description or a
10 diagram of what is involved in a pressure water reactor.

11 I'll be brief, of course. As the two gentlemen said
12 before me, this whole business that we are looking at right now
13 is a substantial departure from traditional ratemaking. I did
14 the last nuclear power plant entry into rate base as this
15 Commission's senior electric lawyer in 1984, I think it was,
16 for FPL's St. Lucie 2 unit. They didn't get a penny of
17 cost-recovery during the 10, 11, or 12 years that that plant
18 was under construction and it was under a good timeline and a
19 good budget. They didn't get a penny. All the money that they
20 had interest charges, AFUDC were added on and went into the
21 1.4, roughly, billion dollar cost of the plant when it went
22 into rate base.

23 The legislature recognized the importance,
24 apparently, of nuclear power plants being nonemitting sources
25 and also having the ability to be base load units. They

1 recognized that they are extremely low-cost fuel, but
2 relatively high capital costs, and they went about this
3 legislation two years ago to allow for early cost-recovery,
4 that is, a change from the traditional for these plants in the
5 IGCC, but we will just talk about nuclear plants, the law
6 enacted two years ago.

7 As they said, the law required that you give certain
8 preferred recovery for preconstruction costs, that is, all the
9 money they spend comes out of the customers' pockets almost
10 immediately, and then still preferential treatment for
11 construction costs that allows the companies not the recovery
12 of all the monies, but of a carrying charge or interest payment
13 as they build up through the construction process equal to
14 their AFUDC charge. So, rather than having a non-cash AFUDC
15 charge under the traditional method, they get to charge the
16 customers a return as they build. Both of those are good.

17 You promulgated a rule, and it's extremely important,
18 because you had to do it pursuant to the legislation. And so
19 what you did was you fleshed out the statute, which is what
20 rules are for. It is more specific than the statute. That is
21 the proper thing to do. Now you are bound by the specificity
22 of your rule. And I want to make a couple of quick points
23 here.

24 If you look at the rule, and you look at -- I have
25 highlighted on your copies, I think, the definitions of

1 preconstruction costs, and I'm not going to read through them.
2 But, if you look at it, those of us that were involved in the
3 process of promulgating this rule and negotiating the language
4 envisioned that to be not just a timeline, although clearly a
5 timeline is involved from the start of the process to
6 construction of the plant, or the final clearing and so forth
7 of the plant site, but also by the nature of the expenses. The
8 nature of the expenses.

9 In my petition to get in this case yesterday, and I
10 appreciate the rapid grant, I likened the preconstruction costs
11 to a cow. I likened the construction costs to a duck. If you
12 look at the construction cost definition, Commissioners, and
13 this extremely important in AARP's view, it says construction
14 costs are costs that are expended to construct the nuclear
15 plant, including but not limited to the cost of constructing
16 power plant buildings and all associated permanent structures,
17 equipment, and systems.

18 If you look at the diagram I gave to you, and the
19 parties, as well, on your copies I have highlighted the reactor
20 vessel. The reactor vessel is not just part of the power
21 plant, the nuclear power plant, it is at its very heart.
22 Literally at the core of its operation. And, as Mr. McGlothlin
23 pointed out, the company's petition is so open-ended that they
24 don't confine their request to this special treatment; that is,
25 they are asking you to make my client's members and everybody

1 else that's a customer to pay all the money for these forgings,
2 not just the return on it. They will get a return in any
3 event, no matter what you do here.

4 So, it's open-ended, as Mr. McGlothlin said, because
5 the steam generator shell, that's in there inside the
6 containment building. That's one of the things they have
7 mentioned, but then they went ahead and said not limited to and
8 et cetera, as he pointed out. Way open-ended, dangerous.
9 Again, not just for the application of this company, Turkey
10 Point 6 and 7, but we had the Levy County units for Progress
11 Energy coming up and we may have additional units for Gulf
12 Power and perhaps others.

13 So, to wrap up here, what I'm saying to you,
14 Commissioners, is that it doesn't matter when they pay any of
15 the costs associated with the long duration forgings, they are
16 still at the core of the plant itself, the nuclear plant
17 itself, and they, in our view, clearly fall within the
18 definition of construction. Ergo, once a duck always a duck.
19 Getting in line with Japan's Steel costs may be in line early,
20 they still walk, quack, and look like a duck.

21 You should deny their petition for a declaratory
22 statement and, at a minimum, if you don't deny it, you should
23 defer making a decision on it and have a hearing on this, an
24 evidentiary hearing so that we can put some price tags figures.
25 Mr. McWhirter, I know, has more dollar figures he could tell

1 you about with the right questions, but put dollar figures on
2 these numbers so that you all will know the extent of what you
3 are going to be tacking on my client's members bills before you
4 go ahead and do it.

5 Thank you.

6 **CHAIRMAN CARTER:** Thank you, Mr. Twomey. You only
7 used two of Mr. McWhirter's minutes, so that's good.

8 **MR. TWOMEY:** Thank you, sir.

9 **CHAIRMAN CARTER:** Mr. Anderson, you're recognized,
10 sir.

11 **MR. ANDERSON:** Thank you, Commissioner Carter,
12 Commissioners. We appreciate the opportunity to appear before
13 you today.

14 FPL's petition for a declaratory statement is very
15 important here. This is because it is the legislature's
16 passage and this Commission's adoption of cost-recovery
17 provisions that induced the company to begin the development of
18 its proposed Turkey Point 6 and 7, which we have all spent a
19 lot of time working on together.

20 We feel it is essential that the laws be correctly
21 applied now that they have been put forth by the legislature
22 and enacted in rules through this Commission, so I would really
23 like to focus my points, just put them in a very a simple way.
24 Staff made these points, I think, very eloquently in their
25 recommendation, and then I will add one other thing.

1 The question is how do we define preconstruction
2 costs, and do advance payments fall in that definition. And
3 the answer to that turns specifically on the time period in
4 which those costs are incurred. I'm grateful to Mr. Twomey to
5 have passed out the statute and the rule, because that makes it
6 as clear as can be. The legislature started this in their
7 efforts to induce companies like ours to make the major
8 investments needed for a plant like this. And looking down at
9 the statute that he passed out, 366.93(f), you see that
10 definition, preconstruction is that period of time after a site
11 has been selected through and including the date the utility
12 completes site clearing work.

13 Now remember those words, and turn to the next
14 document, which Mr. Twomey had passed out, and is critical
15 here. It is the Commission's rule, 25-6.0423. Please look at
16 Item (2)(g), preconstruction costs are costs that are expended
17 after a site has been selected in preparation for the
18 construction of a nuclear or integrated gasification combined
19 cycle power plant, incurred up to and including the date the
20 utility completes site clearing work. There could be nothing
21 more clear. So with respect to Mr. McGlothlin and others that
22 are asserting that our position is not consistent with the
23 statute, in fact, directly implements the statute. It directly
24 implements the rule, and that's what your staff's
25 recommendation says.

1 One other point before I move on, before I conclude,
2 is these points were actually considered when we worked
3 together on the rules. We briefed this point at Page 4 of my
4 response to OPC where I quote a portion of staff's
5 recommendation in Docket 060508, which is where these new rules
6 were adopted, and this was thought about in preparing these
7 rules. At Page 4, a direct quotation, it says about site
8 selection preconstruction definitions, FPL and PEF, the
9 utilities, raised the concern that the definitions contained in
10 Subsection 2 of the rule could be misleading. As several of
11 the examples listed, both site selection costs and
12 preconstruction costs were identical. Utilities proposed
13 refining the definitions to make it clear that site selection
14 and preconstruction are discreet time periods and that the same
15 ongoing activity might begin as site selection and conclude as
16 preconstruction.

17 Accordingly, the language was revised more clearly to
18 reflect that the terms site selection and preconstruction are
19 intended to be definitions of specific time periods, and then
20 it goes on. But that is the heart of this, is that this was
21 enacted by the legislature, put forth in your rule with the
22 express contemplation that the time period definition of what
23 the costs are is what's most important here.

24 We, of course, visited it in the course of the Turkey
25 Point 6 and 7 need determination about the types of costs. We

1 are not looking for all the costs to construct the plant in
2 this period. Right now we are talking advanced payments.
3 Reservation payments are the type that we interchanged with
4 considerably during those hearings. That's our focus here.

5 The last point I want to take up is just reflect
6 together on what is a declaratory statement action. The
7 purpose is to declare the law based upon what is stated in the
8 petition. There is no dispute here that advanced payments will
9 occur. That's the key issue for purposes of application of the
10 law here. Could considerations have been raised concerning
11 what are the costs, the nature of the costs, all those types of
12 things. And we all know that these rules beginning May 1 of
13 this year, we will have those filings in front of this
14 Commission for consideration in detail of all those specifics.
15 In addition, please recall that our best estimates of those
16 costs were included in the record in Turkey Point 6 and 7. So
17 none of this is any news, I think, realistically to people who
18 have followed closely these matters. For these reasons,
19 Florida Power and Light Company supports staff's recommendation
20 and asks that the declaratory statement be granted.

21 **CHAIRMAN CARTER:** Thank you, Mr. Anderson.

22 Commissioners, and for the record, I wanted to just
23 kind of remind the attorneys that have spoken this morning, I
24 hear some grumbling, or it may just be your stomachs, about
25 time participation, but we allow -- when the Commissioners

1 allow parties to participate at our discretion, it's to assist
2 the Commissioners. It's not an opportunity for parties to go
3 on to say things above and beyond what will help us in making
4 our call. So, as a courtesy, when the Commission offers an
5 opportunity at our discretion for parties to participate, we
6 are well within our rights to determine the amount of time that
7 we give to the parties. And all of you have been here for
8 eons -- no disrespect, Mr. McWhirter, you know what an eon is.

9 **MR. MCWHIRTER:** More than an eon.

10 **CHAIRMAN CARTER:** More than an eon in your case. So
11 I just don't want anybody to get off task here, and let's dial
12 the rhetoric back a minute and get back to basics here.

13 So what he have here, Commissioners, I just wanted to
14 say that for the record, because oftentimes we have parties
15 that practice before us, and they spend a lot more time
16 lecturing than they do presenting their case. Not that any of
17 did you that today.

18 So let me do this, Commissioners, before we go into
19 our discussion, before we go into our questions, let me ask
20 staff to kind of reintroduce the issue so we can kind of get
21 ourselves in the posture where we start our questioning phase.

22 Staff, you're recognized.

23 **MR. BELLAK:** Thank you, Mr. Chairman.

24 I think that what has been presented demonstrates
25 that you can lean heavily on one part or another of the rule or

1 the statute and come to what is a reasonable conclusion. In
2 fact, the way the staff recommendation is formulated, it
3 doesn't denigrate any of these conclusions or opinions because
4 it recognizes that there is a degree of ambiguity and
5 difficulty in applying the rule to this particular issue along
6 the procurement items. And the way the staff looks at it is
7 not so much as emphasizing one part or another so as to come to
8 a conclusion, but it looks at it as a balancing exercise in
9 which really what the Commission has before it are a number of
10 alternative reasonable ways of looking at this situation.

11 And the reason that the staff came up with the
12 recommendation that it did is that this is one among a number
13 of reasonable ways of looking at this question of what we call
14 the hybrid of queuing costs which have some elements of
15 construction and some elements of preconstruction, because they
16 are necessarily incurred right up at the front end of the
17 preconstruction time period.

18 The reason we recommend selecting this reasonable
19 alternative among a number of reasonable alternatives, is this
20 is the one most consistent with the intent of the statute which
21 is an intent that all sides agree about, which is to get the
22 plant going, to encourage the construction of the plant. It's
23 difficult to read into the statute and the rule the intent of
24 the legislature that if these costs are prudently incurred and
25 necessarily incurred at the very beginning of the

1 preconstruction period, that it is consistent with encouraging
2 the construction of the plant to make the utility wait a decade
3 or more before it recovers those costs. That doesn't seem to
4 be the way the statute was set up.

5 And, therefore, among a number of alternatives, any
6 one of which reflect reasonable concerns, the staff recommends
7 the alternative that is most consistent with getting the plant
8 constructed, because that's the one element in the statute that
9 all sides agree is part of the legislative intent.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioners, we're on the questions.

12 Commissioner Skop, you're recognized.

13 **COMMISSIONER SKOP:** Thank you, Mr. Chair. I had
14 hoped to have Mr. Devlin with us today in order to ask him some
15 questions and have him opine, but it's my understanding that
16 he's out on sick leave, so at the appropriate time I have quite
17 a bit to say on this issue, and I'll just defer at the moment
18 for questions.

19 **CHAIRMAN CARTER:** Okay. Questions? Commissioners,
20 questions?

21 Commissioner Edgar, you're recognized.

22 **COMMISSIONER EDGAR:** Thank you, Chairman Carter.

23 I cannot let the opportunity go by to not ask Mr.
24 McWhirter if he would talk to us a little bit more. You raised
25 a phrase called the fairness doctrine and how that has been

1 applied by the Commission in the past, and I would just ask you
2 to elaborate on that a little bit.

3 **MR. McWHIRTER:** Well, I think Mr. Bellak gave us some
4 insight. He says the philosophy of the statute is not to
5 require the utility to wait a decade before getting its money.
6 The corollary of that on the other side of the fairness scale
7 is do you charge customers the total cost of an expenditure ten
8 years before any customer gets the benefit of that expenditure.
9 Every opponent to the petition here today agrees that the
10 company can get its carrying costs on those expenditures which
11 covers interest, including return to the investors, but it
12 doesn't include the total cost of the expenditure.

13 And I pointed out a Progress Energy issue, for 2009
14 it's going to ask customers to pay \$272 million for the Levy
15 County plants. Of that \$272 million, 90 million of it is the
16 carrying cost on construction costs they would expend. So if
17 you take that away from carrying costs and turn it into
18 construction costs, 90 million is 20 percent of what the total
19 costs are going to be, so that be would be \$450 million. So
20 that means if those construction costs were determined to be
21 long lead time necessary costs, they would start collecting
22 next January from customers.

23 The problem we face is these proceedings are by and
24 large secret. So customers don't know what the long lead cost
25 items are going to be because they come in under a

1 confidentiality agreement. Your staff will know, but Mr.
2 Twomey and I won't know unless we sign a confidentiality
3 agreement, and then we may not know from our experience whether
4 that is a typical long lead type item.

5 All we are asking you to do is apply a conservative
6 application of the rule. We admit that nuclear plants are on
7 the horizon, they're coming, and we want to be fair to the
8 utilities. But we think it is pretty fair to the utility to
9 give them the carrying costs rather than the total construction
10 costs up front of construction items that are clearly cows and
11 not chickens.

12 **CHAIRMAN CARTER:** That's a duck.

13 **MR. McWHIRTER:** Sir?

14 **CHAIRMAN CARTER:** That's a duck.

15 **MR. McWHIRTER:** Right. I used that because I looked
16 up the phrase that is familiar to some of you, ejusdem generis.
17 Ejusdem generis is a Latin phrase that is used in statutory
18 construction and rule construction. And the literal
19 translation of ejusdem generis is items of like kind. So what
20 we have here in the rule that you are looking at is
21 preconstruction costs are defined but not limited to items like
22 engineering costs, items like permitting costs, and things of
23 that kind.

24 They talk about construction site costs which are
25 warehouses that are put on plants and construction trailers,

1 but they aren't the core of the nuclear plant. Those items
2 they're entitled to recover, and we acknowledge that they can
3 get their carrying costs, but not the total cost, because
4 customers in the future will not bear any portion of that total
5 cost, because today's customers who are already fairly hard
6 strapped for a variety of reasons are going to pay that total
7 cost. And so the fairness doctrine is a weighting of scale,
8 and that's all there is to it.

9 **CHAIRMAN CARTER:** I'm going to go to Commissioner
10 Argenziano, then Commissioner McMurrian, and then Commissioner
11 Skop.

12 Commissioner Argenziano, you're recognized.

13 Wait one second. Had you completed your question?

14 Commissioner Argenziano.

15 **COMMISSIONER ARGENZIANO:** Well, I guess I have a
16 question for OPC, and maybe if FPL wants to respond. The
17 statute, of course, was created to help expedite the building
18 of these plants. And the recovery, of course, was to help the
19 expeditious building of the plants. And I guess I really want
20 to understand, when you say open ends, you are feeling --
21 you're concerned that the petition has open ends as far as
22 additional costs that we may not be recognizing at this time,
23 and that is why you are asking for a hearing?

24 **MR. McGLOTHLIN:** Yes. Either a hearing or, if not a
25 hearing, at least a definitive statement by the petitioner as

1 to the boundaries of what it's asking for.

2 **COMMISSIONER ARGENZIANO:** On preconstruction and
3 construction?

4 **MR. McGLOTHLIN:** On the extent to which, if the
5 petition is granted, the utility would have the authority to
6 charge to the capacity cost-recovery clause 100 percent of
7 items that typically would be treated as construction costs and
8 be entitled only to carrying-cost treatment provided by the
9 statute.

10 **COMMISSIONER ARGENZIANO:** Okay. So to be perfectly
11 clear what you are saying, is there more information that we
12 should be looking at regarding costs being put up front?

13 **MR. McGLOTHLIN:** Yes. And by way of illustration, in
14 the petition FPL alludes to three or four items, but says our
15 petition is not necessarily limited to those, and they use the
16 word et cetera to further make the point that there may be more
17 coming. And it seems to me that in terms of understanding the
18 impact of the decision, it would be incumbent on the Commission
19 to require the petitioner to either put the specifics in front
20 of the Commission or deny its petition.

21 **COMMISSIONER ARGENZIANO:** Thank you.

22 **CHAIRMAN CARTER:** Do you want to hear from Mr.
23 Anderson?

24 **COMMISSIONER ARGENZIANO:** Yes. Anybody who really
25 wants to respond to that, and the company may want to respond

1 to that, also.

2 **CHAIRMAN CARTER:** Mr. Anderson, we'll listen to the
3 parties and then we will come to you. Any other parties that
4 want to speak to Commissioner Argenziano's question?

5 **MR. TWOMEY:** Yes, Mr. Chairman, just briefly. Thank
6 you.

7 Commissioner Argenziano, to expand the point of your
8 question and Mr. McGlothlin's answer, yes, there needs to be
9 some kind of an awareness on everybody's part of what they are
10 asking in terms of dollars. The et cetera is scary. I mean,
11 many of us here are lawyers, and even people that aren't
12 lawyers have more common sense. And the et cetera is
13 dangerous, and the not include is dangerous. It would be one
14 thing, it would be an entirely different matter if FPL was in
15 here by this petition saying we want to recover 100 percent of
16 the cost next year of the \$16 million reservation fee earmarked
17 directly for the Japan Steel reservation for our pressure
18 vessel long-term fortune. You could get your hands on that.

19 We could argue about whether they should get 100
20 percent recovery as a preconstruction cost for what is clearly,
21 in my view and AARP's view, a portion of the plant that is
22 defined as construction at the heart of it. We could argue
23 about that, but at least we would know what kind of a cap they
24 were placing on the monetary demands to their customers.

25 And we don't have that because it is open-ended in

1 terms of what it wants. And, again, the precedent that we have
2 to face, although this is the largest utility in the state, we
3 have to face the precedent that you give them or don't give
4 them will be one that Progress Energy can use, as well. And so
5 it's an open-ended blank check kind of a deal. I like that
6 terminology. We don't like blank checks on our members' bills,
7 but it would be a blank check times two companies.

8 **COMMISSIONER ARGENZIANO:** Thank you.

9 **CHAIRMAN CARTER:** Mr. Anderson.

10 **MR. McWHIRTER:** I'd like to add just one --

11 **CHAIRMAN CARTER:** Mr. McWhirter.

12 **MR. McWHIRTER:** The Public Counsel and Mr. Twomey and
13 I agree that the statute enables the utility to collect
14 carrying costs on construction costs. We believe that's a
15 gracious plenty. And the reason we believe that is a gracious
16 plenty is because if they came in for a full rate case,
17 carrying cost is all they would get. So they're getting the
18 same thing they would get in a full rate case for construction
19 work in progress. And I think you ought to apply the Salvation
20 Army concept, and that is we are here to help the needy not the
21 greedy.

22 **CHAIRMAN CARTER:** Mr. Anderson, you're recognized.

23 **MR. ANDERSON:** Thank you, Chairman Carter.

24 Just very briefly. The words we're hearing from
25 counsel, I respectfully submit, are exactly the opposite of

1 what the legislature intended. What we are hearing is the idea
2 of piecemeal litigation of, you know, what individual costs are
3 going to be over the course of years. That is the opposite of
4 how we, as a state, can get this plant constructed.

5 The idea of a blank check is also incorrect. We have
6 an obligation of prudence, we have an obligation, pursuant to
7 your rules, to leave our books open at all times and our plans
8 open at all times for your staff to see, and we submit each
9 year all of those costs as we go.

10 So we are bounded by the close supervision of this
11 Commission, as we always are, and we take very seriously our
12 obligation to lay out as little money as reasonably possible as
13 we proceed down these paths.

14 And the last point is that the idea of the word et
15 cetera being scary, I just want to point out please consider
16 that point in the context I just raised of the Commission's
17 supervision. Also please look at the rule. Because it,
18 itself, "(h), cites selection costs and preconstruction costs
19 include, but are not limited to." So the use of the word et
20 cetera simply just reflects the language which is in the rule
21 itself. I'm happy to respond to any other questions, but those
22 are the points.

23 **CHAIRMAN CARTER:** Commissioner, let me come back to
24 you. I'm going to go to Commissioner McMurrian and then
25 Commissioner Skop, and then I'll come back.

1 Commissioner McMurrin, you're recognized.

2 **COMMISSIONER McMURRIAN:** Thank you. And it's going
3 to this same point that we are on, actually, too. In the rec
4 it quotes some of FPL's petition, and down near the bottom of
5 the quoted section on Page 2 it says that FPL expects that it
6 will have to make substantial advanced payments associated with
7 long-lead procurement items, and as some of the parties have
8 noted, that includes the reactor pressure vessel, steam
9 generator shell, et cetera.

10 And I wanted to ask Mr. Anderson, when we talk about
11 advanced payments, I want to make sure I understand that term.
12 Are we talking about some portion of the cost of perhaps the
13 reactor pressure vessel, or are we talking about the
14 possibility that we might be paying for the entire reactor
15 pressure vessel to make sure that the time frame for the
16 construction of the plant remains secure?

17 **MR. ANDERSON:** We're talking about reservation fee
18 payments.

19 **COMMISSIONER McMURRIAN:** Follow-up?

20 **CHAIRMAN CARTER:** You're recognized.

21 **COMMISSIONER McMURRIAN:** So you're talking about some
22 costs to basically hold your place to make sure you retain that
23 reactor pressure vessel.

24 **MR. ANDERSON:** That's a specific example that we have
25 all visited on. It is a live example, as you know, from the

1 nuclear plant case, but that is exactly the type of thing we
2 are talking about.

3 **COMMISSIONER McMURRIAN:** Okay. Thank you.

4 **CHAIRMAN CARTER:** Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

6 I guess a question, I guess I can either direct it to
7 Mr. McWhirter or Mr. Twomey, and then, like I said, I do have a
8 bunch to say on this issue. But the notion was mentioned, I
9 think, by Mr. Twomey of a blank check and the need to have like
10 an Excel spreadsheet for definitization of what we could expect
11 to see in terms of preconstruction cost or an itemization
12 thereof. You know, I can understand that, but I can also
13 understand that -- couldn't, or, in your opinion, could these
14 not be addressed on a case-by-case basis as they arise to the
15 extent that, you know, there is Commission supervision -- and
16 prudence determination, frankly, is king. If somebody tries to
17 pass off a cow, when it's in the duck area, then we might not
18 say that that's prudent. But if there is a good reason for
19 putting a cow in the duck area, maybe we adhere to what the
20 statute says. I just wanted to get your take on that.

21 **MR. TWOMEY:** Yes, sir, a good question, of course.

22 Let me be clear as to a foundational issue here, what
23 AARP is asking you to consider and conclude as well as Office
24 of Public Counsel and FIPUG. We want to get the decision right
25 from the get-go today, essentially, or after a hearing. And

1 the foundation of that is that we are saying that the
2 reservation fees, Commissioner McMurrian, are costs that are in
3 the language of your rule, the specifics of your rule, the
4 reservation costs to get in line with Japan Steel for the
5 reactor pressure vessel or the shell of the steam generator are
6 monies expended to construct the nuclear plant. Those are
7 monies used, expended for the construction of the nuclear
8 plant.

9 So, our hope is, fundamentally, is that you will say
10 those monies that relate to the nuclear power plant itself, and
11 you're as aware of these things as most of us, or more so, is
12 that the plant costs no matter when expended will be deemed to
13 be construction costs and will earn a fair return, that is
14 their AFUDC rate, as they are accrued each year that the plant
15 is under construction until such time as it goes into
16 commercial service. They will get a return on their
17 investment, just like if it was in rate base.

18 We're saying don't go for the argument, the company's
19 argument that these monies, just because they are expended in a
20 time period that's defined as preconstruction, makes them
21 preconstruction so that they get all 16 million, or 18 million,
22 or whatever they are going to come up with later.

23 So to the specifics of your question, Commissioner
24 Skop, if you decide today, the Commission decides today that
25 they can get any monies from their customers in full, not just

1 a carrying cost return, but any monies in full they spend on
2 reservation fees for this item or the other items that they
3 come up with, or any items, I would suggest to you, any items
4 that they choose to pay for in preconstruction period that are
5 related to the cost of the actual plant itself, they could then
6 come and say we are paying for it in the preconstruction
7 period, we deserve 100 percent recovery, not the AFUDC carrying
8 charge.

9 And by your decision, if you grant their petition
10 today, they will say you have to give us the money provided we
11 come in in this annual process and show that it's reasonable
12 and prudent. And they may be able to do that. And we will be
13 here watching them on that kind of thing, all of us will, and
14 you will, as well, but our point is that we don't think we
15 should have to argue about the prudence of construction cost
16 items being recovered dollar-for-dollar from the customers.

17 Does that answer your question?

18 **CHAIRMAN CARTER:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Yes.

20 And, Mr. Chair, as a follow up, you know, I
21 understand this. Simply it boils down to, I think, as a timing
22 issue, and I'll get into that when I have my discussion. But,
23 you know, on a case-by-case basis, subject to prudence, when
24 there is a very, very valid reason for doing so, would it not
25 be more -- and I do fully appreciate the intergenerational

1 inequity argument that can be made. But on a case-by-case
2 basis, if there is a substantial cost savings or need to do
3 something and you expense it versus capitalize it later,
4 wouldn't that result in a tremendous cost savings? Because if
5 you expense it, it's pay as you go, and you're not putting it
6 into rate base where you're earning a huge return on equity
7 year, after year, after year, after year. So in terms of total
8 cost of ownership, would you agree, or I think you would agree
9 that it may, in some instances, be more cost-effective in terms
10 of total cost of ownership of seeing this through to
11 completion?

12 **MR. TWOMEY:** Commissioner Skop, it might be.

13 But from our perspective, it ignores the point, or we
14 need to go back and revisit the fact that, as I've said, we're
15 all aware here, what the Legislature allowed in 2006 is a
16 substantial departure from traditional ratemaking. There is
17 already, forgetting the preconstruction costs, as this company
18 goes through and starts -- I mean, these plants are going to
19 be -- we don't know what they're going to be, they are going to
20 be 3 or \$4 billion a copy, maybe 6 or 7, we don't know, but
21 they are going to be hugely expensive.

22 As they pay their hundreds of millions or whatever it
23 is for the NRC Applications, as they have engineering costs,
24 legal fees, site certification, DEP applications, and that kind
25 of stuff, a lot of that stuff is going to be paid either

1 clearly as nondisputed preconstruction, or the items that
2 aren't and they put in their construction account, customers
3 are going to pay a return on every year in their current rates.
4 And that means that people like my parents, who some of you
5 still know, I think, from the hearings, who are in their 80s,
6 late 80s, they are going to be paying through their current
7 bills on the construction returns for plants that,
8 unfortunately, they will probably never see go into service and
9 take service for them.

10 So under the legislative -- the undeniable intent of
11 the 2006 legislation, Commissioner Skop, there is a tremendous
12 amount already of paying as you go intergenerational inequities
13 associated with it. And what we are saying here is that aside
14 from being, what we think, is inconsistent with the statute and
15 your rule, having this piece added and maybe others, as well,
16 is a bit too much of a good thing.

17 **COMMISSIONER SKOP:** And as a quick follow-up to
18 that --

19 **MR. McWHIRTER:** Can I add to that?

20 **COMMISSIONER SKOP:** Briefly.

21 **MR. McWHIRTER:** A long lead time is an item that is
22 of value, but it's also an item that can be resold. So if the
23 utility is entitled to get a return on a long lead item, I
24 would think that would give it adequate protection. And, also,
25 we don't want to have a lot of appearances before you to debate

1 these individual items that, for the most part, are coming in
2 under confidentiality agreements. By ruling against this
3 petition, you will eliminate a multiplicity of debates, and I
4 think that's something that the Commission should be aware of.

5 **COMMISSIONER SKOP:** Mr. McWhirter, can I cut you off
6 there? Because I am planning on addressing that, and I think
7 that is a point you raise. Because, again, I think -- I fully
8 appreciate the intergenerational inequity arguments, but I'm
9 tempering that with the total cost of ownership. And I think
10 that -- no one is going to make any more money. In frank, it's
11 a timing issue, and if you get paid as you go on some things
12 where there is prudence which provides adequate protection, the
13 total cost of ownership is cheaper. And the point I was trying
14 to make as a follow-up, and I will get in and out of this, and
15 then I have a whole bunch to say, but the point I was going
16 back Mr. Twomey is that when these proposed units come in line,
17 or future units, actually, I will probably be an AARP member
18 then. And part of my concern is that, you know, by everyone
19 maybe paying just a little bit more sooner rather than later,
20 again, if these costs -- some of the costs are fully
21 capitalized, that's a huge balloon. You're talking billions of
22 dollars.

23 So I guess what I'm looking at is that if everything
24 goes into the rate base, and it's this huge payment, rates are
25 going to go up substantially. I think Mr. McWhirter spoke to

1 that. I won't, because, again, that is a pending proceeding.
2 But, again, it will have, in some aspects, I think, a smoothing
3 affect on the total cost.

4 Now, I think that the argument is is it unfair to
5 burden people that may never see this in their lifetime? Well,
6 it's an argument. But, just briefly, and then we'll go in, and
7 like I say, I do have quite a bit to say.

8 **MR. TWOMEY:** Mr. Chairman, might I just briefly?

9 Commissioner Skop, you may be right on the
10 fundamental mathematics about the leveling effect, okay, of
11 paying as you go. And I have already tried to suggest to you
12 that that is already built into the legislative scheme, and
13 this is piling on, in our view. But you could carry --

14 **COMMISSIONER SKOP:** Let me stop you right there.

15 How is it -- because to me, and maybe I'm not
16 understanding something, maybe you can help me clarify it. But
17 if they expense it in a given year, there is no AFUDC, there is
18 no interest, you are done, it's like you bought your movie
19 ticket and you're going to Disney World -- I mean, you bought
20 your ticket and you're going to Disney World for the day, as
21 opposed to being year, after year, after year paying more, on
22 top of more, on top of more, kind of like compound interest.
23 So, to me, if you pay for something -- say I could buy
24 something. Say I could buy that duck today.

25 **MR. TWOMEY:** You can.

1 **COMMISSIONER SKOP:** Say I could buy that duck today
2 for five dollars, but ten years from now that duck would cost
3 me ten dollars. So if I can make a good argument to pay you
4 five dollars today for that duck, and mothball the duck, and
5 hopefully he will be fruitful and multiply, but maybe not, then
6 I'm effectively saving money, because the ten dollars that I
7 would otherwise pay for the duck later going into the rate base
8 would be, you know, maybe 100 once you are done paying for it.

9 So, again, I think that my point turns into being is
10 that, unless I'm missing something, you say that it is a
11 windfall already. Well, if you expense something, you're done
12 with it. You have paid for it, they can't recover on it on a
13 forward-going basis. You're done, it's expensed. Now, if you
14 hold it with the anticipation of putting it into the rate base
15 later, your revenue requirements are certainly going to go up
16 because you will have a huge input into your rate base that
17 you're paying a return on equity on.

18 So, again, I'm not advocating for anything, but I
19 hope that when I get into my discussion of the things I want to
20 discuss, after we get out of our question period, I think it
21 will become apparent that in some instances on a very limited
22 case-by-case basis there may be tremendous cost savings in
23 doing just what the statute and the rule reflects. Because,
24 again, if you pay for it once, it's pay as you go, you're over
25 and done. I'm not advocating everything, or abuse of that,

1 because prudence is king.

2 If you are asking me to buy the duck today, and you
3 don't need the duck until ten years from now, I'm not going to
4 let you buy the duck. But if there is a good reason for buying
5 the duck, and you need to sit on the duck for all the right
6 reasons, because you're not going to be able to buy the duck,
7 or the duck is going to cost 100 times more than it would
8 today, then maybe there are reasons on a case-by-case basis
9 where you would consider absorbing that expense so that you
10 don't have to pay ten times or a windfall more on that later.

11 **MR. McGLOTHLIN:** Commissioner, could I speak to that
12 for a second?

13 **COMMISSIONER SKOP:** Briefly, yes.

14 **MR. McGLOTHLIN:** Three quick items. With respect to
15 the mentioning of the prudence test, FPL has said in its
16 petition, yes, our request is somewhat unusual, and there may
17 be more of them, but that is okay because the Commission always
18 looks to prudence. We have to demonstrate prudence before we
19 can have our way.

20 I will make the point that what they are putting in
21 front of the Commission is nothing that isn't already there.
22 The prudence test is what they would have to pass to be
23 entitled to use the carrying cost alternative that the
24 legislature and the Commission gave them by statute and rule.
25 So that adds nothing in terms of the regulatory approach. If

1 it is construction costs, it's the carrying costs test and not
2 the 100 percent recovery, and prudence governs in either
3 scenario.

4 With respect to the idea of savings, first, I
5 mentioned in OPC's pleading that with respect to the 100
6 percent recovery to the extent the IRS sees that as revenue
7 that carries with it an income tax obligation, that is an
8 aspect of the smoothing that FPL has ignored, and I haven't
9 seen it addressed in the staff, either. And that is an offset
10 to whatever savings you see there.

11 In addition to that, this goes to the overall
12 overriding subject of the legislative intent that staff counsel
13 addressed and that counsel for FPL addressed. I think we need
14 to remember that while the legislature designed a statute to
15 encourage investment in nuclear facilities, it had different
16 approaches for construction costs and other things.

17 And to the extent that it requires construction costs
18 to go into rate base and to be recovered over the life of the
19 assets, that indicates to me a legislative intent to not
20 completely abandon the fairness doctrine that Mr. McWhirter
21 addressed in his comments. It says, yes, we are going to
22 provide you an incentive, but it is not unlimited, and we are
23 drawing the line here, preconstruction versus construction.
24 And when the rule implementing that statute defines
25 construction cost to include permanent structures, equipment,

1 and systems, and when staff agrees that these heavy forgings
2 fall within that category, to argue that they somehow lose that
3 character by virtue of a timing difference fights against the
4 direction of the rule.

5 **COMMISSIONER SKOP:** Yes, sir. And let me cut you off
6 there. And, again, I wish Mr. Devlin was here today, because,
7 again, I have vetted this thoroughly through staff. But I do
8 appreciate that, and I will discuss that openly when we get
9 into our discussion period, because I think that that is a
10 point. You know, those points are appreciated, and I have
11 considered them in trying to vet through this.

12 **CHAIRMAN CARTER:** Thank you, Commissioner.

13 Before I recognize Commissioner Argenziano, Mr.
14 Twomey, let me give you some words of comfort there. You are
15 talking about your parents being 80 years old; I was watching
16 something on TV the other day; do you know that there is over
17 100,000 people in the world that are at least 100 years old?
18 So, take heart. At that, Commissioners, we are going to take a
19 quick --

20 Commissioner Argenziano.

21 **COMMISSIONER ARGENZIANO:** I just wanted to tell you, I
22 saw that, too, and the places where they are over 100 and
23 higher than that, one place is Sardinia, Italy, and they
24 attribute it to the wine because it has ten times more
25 antioxidants in it. So when you are there buying your red

1 wine, make sure it is from Sardinia.

2 **CHAIRMAN CARTER:** So there is hope after all.

3 Commissioners, we are going to take a ten-minute break.

4 (Recess.)

5 **CHAIRMAN CARTER:** We are back on the record, and I'm

6 glad that we had that break, because it just dawned on me, I

7 had completely forgotten all about lunch. I didn't even tell

8 anybody about lunch plans. So, sorry. When you're drinking

9 this good old water here, you just forget all about lunch.

10 But what my plans are, Commissioners, for us in terms

11 of the day, so we can all plan, is that we are going to do

12 about another ten minutes. We are going to recognize

13 Commissioner Argenziano for questioning, and then Commissioner

14 Skop, and then we will break for lunch. After those questions

15 we will take maybe an hour for lunch and come back from there.

16 So, I will say more about that in a minute, but right now let's

17 proceed.

18 Commissioner Argenziano, you are recognized.

19 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chair.

20 I am getting a little worried because the ducks are

21 multiplying over there. There's another duck that has

22 appeared.

23 I guess I have a question for FPL. And, you know, I

24 have been -- the whole Commission has been supportive of the

25 plan. I certainly have been. My question goes to the rule and

1 the statute. And you mentioned before the words but are not
2 limited, and you said that was the same thing as -- basically
3 said that was the same thing as et cetera, and I just don't see
4 it as the same. I think but not limited, and then you
5 understand that again, you know, the rule doesn't say you don't
6 have to show what you are not limited to. You have an idea of
7 what you are not limited to. This cost, the cost of that, so
8 on and so on. Et cetera says to me that it could be whatever
9 and it is not known. So the only problem I have with that is
10 the not known and it could be writing a blank check, and I
11 wanted your assessment of the two.

12 **MR. ANDERSON:** I think it is helpful to focus on the
13 exact question that we asked to be answered in the proceeding
14 which is that if the Commission grants FPL's petition to
15 determine the need, which you did, are advanced payments made
16 prior to the completion of site clearing work, that is the end
17 of the construction -- I'm sorry, preconstruction period,
18 properly characterized preconstruction costs to be recovered
19 pursuant to the mechanism.

20 So, you know, we have focused pretty much upon
21 reading, as does your staff, both (g) and (h) in the rule
22 definition, which says that the costs include, but are not
23 limited to, and then lists a lot of different things. In our
24 petition we mentioned things like the shell, and the forging,
25 and the this and the that. And we are being as forthright as

1 we can in terms of what we know about.

2 **COMMISSIONER ARGENZIANO:** I'm sorry, and I need to
3 cut you off. And please continue, but it's the et cetera that
4 is not the same as not limited to.

5 **MR. ANDERSON:** I think they are very much similar.
6 Et cetera means other things of this kind. Not limited to --
7 again, the core point here is that the preconstruction costs in
8 our view are defined by a time, but are not limited to or et
9 cetera. If the cost is incurring in this time and it is
10 prudent, those are preconstruction costs. That's what the rule
11 provides. And what we are focusing on is that subset of
12 preconstruction costs which are advanced payments.

13 **COMMISSIONER ARGENZIANO:** Well, then just a follow-up
14 question very quickly. If you feel that et cetera is the same
15 as not limited to, why don't you just remove et cetera and go
16 with not limited to as specified in the rule and the statute?
17 That's why I'm having a hard time. Et cetera to me says it
18 could be whatever and not known.

19 **MR. ANDERSON:** In our petition, in my opinion, the
20 words but are not limited to could have been just as well. It
21 was pure drafting choice of shorter.

22 **MR. McGLOTHLIN:** Commissioner, may I point out
23 something in response to that? I believe I heard counsel for
24 FPL say that as the rule operates if a cost is prudent and is
25 incurred prior to the completion of site clearing it qualifies

1 for preconstruction. And if that's correct, that expands
2 enormously the category of costs which, according to their
3 proposition, would qualify for the 100 percent recovery. It is
4 not limited to any advanced payments of heavy forgings, it is
5 anything that comes before a point in time and is prudent. And
6 that illustrates the open-ended nature of the ruling that they
7 are asking you to make.

8 **COMMISSIONER ARGENZIANO:** Thank you.

9 **CHAIRMAN CARTER:** Thank you, Commissioner Argenziano.
10 Commission Skop, you're recognized.

11 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

12 Like I said, I had quite a bit to say about this, so,
13 like I say, I will try it make it brief and then we can break
14 for lunch.

15 I guess for me, I saw this issue emerging about
16 almost a year ago, the tension between the rule and the
17 statute. And I think that some of that has been recently
18 reflected in the direct testimony during the need determination
19 by Kim Ousdahl, and hopefully I said that name correctly, on
20 Page 4 where they outline the site selection costs,
21 preconstruction costs, construction costs, and then the gray
22 area within what is defined as preconstruction costs.

23 And with respect to Mr. McGlothlin, Mr. Twomey, and
24 Mr. McWhirter, I guess sometimes we can agree to disagree, and
25 hopefully at least some of my comments that maybe we can

1 respect and understand. Specifically, OPC in staff's
2 recommendation emphasizes the nature of the costs, and I think
3 historically that has been accurate, but I think times have
4 changed to some extent. And what I would like to do is to
5 briefly, you know, go through what I wanted to say starting
6 with the staff recommendation.

7 In principle I concur with the staff recommendation,
8 but also I think it's necessary to add further clarity within
9 any declaratory statement that this Commission issues on this
10 important issue before us today. And what I would note, at
11 least from my reading of the statute, the rule, the staff
12 recommendation, and my sole legal analysis that the advanced
13 payments are not limited to the example provided within the
14 staff recommendation. I can articulate some other examples
15 that I could logically think of. But, nevertheless,
16 preconstruction is defined in the rule and it is a bright line
17 based on a date rather than the nature or character of the
18 expense. I mean, that's just a plain reading of the statute
19 and the rule.

20 Third, the petitioners seek to have the definitions
21 and provision of the Rule (2)(i), construction costs, limit the
22 definition in (2)(g), which is preconstruction costs, and that
23 gets into the nature and character of the expense which the
24 definition of preconstruction doesn't anticipate.

25 But, fourth, regarding the staff recommendation, you

1 know, the rule may not fully appreciate the scope of the
2 statute, and when there is tension it has got to yield to the
3 controlling statute. So I think that this discussion of the
4 rule implicates the need to consider the statute. And just
5 applying the statutory construction analysis that I took a look
6 at on my own, looking at the statute what does it tell us.
7 Well, I think there are three takeaways from that. First and
8 foremost, it provides for cost-recovery irrespective of plant
9 completion. That's the law of the state of Florida right now.
10 Like it or not, that is what it is. So they are going to get
11 cost-recovery.

12 Secondly, there is a bright line rule for
13 preconstruction costs. It's based on a date and time rather
14 than the nature or character of the expense.

15 And, third, the statute provides, arguably, a new
16 paradigm for cost-recovery as opposed to the traditional
17 notions of viewing capital expenditures. Simply put, the
18 preconstruction is more of a pay-as-you-go method where you get
19 complete -- you request recovery, not saying recovery will be
20 approved, but you request recovery, and if you get recovery
21 based on the prudence and everything before the Commission,
22 it's paid for. You're done. You're not accruing interest,
23 you're not accruing things that will later be put in the rate
24 base, which there's a return on equity and shortly the total
25 cost of ownerships are arguably much cheaper. And that's part

1 of the task of this Commission is to ensure that affordable --
2 and anything I can do to take a look at where there is
3 opportunity to minimize costs, tempering that with the
4 intergenerational inequities, I think I have a duty and I think
5 the Commission does to do, also.

6 So, basically, knowing what the statute tells us, at
7 least in my eyes, and what the staff recommendation tells us
8 and the rule, I think really that this is much adieu about
9 nothing. This is simply a timing issue of when you are going
10 to get paid. You know, arguments can be made by front-loading
11 some expenses when they are prudent to do so could result in
12 reduced total cost of ownership. And I think that, again, this
13 is an expense versus capitalization argument. Certainly if you
14 put a lot of -- billions and billions of dollars into the rate
15 base, the revenue requirement is going to be substantial. So
16 front loading could serve to smooth the curve instead of having
17 the peak when you dump it into rate base.

18 I think counsel for AARP and OPC, as well as Mr.
19 McWhirter have raised concerns about adequate protection in a
20 blank check. I think adequate protection exists. We have
21 prudence determination, okay. If they bring something an in
22 accelerated cost proceeding under preconstruction costs and we
23 don't agree with it, they don't recover it. It goes in the
24 rate base. That is a default. The rate base is a default.
25 But putting it into rate base is more expensive to the

1 consumers at the end of the day.

2 Again, by front loading it and recovering expensing,
3 you know, you do save that interest, the carrying costs, the
4 AFUDC, the return on equity that you would incur later. So,
5 again, I think it is a balancing. I'm not saying it is a blank
6 check or open-ended. I think it is very limited on a
7 case-by-case basis.

8 Again, prudence is the underlying check and balance
9 power of this Commission to prevent any abuse of anything that
10 is brought forth that we don't agree with. And I'll talk more
11 about that in a second. And, again, I'm trying to be brief,
12 and I think probably I've got about two or three more minutes
13 and maybe we can adjourn for lunch.

14 **CHAIRMAN CARTER:** Okay.

15 **COMMISSIONER SKOP:** I want to give some examples,
16 though. And, again, I think that this is where perhaps the
17 staff recommendation didn't consider -- you know, it gave one
18 example in terms of the advanced forging reservation payment,
19 and we ought to already address that subsequently after our
20 determination of need. And, so to me, we know this Commission
21 has blessed that for what I feel to be the right reasons.

22 Another example of work and material, and, again,
23 this gets back to when does something become a capital item,
24 and this could logically be in the context of advanced
25 payments. How components work. And, again, this is from my

1 own personal knowledge of seeing these built. You start with
2 the forging. Or actually you start with a raw block of
3 material, then you make the forging, then maybe you do some
4 initial machining, then you do some heat treatment, initial
5 heat treatment. Then maybe you take it out and do some
6 intermediate machining, some final machining, maybe some more
7 heat treatment, welding. But, nevertheless, you start with a
8 raw block of material, and it becomes a work in progress.

9 And what I have seen, at least, in my many years of
10 engineering practice and procurement of large scale items is
11 that at certain points in the line as you are paying for the
12 material, you have the work in progress that it is assuming its
13 final form. You have performance or progress payments to the
14 vendor at certain points of completion. Now, at that point you
15 can't identify what the material would be. I mean, you know
16 that ultimately it may come into some certain form, but at what
17 point that character and nature changes is up to debate.
18 Again, that is a fine line.

19 But if there are things that fall within
20 preconstruction arguably that also is based on a bright line of
21 a date, not the character or nature of what is being built.
22 Now, traditional notions have been capital expenditures for
23 capital equipment or capital expenditures. Again, I think that
24 the statute provides a new paradigm for how you look at that.
25 And, again, it's not a windfall, because they are going to get

1 cost-recovery under the statute irrespective if they never
2 build the plant. So the issue is, it's a timing issue, and I
3 think that that is a more logical way to look it at. It is
4 simply all about the timing. It is not about more money. In
5 fact, front loading, although it may cost consumers today a
6 little bit more money in their bill, will reduce the total cost
7 of ownership of this plant, because it won't be exposed to the
8 AFUDC, nor will it be exposed to return on equity that it would
9 incur in the rate base. So, it is like a compound interest if
10 you stick it in the rate base versus if you just pay for the
11 pin and you are done with it, and you put the pin in holding.

12 Finally, another third example would be something I
13 would characterize as others. And, again, a case-by-case
14 basis. You could arguably look at a piece of what would
15 normally be capital equipment and have a substantial reason for
16 buying that now, whether it be cost escalation risk, whether it
17 be not being able to procure it at the time, whether it be we
18 are in the midst of what people would call a recession and you
19 can get a much better deal now because people are hungry for
20 business. But, arguably I could see taking it to the extreme.
21 And, again, the burden is on the person proposing seeking
22 cost-recovery to prove that things were prudent, and that is a
23 big burden to go.

24 But, again, the open-mindedness of the statute seems
25 to imply that that is allowable. But if you could buy a

1 component today that would cost you \$100 million versus that
2 same component ten years from now would cost you \$500 million,
3 and that component is needed for the plant, and you can make a
4 good business case on why that would save the consumer money,
5 you are guaranteed cost-recovery anyway under the statute, it
6 is just a matter of timing. And arguably it's cheaper to buy
7 it today at \$100 million and not bear the AFUDC and all the
8 other things that would incur if it went into rate base than it
9 would be to buy at \$500 million plus all the return on equity
10 plus the AFUDC of carrying it for those ten years, or the time
11 in place.

12 So to me there is somewhat of a benefit to being a
13 little bit more openminded in terms of a new paradigm of how we
14 address things versus the traditional rigid notion of a capital
15 expenditure is a capital expenditure is a capital expenditure.
16 And what I mean by this is that simply put nuclear
17 cost-recovery is going to be a miss -- I always do that.
18 Nuclear cost recovery will be a risk management exercise for
19 the IOUs. And in doing that, they're going to seek to balance
20 the long-term returns for their shareholders, which would be,
21 i.e., additions to the rate base subject to prudence
22 determination at a later date, i.e., maybe they do something
23 and it takes a haircut, versus the certainty of near-term cost
24 recovery, which would be the prudence determinations and PPCR.
25 So it is kind analogous to the capital structure.

1 It's like in the capital structure of a corporation
2 you have your debt to equity and you have got skin in the game.
3 Well, here I can't see anyone having the risk tolerance to
4 throw everything into capital and into the rate base later.
5 So, I think you will see that balancing, and if that balancing
6 provides savings in terms of total cost to completion, total
7 cost to ownership for the ratepayers, maybe that's not a bad
8 thing. I understand the intergenerational inequities, but
9 perhaps front loading is not a bad thing.

10 And I know there has been a lot of opposition to
11 that, but I don't think anyone in this room can deny there's
12 cost savings associated with that. I don't think anyone in
13 this room could deny that under the statute they are guaranteed
14 cost-recovery. So, again, it boils down to a timing issue and
15 if you on a case-by-case basis when such things are prudent and
16 they can save money by not having to put them in the rate base,
17 perhaps that warrants a more critical look by this Commission.
18 And that's what I would advocate for in terms of trying to
19 harmonize the tension between the rule, the statute, the
20 requests that this Commission can expect to receive from the
21 IOUs.

22 Again, not a blank check. Mr. Twomey, I'm very
23 sensitive to that. Need to constrain costs and certainly no
24 way are all expenses going to be front-loaded. That's just
25 not -- that's not prudent. But there are cases, limited cases

1 on a case-by-case basis that I could envision, and hopefully
2 maybe my colleagues could where such requests provided with the
3 proper business case to show the cost savings, provided with
4 the knowledge that paying for it today in full and maybe
5 mothballing it or paying for it in progress payments along the
6 line is effectively cheaper than expensing it -- I mean, than
7 capitalizing it and putting it in the rate base where it just
8 balloons and we will be paying for it long after I'm off this
9 earth.

10 So I would just ask that the parties to kind of
11 consider that, and also my colleagues. And I think I have
12 taken enough time, but I think I have tried to hit on the issue
13 that, you know, that the IOUs are going to risk averse, and
14 this nuclear cost-recovery is going to be a risk management
15 exercise, and I don't think that they are going to put
16 everything into capital. I think on some things where it's
17 prudent they are going to want to shed that risk and get
18 immediate prudency determination and payment.

19 But, again, if that's saving the consumers money in
20 the long-run, is that necessarily a bad thing? And I think
21 those are the trade-offs under the new paradigm and the
22 untested statute and rule that the Commission needs to properly
23 consider. Because I don't see it is a as windfall, because,
24 again, the statute provides clearly they are getting paid. The
25 only thing is do you put money at risk by capitalizing it

1 subject to prudency determination at a later date versus
2 seeking to get that recovery sooner. And I think that there
3 are cost/benefit analysis associated with that, but the burden
4 is clearly on the utilities subject to the scrutiny by this
5 Commission and subject to scrutiny by the members of AARP, Mr.
6 McWhirter, and OPC to make sure we are doing the right thing.
7 But I think that open-mindedness under the new paradigm of the
8 statute is, perhaps, a good thing.

9 And I have probably said enough, but, you know,
10 again, I saw this issue emerging almost a year ago, and I knew
11 it would come to head sooner rather than later. But it is an
12 important issue that we need to tee up not only as a
13 Commission, but through the stakeholders and the utilities to
14 ensure that we get the right result. And I think I have said
15 all I need to say. Thank you.

16 **CHAIRMAN CARTER:** Thank you, Commissioner.

17 I think that, like you were talking, about timing,
18 and timing is everything, and so I think it is time to take a
19 pause for the cause.

20 So, Commissioners, we are on break and we will come
21 back at 12 -- excuse me, let's try that again. Let's come back
22 at 1:45. All right. We are on recess.

23 (Lunch recess.)

24 **CHAIRMAN CARTER:** We are back on the record. And
25 last time we left, Commissioner Skop was making a couple of

1 comments.

2 Commissioner, to kind of kick us off here I'll let
3 you finish the comments that you were making. Commissioner
4 Skop, you're recognized, sir.

5 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. Again,
6 I just wanted to briefly conclude in summation I support
7 approval of staff recommendation and request only that
8 additional language be added to the order reflecting that the
9 Commission will consider requests for preconstruction cost
10 recovery treatment on a case-by-case basis. Thank you.

11 **CHAIRMAN EDGAR:** Mr. Chairman. I'm sorry. I did not
12 understand that. Could you say that one more time?

13 **CHAIRMAN CARTER:** You look like I feel. Let's try
14 this again. Commissioner.

15 **COMMISSIONER EDGAR:** I just -- I am so sorry.

16 **COMMISSIONER SKOP:** Thank you. Let me try and
17 clarify this.

18 I support approval of the staff recommendation on
19 this limited issue. But also based on my comments, I do think
20 that on a forward-going basis with respect to preconstruction
21 cost recovery treatment, that needs to be assessed by the
22 Commission on a case-by-case basis, and that's consistent with
23 the staff rec. But, again, I do think that the question
24 presented to the Commission regarding advanced payments is a
25 broad question and I think it's been somewhat narrowly

1 tailored. I just want to reserve the fact that that's a
2 question as to what, what advanced payments encompass, so.

3 **CHAIRMAN CARTER:** Commissioners, do you mind if I
4 just kind of take a moment? Let me get myself together here.
5 Mr. Cooke, I just kind of want some guidance from you
6 because -- if I misread it, please help me, but I was under the
7 impression that that was encompassed within the confines of
8 this. Is that right, or did I miss something?

9 **MR. COOKE:** I think that what Commissioner Skop is
10 moving for is consistent with staff recommendation. I think he
11 wanted to make it clear, listening to his prior conversation on
12 this, that there may be other types of payments that fit within
13 what staff's recommendation is. In other words, we focused on
14 long-lead advance payments, and Commissioner Skop gave some
15 other examples of types of payments that may well be consistent
16 with what staff's recommendation is.

17 We're doing a declaratory statement, so we are
18 dealing with the facts that were presented to us. That doesn't
19 mean that we're precluding other things down the road that may
20 fall within this same framework. And I think --

21 **CHAIRMAN CARTER:** Commissioner Argenziano.

22 **COMMISSIONER ARGENZIANO:** But, Mr. Cooke, if, if we
23 went with the declaratory statement today, does that then tie
24 our hands on the long-lead procurements? Should they be given,
25 you know, accelerated cost recovery on every one that comes

1 before us if we voted for the declaratory statement today
2 rather than by a case-by-case?

3 **MR. COOKE:** That's not my interpretation of our staff
4 recommendation. We in this case looked at long-lead payments,
5 advanced payments that are necessary for queuing purposes and
6 that's what this declaratory statement is geared to. Yeah.

7 **COMMISSIONER ARGENZIANO:** I don't --

8 **MR. BELLAK:** Commissioner Argenziano, I'd like to
9 address what you're asking. I think that it should be
10 clarified that what FPL is seeking in this declaratory
11 statement, as I understand it, is that they want to make sure
12 that they can ask. So we're not granting anything, long-lead
13 or anything else.

14 **COMMISSIONER ARGENZIANO:** Well, Mr. Chair.

15 **CHAIRMAN CARTER:** Commissioner Argenziano.

16 **COMMISSIONER ARGENZIANO:** I was under the impression
17 if you have a declaratory judgment, then you have basically --
18 if you're not being, I guess, specific about what they could be
19 given accelerated costs to on long-lead procurement items, then
20 there could be things that come down -- basically what I see
21 today, and I don't know why, but I don't -- I think that if we
22 passed, if we voted yes on the declaratory judgment, we are
23 basically saying that that ties our hands and that anything you
24 come with down the line basically for that, for those purposes
25 on the accelerated cost recovery for those long-term, long-lead

1 procurements are then, are then a given, you can't look at them
2 case by case.

3 **MR. BELLAK:** Well, this is case by case, and there
4 are a few different questions subsumed in your statement.

5 **COMMISSIONER ARGENZIANO:** Right. What is case by
6 case? I'm talking about the declaratory judgment.

7 **MR. BELLAK:** Right. This is not a declaratory
8 judgment. It's a declaratory statement.

9 **COMMISSIONER ARGENZIANO:** Statement. I'm sorry.
10 Statement.

11 **MR. BELLAK:** And all the declaratory statement does
12 is clarify some legal categories. What it says is that if they
13 come before the Commission -- remember Mr. Twomey mentioned if
14 this, he said if this were a particular item and they were
15 asking for treatment of that particular item, he could get his
16 hands around that.

17 What FPL is seeking in the declaratory statement is
18 they want to make sure that if they ask for one of those items,
19 they won't be met with the counter position by the Commission
20 that, well, we wish we could consider this but actually it's in
21 a different category and legally it doesn't fit within the
22 rule. That's all they're asking. And if you issue the
23 declaratory statement, what you're saying is we won't foreclose
24 you from making your request as to one of those particular
25 items because it's in the wrong legal category. But we're not

1 saying that if you do ask, that it will be granted because we
2 don't know whether any particular item is going to be prudent
3 yet. That's all going to be reviewed on a case-by-case basis.

4 **CHAIRMAN CARTER:** Commissioner Argenziano.

5 **COMMISSIONER ARGENZIANO:** I understand the prudence.
6 Back up there. But I'm not sure -- and maybe this will give
7 you a better understanding of what I'm thinking and maybe I
8 just can't articulate it well. I'm not sure that the rule
9 didn't expand the statute and what is -- et cetera to me is,
10 like I said before, that doesn't, I don't, I don't know what et
11 cetera means. And if you tell me that you're going to build
12 maintenance sheds, things that are a preconstruction cost to
13 facilitate the building of the plant itself, which I am in
14 favor of, but those type of things I understand is
15 preconstruction and I don't want to lose the ability to go down
16 the line and look at it case by case. And you're telling me
17 maybe for prudence, but if you lump it in into something that I
18 don't think the statute really intended, or maybe it did, I'm
19 not sure -- and I guess maybe asking legal staff and then maybe
20 even OPC and the company if, if -- I guess we'll go back. I
21 think maybe the question should be does the rule expand the
22 statute?

23 **MR. BELLAK:** Right. Well, the, the, that's an issue.
24 That's one of many issues. You're raising a lot of issues.

25 **COMMISSIONER ARGENZIANO:** I know.

1 **MR. BELLAK:** Let me see if I can go through them one
2 at a time.

3 We don't think that it expands the statute for this
4 reason, and this takes us back to the ejusdem generis argument
5 that Mr. McWhirter made.

6 What you're talking about is a payment that's
7 necessary as a prerequisite for any construction to happen at
8 all. If they can't get in the queue, then they can't construct
9 anything. So in that sense we analyzed those queuing costs,
10 the expense to get in the line as a prerequisite to
11 construction and therefore a preconstruction cost. So we're
12 not expanding -- we're not pretending that this is
13 construction, but it doesn't matter if we expand the statute or
14 not. We're saying we've analyzed this. It looks like a
15 hybrid. It has some qualities of construction-related costs in
16 it. Nobody is denying that. But it also is a prerequisite to
17 construction because if they don't get in the queue, there is
18 no construction. So we're analyzing it as preconstruction.

19 **COMMISSIONER ARGENZIANO:** Now just because I just
20 have to go there.

21 **CHAIRMAN CARTER:** Commissioner.

22 **COMMISSIONER ARGENZIANO:** I understand, and I'm
23 trying desperately to understand really, excuse me,
24 preconstruction. To me preconstruction means what it says,
25 preconstruction, not prepayment of something. And I see

1 there's two different things. That the forging, for instance,
2 is not going to be used or even on site for many, many years,
3 so I'm not sure that's preconstruction as the statute would
4 indicate. I think the preconstruction is preparing the site,
5 doing things to facilitate the construction of the plant. So
6 it may be just in our differing interpretations of
7 preconstruction.

8 **MR. COOKE:** Commissioner, can I take one quick stab
9 at the statute, which is the statute defines preconstruction
10 based on time alone. And then it directed us as a Commission
11 to figure out alternative mechanisms for recovery of any type
12 of cost that is associated with the nuclear plant. And cost as
13 defined in the statute talks about capital costs, et cetera.
14 So what we were faced with in the rulemaking was really trying
15 to find appropriate mechanisms to recover cost. But I don't
16 think that our rulemaking expands on or is broader than the
17 statute. If anything, we tended to narrow and we tended to
18 look at creating mechanisms for appropriate cost recovery.

19 **COMMISSIONER ARGENZIANO:** But to that point, I looked
20 at it that way too and now I'm seeing it both ways. It could
21 be looked at the other way of saying just what I said before,
22 that the forging is more of a prepayment than a, than a
23 construction. It's not the preparing of a site, it's not those
24 costs. So if you look at it the other way, that it's not
25 really going to be utilized for ten years or even it's just

1 something that has to be ordered up-front, maybe then that
2 changes the definition. Because if you read the statute, you
3 know, it basically says the costs incurred in the siting, you
4 know, licensing, construction and all that. So I'm not sure
5 and --

6 **MR. COOKE:** I think that's the rule. If you look at
7 the statute, the definition of preconstruction is --

8 **COMMISSIONER ARGENZIANO:** I'm reading the statute.

9 **MR. COOKE:** Okay. Well, my reading of it is that
10 period of time after the site has been selected through and
11 including the date utility completes site clearing work.

12 **COMMISSIONER ARGENZIANO:** But if I can, where does
13 that get you to though that anything is included?

14 **MR. COOKE:** I think it is a timing issue. We were
15 grappling with the timing of the preconstruction.

16 **COMMISSIONER ARGENZIANO:** But the timing of the
17 preconstruction, if you consider the forging a preconstruction
18 item -- just having all kinds of problems with this one. I
19 understand what you're saying because that's the way I
20 originally looked at it.

21 **MR. COOKE:** Right. I hate to go back to the, to the
22 animal analogies, but I think we saw the queuing cost as being
23 neither a duck nor a cow. It was in essence a hybrid. And the
24 intent of the statute was to find a mechanism to recover cost
25 in a way that enables a nuclear plant, which is going to be

1 difficult to construct because of risk management purposes, to
2 be facilitated. And in this case in our, in our rule our
3 definition of preconstruction has both a time element to it and
4 a type element to it. And we believe that these types of
5 costs, the queuing costs, it is appropriate to interpret our
6 rule as allowing recovery through the cost recovery mechanism
7 for preconstruction costs. It is consistent with the statute.

8 **COMMISSIONER ARGENZIANO:** And why do you need a
9 declaratory statement if they can recover anyway? Obviously
10 FP&L can recover those costs anyway.

11 **MR. COOKE:** Well, they're asking if they can recover
12 it through the capacity clause, through the clause mechanism.
13 In other words, the kind of discussion that we've had earlier
14 today, whether it's going to be put off into capital costs that
15 are recovered in rate base with only getting carrying costs. I
16 mean, they're -- I think Commissioner Skop really spent some
17 good attention on this. They're going to recover these costs
18 one way or the other.

19 **COMMISSIONER ARGENZIANO:** Right. Right. And I'm not
20 saying that -- Commissioner Skop, you know, has, Commissioner
21 Skop has his expertise here and he definitely brought out some
22 points. And, of course, while saving today is a good thing,
23 I'm not always sure that, I'm not sure of certain things that
24 I'm trying to get answers to. So maybe we can, we can go here
25 and see if I can get some answers to that. It looks like Mr.

1 Twomey --

2 **CHAIRMAN CARTER:** Mr. Twomey.

3 **MR. TWOMEY:** Yes, sir, Mr. Chairman. Thank you. And
4 very briefly to the, one of the initial questions I think
5 Commissioner Argenziano asked staff, and it's a critically
6 important one in my view, and that is what -- if you, if you
7 approve this petition for a declaratory statement, what do they
8 get? And I would commend to you, Commissioners, that we need
9 to look what the question is they asked you to answer and not
10 pretend to understand what they want. It might be a different
11 matter entirely. And AARP would say it would still be wrong
12 pursuant to the rule if they were only asking to recover the
13 \$16 million or so associated with the long-lead determinations,
14 the reservation charge for the reactor vessel.

15 But I would commend to you just very briefly on Page
16 6 of their petition, Paragraph 16, and let me just read. "In
17 light of the foregoing progress of this petition, the proposed
18 question to be answered by the Commission in this petition for
19 declaratory statement is if the Commission grants Florida Power
20 & Light Company's petition to determine the need of the
21 proposed Turkey Point Units 6 and 7," which you've done now,
22 "are advanced payments made prior to the completion of site
23 clearing work properly characterized as preconstruction costs,"
24 quote unquote, "to be recovered pursuant to the mechanism
25 provided in Rule 25-6.0423?" Which, of course, as you recall

1 means if they are, they get 100 percent almost immediately, not
2 a carrying charge on. So if you go to the question, they're
3 not asking that your answer be limited to, to reactor vessel
4 reservation charges and that kind of thing. They're saying in
5 the paragraph below in the wherefore, they want you to declare
6 that advanced payments made prior to the completion of the site
7 clearing work are preconstruction costs as defined by the rule.
8 Which would mean if you grant that, that anything arguably, the
9 legal answer would be anything they choose to pay for prior to
10 the completion of the site completion work would be a
11 preconstruction cost defined by the rule and would be eligible,
12 be mandated that you give them 100 percent recovery under the
13 preconstruction cost language.

14 So I just, I want to be cautious. We, you know, we
15 have our disagreement that -- our thing is the, you know, look
16 at the character of the cost and they say the time. And your
17 staff has agreed under this hybrid deal, look at the timing of
18 when they do it. We have a clear disagreement there. We're
19 saying the character of, not the timing. But, but know what
20 you're asking -- know what they're asking you to answer before
21 you give them an answer and think that it's only one specific
22 charge. They're asking for a license.

23 **CHAIRMAN CARTER:** Let me do this, Commissioners. I'm
24 going to give Mr. Anderson an opportunity to respond. Then
25 I'll go to Commissioner Skop and then Commissioner McMurrian.

1 Mr. Anderson, you're recognized.

2 **MR. ANDERSON:** Thank you, Chairman Carter. First,
3 staff has stated exactly correctly what your rule states and
4 what the statute states in terms of definition of
5 classification of the costs by timing. That could not be more
6 clear and is, is probably the fundamental legal point for us
7 here today, I believe.

8 We have been very, very clear in our petition of what
9 we're seeking. It's three or four lines above, it's advanced
10 payments associated with long-lead procurement items. That's
11 exactly what we've been talking about. You heard about those
12 in our nuclear need case: For example, some of the forging
13 reservation costs and things like that.

14 Those are the types of things we're seeking this
15 Commission's determination that, yes, they fit in the
16 preconstruction bucket, so to speak, if they are made in this
17 time window before the end of site clearing. What does that
18 mean? Does that mean there's a blank check and we just get
19 money? Absolutely not. It means, as staff's counsel was
20 stating, that those costs when incurred will be presented to
21 the Commission in the annual proceedings for review. They'll
22 actually be presented a year in advance to the extent that we
23 know so parties can know about them, and there will be no
24 secrets of these things. We have an obligation of continuous
25 available information for our project costs and things for this

1 project. And it could -- that is just the beginning point.

2 The Commission then sees those costs a year in
3 advance, then the costs are actually expended, then there's a
4 prudence determination. The prudence determination as to was
5 it the right amount to pay, were these the right terms and
6 conditions, all of that will be subject to proof and discovery
7 and things, you know, in the years forward as we go through
8 this process. But to assert that this is just a way to, you
9 know, dump things onto people's bills, absolutely not.

10 The key focus to this is recognizing that -- we
11 anticipated exactly this argument we're seeing about cows and
12 ducks; not in those words. But we wanted to make it real clear
13 that we all start from the same point, that costs incurred
14 between the time we declare a site, and we have, Turkey Point,
15 and the time we complete that site clearing, which is expected
16 to be in 2011, our advanced payments in that period will not be
17 received by this argument. That's exactly the purpose of this,
18 so that they're in the bucket for consideration as
19 preconstruction costs. I hope that's clear, and I'm happy to
20 answer any other questions.

21 **CHAIRMAN CARTER:** Thank you, Mr. Anderson.

22 Commissioner Skop, then Commissioner McMurrin.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. I just
24 wanted one point of clarification, then I have a question for
25 Mr. Twomey.

1 I think what I was saying previously when we started,
2 when we came back from lunch essentially and the gist is that
3 in my view the preconstruction costs, preconstruction cost
4 recovery is not limited solely to the queuing cost example
5 provided by staff, and I would reference to the statute. The
6 statute does not define constructions costs, as, as does the
7 rule. So, again, I think the statute is, is very broad and I
8 think the, the rule properly synthesizes that. But at the end
9 of the day preconstruction is a bright line time, I mean, a
10 bright line date in time under which, under the statute and our
11 rule. All costs, if prudent, are recoverable under
12 preconstruction costs.

13 But my question to Mr. Twomey, I think that, you
14 know, again, this goes back to the blank check argument and
15 being able to dump things into the preconstruction bin, I think
16 in response -- and, again, I'm well aware of the
17 intergenerational inequity argument, but, again, part of the
18 Public Service Commission's obligation is to approve fair and
19 reasonable rates. And, again, if we can balance that rate by
20 capturing or leveraging the cost savings by considering
21 requests on a case-by-case basis, how does prudence review, how
22 does prudence review not provide adequate protection for
23 insuring that things don't go into the preconstruction cost bin
24 if they're not appropriate? Because the default fallback --
25 because, again, all, under the statute they're going to get

1 complete cost recovery irrespective of plant completion. So,
2 again, it's a timing issue. It's do you get paid in full now
3 and avoid the carrying costs and the return on equity costs
4 that you would incur later? So I think my question is why does
5 prudence review -- if they bring a request to us for
6 preconstruction cost treatment and we say, no, that's not
7 prudent, the default is for it to go back into the
8 capitalization bin where you guys are arguing that the costs
9 should be. But, again, I think that prudence, you know,
10 provides that adequate protection that you're seeking. I just
11 wanted to get your opinion on that.

12 **MR. TWOMEY:** Yes, sir, I appreciate that. I think, I
13 think we're using, Commissioner Skop and Commissioners, we're
14 using the word "prudence" differently perhaps. Okay?

15 Our, again, very briefly, our threshold argument is
16 that this particular cost for the pressure vessel doesn't
17 belong in this basket. I'm concerned that you seem to be
18 willing to expand that basket, that they can put more things in
19 the preconstruction based on the time line.

20 But now to your prudence question, okay, the way I
21 view this, and I've been doing this 29 years now, almost half
22 my entire life, prudence would be they bring the reactor vessel
23 in and they say it's in this basket. And Public Counsel might
24 have a witness, we might have testimony, and we would say our
25 evidence would suggest that you should have spent \$350 million

1 for this and you spent 500. So there's no question that you
2 should have a reactor vessel for a nuclear power plant, but
3 whether you purchased it at the right price. So that would be
4 the prudence issue there. And once you have decided that the
5 reservation charge for the reactor pressure vessel goes in the
6 preconstruction basket, the question would be only whether the
7 amount they're asking for could be recovered 100 percent, not
8 whether it belongs there based on the question they're asking
9 you to answer here. So -- and if you found any monies, monies
10 imprudent, not the items, if you found any monies imprudent,
11 then in my estimation they wouldn't get a second chance at that
12 in the rate base recovery or the carrying cost deal. What they
13 would do is they would get -- the amount that you found prudent
14 would be recovered 100 percent through the capacity cost
15 clause.

16 Now am I responsive, being responsive to your
17 question?

18 **COMMISSIONER SKOP:** Yeah. Let me respond. And,
19 again, I don't want it to be construed that, that I'm trying to
20 broaden something, because, again, as an attorney and a
21 Commissioner I'm trying to balance what the statute says based
22 on the plain language of the statute, statutory construction
23 with our, with our rule. And, you know, I think that we're --
24 I disagree with you.

25 If, if somebody was trying to put something as a

1 preconstruction cost and it didn't pass muster, like it was
2 accelerated way, way in advance of where it needed to be, then
3 that would be an issue which would be encompassed by the
4 prudence determination.

5 But what I am advocating for is that, you know, to
6 the extent that there are certain pieces of equipment that
7 traditionally have been viewed as capitalized items, under the
8 new statute and the cost recovery it basically provides a new
9 paradigm, at least in my mind, for cost recovery as opposed to
10 traditional notions of viewing capital expenditures to the
11 extent long-lead payments, progress payments, or I would even
12 logically extend it based on the statute to the extent if I
13 could buy that -- I'm going to use the duck example. If I
14 could buy the duck today for \$10 and it's a capital piece of
15 equipment and it would cost me \$500 ten years from now, or
16 there might be a host of other reasons why it might be prudent
17 to buy it now and just expense it, you know, why shouldn't that
18 be open if it ultimately saves consumers money? Because I do
19 think that's reflected within the statute, 366.93(1)(f), where
20 it defines preconstruction costs. Because that's -- it's a
21 bright line based on a date, not the character or nature of
22 use.

23 And I think that's the tension here is historically
24 character and nature has driven the capital item. The capital,
25 capital items are capitalized, I mean, capital expenditures or

1 capital equipment are capitalized. Here there's a little bit
2 of a tension between that traditional notion and the bright
3 line that's based on the date, not the character or nature or
4 use in preconstruction.

5 So, again, we have prudence review to make
6 determinations. But at the end of the day if it results in a
7 cost savings that benefits consumers, I mean, that seems to me
8 that it would be, it would not be prudent of the Commission not
9 to consider such things. I mean, I'm not saying, again, I'm
10 not saying a blank check, but I'm saying that the Commission
11 under the existing statute, the intent of the statute and our
12 rule should be willing to consider those, those hybrid things.

13 And, again, I think that the one limited example
14 provided by staff to the extent of the queuing, queuing cost
15 example, I could think of a host of other more, other examples,
16 and I think I articulated some of those, where, you know, it
17 could provide the basis for a request being properly
18 entertained by the Commission. I'm not saying that request
19 would be granted. But, again, if it's not granted, if we say,
20 no, sorry, guys, you know, this is, there's no reason to buy
21 the duck today instead of ten years from now, then go recover
22 it ten years from now. So, again, I think it's that screening
23 process.

24 But I also think that the statute is pretty broad and
25 the rule, I think, is equally broad, and I think staff's done

1 an excellent job of harmonizing the two. But I think that
2 there's always going to be this disagreement between the
3 traditional notions of capitalized equipment versus being able
4 to recover some or all of that in the preconstruction period.
5 But the statute is pretty clear to me, plain language:
6 Preconstruction is based on a date, not what you're buying.
7 So, I mean, just a brief response to that.

8 **MR. TWOMEY:** Yes, sir. And, first of all, I
9 understand where you're coming from. The -- I think it's
10 clear, I'll speak for myself, we believe that it's the
11 character of the expense not the time that it's made that
12 should judge whether it's preconstruction or construction.
13 You've taken a contrary view. And I appreciate that you're,
14 you have an obligation to vote here and I believe entirely that
15 you're trying to do your best job to protect the law, be true
16 to the law and protect the consumers' interests as well as the
17 company's.

18 As to the part about having more capital costs
19 expensed early on resulting in a lower overall cost, okay,
20 that's true to an extent. And the extreme would be if the
21 company expensed all of its costs every year until the plant --
22 let me finish. Let me finish.

23 **COMMISSIONER SKOP:** I assure you I would not let that
24 happen.

25 **MR. TWOMEY:** I know. But I'm saying that would be,

1 that would be the extreme example where you would end up having
2 no increase in rates because nothing would go in rate base.

3 Now with respect to the balancing point of how much
4 of, of early recovery of capital items in advance recovery is a
5 good thing for consumers, I would ask you respectfully to, to
6 look at the three of us sitting up here. I represent an
7 organization that has 2.95 million members in this state.
8 Mr. McWhirter represents large industrial customers that are
9 acutely, companies that are acutely aware of energy costs and
10 that kind of thing. Mr. McGlothlin's boss, J. R. Kelly, is
11 statutorily charged with the responsibility professionally,
12 we're all attorneys, of best representing the interest of all
13 the customers of FP&L.

14 And what I'd ask you to consider, Commissioner Skop,
15 and all of you, Mr. Chairman, is that we're out here telling
16 you on the issue of how much is enough on the, the early cost
17 recovery, we're telling you enough is enough and that there's
18 already enough in the, in the statute clearly and that we don't
19 need clearly construction items given a hybrid treatment so
20 that they're brought in early.

21 And, again, lastly, read the question that they ask
22 you to answer, to look at and see the answer they want to get.
23 Thank you.

24 **CHAIRMAN CARTER:** One moment. I'll be back -- I'm
25 going to go to Commissioner McMurrian first, assuming

1 Commissioner Skop is done, and then I'll come back on this end.

2 Commissioner Skop.

3 **COMMISSIONER SKOP:** Thank you, sir. I just have two
4 quick follow-ups on that question.

5 Again, I think, Mr. Twomey, you would agree that
6 under the existing statute it provides the basis for cost
7 recovery irrespective of plant completion. Is that, is that
8 your understanding?

9 **MR. TWOMEY:** Do you mean if they, if they were to
10 drop the --

11 **COMMISSIONER SKOP:** Not, not turn it on, right up to
12 the day before they said we're walking away. The statute
13 provides for that; right?

14 **MR. TWOMEY:** I'm afraid it does.

15 **COMMISSIONER SKOP:** So I guess what I'm getting to is
16 this is merely a timing issue. And I think the only argument
17 as you guys are properly advancing it is the intergenerational
18 inequities argument. And I'm contrasting and balancing that,
19 and, again, that's a tough balance because I fully respect your
20 constituency and yours as well as yours. But at the end of the
21 day, you know, total cost of ownership, if there's a
22 substantial cost savings that can be leveraged and realized by
23 merely expensing something or having the ability to expense
24 something now based on, you know, the facts that were prudent
25 to justify doing so versus arbitrarily dumping it under

1 traditional notions into capital or capitalizing it where
2 you're going to be paying a lot more later, I'm just trying to
3 understand. Because at the end of the day they're going to get
4 paid somehow, someday. It's this timing issue.

5 And I think the tension, as I see it, boils down
6 to -- under what I'm advocating for it would be analogous to
7 asking everyone to pay a little bit more now as opposed to
8 everyone pay a lot more later. And I understand that tension.
9 But, again, if the total cost -- because if you're talking
10 about putting billions upon billions upon billions of dollars
11 into a rate base earning a return on equity, that number -- I
12 don't want to even contemplate that number. But, again, if you
13 can kind of chip away a little bit of that, then that's a
14 tremendous cost savings.

15 **MR. TWOMEY:** Mr. Chairman, just briefly.

16 Commissioner Skop, it's already there. The
17 company -- this company has issued press releases that have
18 been interpreted by the media as saying that within a short
19 period of time that their customers will see an additional
20 \$6 per month in rate increases due solely to the Turkey Point
21 6 and 7 plants and that that will carry on for ten or 11 years
22 until the plants go into, into service.

23 By contrast to that there have been comparable press
24 reports that say that for Progress Energy, because of their
25 Levy plants and their being a smaller company, that their rate

1 increases will go into effect eight, nine, ten years in advance
2 of the plant producing electricity are going to be \$9 a month.
3 So what I'm, what I'm trying to make clear, Commissioner Skop,
4 is that the transfer of rate base capital through early
5 recovery and the reduction of AFUDC, which is always the big
6 chunk in traditional ratemaking, is already going to take
7 place. To the extent that your theory -- and I respect where
8 you're coming from. I understand it. To the extent you're
9 saying it's a little bit more that reduces that in rate base
10 amount, I'm saying that I think all three of us, I know I am,
11 enough is enough. We don't want it. As people that present
12 consumers, we don't want any more.

13 Now you have to vote on it and you, you know -- and I
14 understand where you're coming from. I'm just saying from out
15 here, from my client's perspective we don't want any more.
16 Enough of a good thing is enough.

17 **CHAIRMAN CARTER:** Commissioners, just I wanted to
18 come to Commissioner McMurrian, but I do need to give -- in all
19 fairness to Mr. Anderson, you made representations as to what
20 the company said. So in all fairness, Mr. Anderson, you're
21 entitled to respond to that. You're recognized.

22 **MR. ANDERSON:** Thank you, Commissioner Carter. And
23 this is a very, very important point. What counsel stated is
24 absolutely not right. In fact, this past week there was a
25 misstatement and a mischaracterization of our company's

1 position in the Atlantic -- Atlanta Journal and Constitution,
2 the newspaper up there. We sent them information pointing out
3 exactly that the calculations that we submitted in our case you
4 saw showed bill effects of between 43 cents to \$5.80 for 2009
5 through 2020. And the article that counsel may be referring to
6 incorrectly implied that a \$6 charge would be applied to
7 customers' bills as part of preconstruction costs. That just
8 absolutely is not so, and I'm very grateful for the opportunity
9 to point that out. And, in fact, we did receive notice that
10 there will be a correction printed in the newspaper.

11 **CHAIRMAN CARTER:** Thank you.

12 Commissioner Skop, have you completed your line of
13 questions?

14 **COMMISSIONER SKOP:** Just one, one brief response,
15 Mr. Twomey, and I promise I'll make this very brief.

16 Mr. Twomey mentioned that, I think, that they don't
17 want any more. And, again, I don't, I don't see it as being
18 any more because the costs are going to be the same. By
19 open-mindedness you have the opportunity to mitigate total
20 costs, and to me that's a balancing act between the tradeoff
21 between intergenerational and total cost. And I think that
22 there is something to be said by expensing something rather
23 than carrying it and putting it in the rate base. Because
24 you've got the AFUDC and then you've got the return on equities
25 and so on and so on. I think we agree there is a cost savings

1 for doing that. It's just a matter of whether that should,
2 that tradeoff on a limited amount should be absorbed by current
3 ratepayers as opposed to future. And I respect, because
4 there's countervailing arguments there, but I am sensitive to
5 the advocacy on that point. Thank you.

6 **CHAIRMAN CARTER:** Thank you, Commissioner.
7 Commissioner McMurrian, you're recognized.

8 **COMMISSIONER McMURRIAN:** Thank you, Chairman.

9 I still need to be clear, I guess, on what we're
10 going to do after today, and I know that depends on what the
11 vote is. But let's assume that we were approving the staff
12 recommendation, because I think that's where we started this
13 discussion on.

14 And, Mr. Twomey, when you were talking, at one time
15 you said something -- I think you clarified it later, but I
16 just wanted to make sure. You said if we said yes to the
17 declaratory statement, that 100 percent of the recovery -- and
18 I'm not sure I'm saying this exactly correctly, so I should say
19 I'm paraphrasing. I think you said 100 percent recovery of the
20 cost would be approved as prudent. But I think you later
21 clarified that just because they ask for recovery through the
22 nuclear recovery clause, it doesn't necessarily mean that
23 100 percent of those requested costs would be approved as
24 prudent. We would look at those costs and they would be
25 subject to our examination. We would approve whatever we felt

1 was prudent of that amount. Am I --

2 **MR. TWOMEY:** I think I, I think I tried to say the
3 latter. Again, because there's going to be a prudence review
4 no matter which pot of money they put these things in for
5 recovery. Again, our argument is, is that -- and, again, it
6 would go back to whether they got it at the right price,
7 whether they needed it for what they were doing. And if they
8 did need it for what they were doing, whether they got it for
9 the right price and installed it correctly and that kind of
10 stuff. And I'm confident that will happen irrespective of
11 which pot it goes in. Our fundamental disagreement, again, is
12 that we don't want that reactor vessel, pressure vessel money
13 going in the preconstruction pot.

14 **COMMISSIONER McMURRIAN:** I understand that. I'm just
15 trying to get straight -- Chairman. I'm trying to get straight
16 what we would do. And I think you did clarify to the latter in
17 a later response to Commissioner Skop.

18 **MR. TWOMEY:** Yes, ma'am, I tried to.

19 **COMMISSIONER McMURRIAN:** So I think we're on the same
20 page. But I also did want to ask you, I think when we talk
21 about the amount though that perhaps there's more to it. I
22 think if -- and I'll just say what I think and then we can all
23 talk about whether or not that's right, and feel free to tell
24 me I'm wrong. But if FPL were to make a request through the
25 nuclear cost recovery clause, if we approve this today and they

1 were making a request for a long-lead procurement item
2 requiring advanced payment, I think they would still have to
3 show that it was, in fact, a long-lead procurement item and
4 that, two, that it did require an advanced payment of some
5 sort, and then we would also be talking about the amount
6 itself. And I just wanted to throw that out there. But I
7 think that even if we approve this today, we would still have
8 those hurdles to jump through in the nuclear cost recovery
9 clause. Okay. Go ahead and tell me where I'm wrong.

10 **MR. TWOMEY:** Mr. Chairman. No, ma'am, you wouldn't.
11 Because, because while Mr. Anderson talked about what was above
12 the question they asked on Page 6 of their petition, what I
13 think is critically important here is to read the question,
14 forget all the rest of the stuff that's in there, because
15 they're asking you to look at a specific question and give them
16 a specific answer. And the, and the question they raise,
17 unless I'm reading it incorrectly, doesn't make any mention at
18 all about long-lead items and reservations. Okay? If they
19 wanted to say that, they could have said it.

20 What it says instead is that any payments they make
21 prior to the completion of site clearing work be properly
22 characterized as preconstruction costs to be recovered
23 100 percent from the customers, and then they reaffirm that
24 they want you to give them that answer in the wherefore
25 paragraph that follows. That's, that's my concern. If they,

1 if they had wanted to ask for a very narrow question, I could
2 have drafted them one, I could do it right now, that would have
3 said, you know, give us permission. Is it, is it permissible
4 for having the reservation charge for this one item that we
5 estimate would cost \$16 million for the reservation of the
6 place at Japan Steel for the forging of the pressure vessel,
7 can it be considered as a preconstruction cost and recovered
8 100 percent instead of through the less advantageous but still
9 good deal of getting a carrying cost? Okay. They could have
10 said that.

11 Now the, the -- they're asking you to answer a
12 specific question, and if you answer that, you're going to give
13 them a broader license than if you constrain it.

14 At the end of the day if you, if you approve this and
15 answer this question as they've presented it to you, then what
16 your staff thought they wanted, FP&L wanted is not going to be
17 particularly germane. So did I answer your question? They can
18 --

19 **COMMISSIONER McMURRIAN:** I think you did, but I
20 guess, I guess I've got a new one now. Because I saw, whenever
21 I was asking my question I saw Mr. Anderson nodding and then I
22 saw Mr. Casey grabbing, I mean, Mr. Hinton grabbing papers.
23 And I sense that perhaps maybe the question as worded before us
24 is not exactly the same as the way FPL worded it in their
25 petition. I don't have the petition in front of me, so I'm

1 going on what you read. But I do, I do understand they're
2 asking for this to be determined preconstruction costs. But
3 when I look at Issue 2 as worded, it includes, "to the effect
4 that," the declaratory statement, "to the effect that long-lead
5 procurement items requiring advanced payment up to and
6 including the date of site clearing work are preconstruction
7 costs." So I guess I was assuming that was the question we
8 were answering. But if it's not, I mean, we need to get that
9 clear now.

10 **MR. TWOMEY:** I would, I would submit, Mr. Chairman,
11 Commissioner McMurrian, that it's not. You need to, you need
12 to read their petition because it is their, it is their
13 petition which is the foundation document for this case today
14 that is controlling. Now you can change it, I suppose. They
15 could agree to let you change it. But it's, it's the question
16 in the petition, not what your staff says in the staff
17 recommendation.

18 **MR. McGLOTHLIN:** Let me add to that, if I may,
19 Commissioner.

20 In addition to what Mr. Twomey said, prior to the
21 lunch break counsel for FPL said to one of the Commissioners
22 that the long-lead items are a subset of a larger universe of
23 costs which could be qualified under preconstruction if, if
24 they occur prior to the completion of site preparation and if
25 they were demonstrated to be prudent. So I think the

1 implications of your decision will go beyond queuing of large
2 forging items even if the staff recommendation was intended to
3 be limited to that.

4 **COMMISSIONER McMURRIAN:** Mr. Chairman, I'd like to
5 hear from Mr. Anderson as well as staff. And I do -- I know I
6 keep reading, I don't mean to do this, but in the
7 recommendation statement it does say, "Yes, the Commission
8 should enter the declaratory statement requested by FPL." So
9 there is some, you know, the wording in the issue and what the
10 recommendation statement says.

11 **CHAIRMAN CARTER:** Let's hear from Mr. Anderson and
12 then we'll hear from Mr. Hinton.

13 Mr. Anderson, you're recognized.

14 **MR. ANDERSON:** Thank you, Chairman Carter. Staff's
15 raising the issue is perfectly what we mean. That's exactly
16 what we're asking for. A yes to that is exactly where we wish
17 to be in this particular case.

18 To OPC's counsel's point, the point about being a
19 subset, this goes to the idea that, as we talked about all day,
20 site selection costs, between the time period of the site
21 selection and the end of site clearing, those are all site
22 selection costs, and that's the subsection (h) of the rule.
23 That's the "include but not limited to" we all talked about
24 earlier about costs associated with preparing, reviewing and
25 defending a combined operating license, costs of engineering,

1 designing, all those things. So these costs falling in that
2 time frame like all those other costs, it's a time-sensitive,
3 it's a time-based definition. Those are the, those are the --
4 that's what our, our petition hinges on. And staff has
5 articulated the issue presented in this particular case exactly
6 right.

7 **CHAIRMAN CARTER:** Mr. Hinton, you're recognized.

8 **MR. HINTON:** When approaching this issue it was
9 staff's understanding that it revolved around advanced payment
10 for long-lead procurement items. But before I make any other
11 legal pronouncements about how your order will say what it says
12 and that that's what really matters, I'll allow a legal, a
13 lawyer to tell you that.

14 **CHAIRMAN CARTER:** Mr. Bellak.

15 **MR. BELLAK:** Right. If, if you take a look at the
16 recommendation, it starts out with Florida Power & Light's very
17 broad statement that Mr. Twomey is, is mentioning, but that's
18 not where it ends up. Because what we recommended in Issue 2,
19 and from my standpoint it was just being conservative, we
20 recommended that you grant as to the queuing costs. It was not
21 with any prejudice toward any further requests they might make,
22 and that response to Commissioner Skop's point that there are
23 other things that might be considered. And, and what we did
24 was we narrowed it to encompassing queuing costs, and we can
25 make that clear in the, in the order, and the reason we did

1 that is because that's what they mostly talked about. That's
2 where their argument was centered. So we knew more about that
3 than we knew about other things that in the abstract might come
4 up later that we don't know much about.

5 So if we, if you approve the declaratory petition,
6 what the order would say would be, it would consider, it would
7 be a declaratory statement as to queuing costs. But that would
8 not mean that they couldn't ask for other kinds of things and
9 then we could consider them too. But this thing is limited to
10 queuing costs, notwithstanding the fact that there's a broader
11 statement which I put in the case background.

12 **CHAIRMAN CARTER:** Okay. Mr. Hinton, did you want to
13 add anything to that?

14 **MR. HINTON:** Yes. Thank you. I just wanted to give
15 you a little bit of background about our reasoning when we're
16 looking at long-lead procurement items, advance payments. And
17 the word "hybrid" is very, it's a very key word to use in this
18 because we're talking about a particular cost that could fit
19 into either category. By nature it's, you know, we're talking
20 about costs that are going towards a piece of equipment that
21 will be in the plant itself. It lends itself to the, what, you
22 know, the other examples of construction costs as contained in
23 the rule.

24 However, we're looking at this particular advanced
25 payment, it's a critical path payment. It's something that

1 it's necessary for them to expend these funds at this time in
2 order for this plant to go in service when, when, the planned
3 in-service date. So it's necessarily incurred during the
4 preconstruction time period. And that's why it's kind of a
5 hybrid. It could fall into either way, it could be addressed
6 either way by the Commission. And staff felt it is appropriate
7 for them to be able to come in and, and present these costs for
8 recovery as preconstruction costs. And, as has been repeated a
9 couple of times, that is going to be subject to your review and
10 your approval.

11 And -- but the flexibility about -- I think there's a
12 certain matter of flexibility within staff's recommendation as
13 to how you address that when they bring it in for recovery.
14 Right now we're just saying, yeah, these advanced payments on
15 these long-lead procurement items, if they're incurred during
16 the preconstruction phase, you can come in and ask for recovery
17 as preconstruction costs.

18 **CHAIRMAN CARTER:** Thank you.

19 Commissioner McMurrian, had you completed your --
20 okay.

21 **MR. McWHIRTER:** Mr. Chairman, could I make an
22 observation on this line of questioning?

23 I take great comfort in the presentation that staff
24 made that we're only talking about specific kinds of things
25 that have long leads and we're not talking about all

1 construction costs. The problem is that site clearing date is
2 an undefined date and it's totally within the domain of the
3 utility to determine how long it's going to take it to clear
4 that site. And if you consider all preconstruction costs up
5 until the time they get around to clearing the site, they can
6 get the total cost of things that normally would be
7 construction costs. Well, I think if you look at the statute,
8 the statute has talked about planning and preplanning items
9 like engineering, which is very expensive, licensing, which is
10 very expensive, they let you collect the total cost of those
11 things. And that's what Commissioner Skop is talking about,
12 that you can get that in its entirety and that's going to
13 reduce costs in the long run. But construction costs, the
14 legislation says that you only get the carrying cost on the
15 projected construction cost balance.

16 So I would suggest to you that what you want to do is
17 go with what the staff has said on the long-lead items, let
18 them collect the total cost of those long-lead items that
19 they've proved to be prudent, but give them a limited period of
20 time in which to identify long-lead items. You need to tell us
21 what those long-lead items are going to be by the end of 2008
22 so that we can begin to identify and let you prove to us that
23 these long-lead items are prudent. And if you come in three
24 years from now and say, well, this is another long-lead item
25 and we haven't completed the site yet so we have to fight about

1 that again, I think you're unduly prolonging it and I think
2 you're going beyond what the legislators had in mind. They
3 weren't thinking that it would take three years to get some
4 palmettos off the ground in South Dade County, for Pete's sake.

5 **CHAIRMAN CARTER:** I promised to go to Commissioner
6 Argenziano and then I'll be back to my colleagues on my left.
7 Commissioner Argenziano, you're recognized.

8 **COMMISSIONER ARGENZIANO:** Thank you. And just bear
9 with me for a couple of minutes because I'm going back and
10 forth on this.

11 I do disagree with staff as far as the declaratory
12 statement. I think it would tie our hands in the future on
13 things that we determine to be prudent long-lead procurements
14 and foreclose arguments in the future, and that concerns me a
15 great deal.

16 But what I think I want to take a step back to,
17 because I had questions and then there's a couple of things I
18 want to say in closing at the proper time, but I want to go to
19 this now because Commissioner Skop raises some excellent points
20 that we need to look at. But what I'm finding is that we don't
21 have the answers for everything.

22 One of my questions was going to be what is long-lead
23 items? What are they? Is the rule expanding the statute? I
24 have a bunch of questions. And what I come back down to is
25 Issue Number 1, "Should the Commission grant OPC's request for

1 a hearing?" And since the public -- and as Commissioner Skop
2 said, this could be a great savings for the public, but they're
3 the ones who are going to foot the bill. And I think that at
4 this time with all these unanswered questions, and we're
5 talking about hundreds of millions of their dollars, I think
6 there would be no harm in granting a hearing to bring out more
7 information on all parties. FPL could come out with more
8 information saying this is why we need to do it this way. And
9 I think that since they are the people that I answer to, I
10 would rather move to -- and I'm probably not going to get
11 anywhere, but I don't care. I've been here before. Since
12 there are so many things of such importance in a hundred
13 million dollar project which the people pay for, I believe that
14 they deserve a hearing. So that would be where I would go at
15 this point and say let's go to the hearing, not close down --
16 you know, defer the declaratory statement because it may be
17 what we do ultimately. I don't know. But I'd like more
18 information before I move forward, and I think the public
19 deserves a hearing.

20 **CHAIRMAN CARTER:** Thank you.

21 Commissioner Skop, you're recognized.

22 **COMMISSIONER SKOP:** Thank you, Chairman Carter.

23 Just going back to staff's comments with respect to
24 the hybrid, and, again, I'm looking at the statute in
25 366.93(1)(a) where it defines cost includes but is not limited

1 to all capital investments. And I go down to the definition of
2 preconstruction in Item (f), and it's basically preconstruction
3 time, again, to the date utility completes site clearing work
4 preconstruction costs shall be afforded until recovered in
5 rates, and then it talks about the alternate recovery mechanism
6 in terms of cost recovery clause and preconstruction costs.
7 Nowhere in there do I see the definition of construction costs.

8 So it to me, the statute -- the last time I checked
9 statute trumps rule. The statute seems to me to imply that the
10 capital expenditures incurred in the preconstruction period are
11 preconstruction costs. Again, I'm just going by, by my own
12 opinion, and it won't necessarily reflect the -- excuse me?

13 **MR. TWOMEY:** It's in there, Commissioner.

14 **COMMISSIONER SKOP:** Okay. Well, I'm looking for it,
15 but --

16 **MR. TWOMEY:** If I may, Mr. Chairman, let me just
17 point it out. It doesn't have a headline in the statute like
18 preconstruction does. But if you look at (2)(b), it says,
19 "Recovery through an incremental increase in the utility's
20 capacity cost recovery clause rates of the carrying cost on the
21 utility's projected construction cost balance." So in my view
22 I think that what you're looking for in terms of the
23 construction cost --

24 **COMMISSIONER SKOP:** Well, I think -- let me, let me
25 stop you there. Again, when it talks about costs in (1)(a), it

1 talks about all capital investments and then it talks about
2 preconstruction. Again, I think the tension here is that the
3 preconstruction period is a bright line indifferent of the
4 character or nature of the expense, and I think that that's
5 just the underlying tension. And I think as staff has tried to
6 harmonize in our rule, the need to reflect the intent of the
7 statute and capture that in what some people would deem to be
8 gray areas -- and, again, I think it's pretty clear on face but
9 I know that there's probably some difference of opinion. But,
10 again, I think that the, the adequate protection is that of the
11 prudence determination and the diligence of the Commission to
12 make sure that, you know, it's not being abused, that it's
13 there for the right reasons when it makes sense to save money
14 at the end of the day for consumers. Because, again, if I can
15 expense something in today's dollars and not have to pay the
16 carrying costs on that and pay the return on equity associated
17 with that, I'm certainly willing to do that if there's a
18 tremendous cost savings associated with it.

19 So, again, I just wanted to clarify that. Because to
20 me the statute, again, I think if it came into tension between
21 rule and the, and the controlling statute, that the rule would
22 have to yield to the statute in my opinion.

23 **CHAIRMAN CARTER:** Thank you, Commissioner.

24 Commissioners, we've had a vigorous section for
25 questions and comments from both staff and then the parties.

1 We need to proceed now to our discussion and our debate. So
2 we're now in discussion and debate on, on Item 3, excuse me,
3 Item 5 and the issues pertaining to that. So let's, let's get
4 into that mode. Thank you so kindly. I mean, we've got a lot
5 of questions, a lot of interesting questions and those were
6 answered and all, but now we need to proceed to our discussion
7 and debate. So we're now in the discussion and debate, and
8 this would be limited to Commissioners.

9 **COMMISSIONER EDGAR:** Mr. Chairman.

10 **CHAIRMAN CARTER:** Commissioner Edgar, you're
11 recognized.

12 **COMMISSIONER EDGAR:** Thank you, Commissioner Carter.
13 I have a few very brief comments because I haven't made any yet
14 on this item, which is, as we all know, incredibly unusual for
15 me.

16 I have enjoyed the discussion very, very much, and it
17 makes me harken back to, you know, listening to some of the
18 discussion at the legislative committees when this new statute
19 was first proposed and was moving through that process. And I
20 know at the time, at the time as a sitting Commissioner and as
21 a regulator I remember thinking, you know, many of these issues
22 at the time the statute or the proposed statute at that time
23 was moving through and how would we in this body debate some of
24 these issues and how would some of the issues come forward.
25 And so it's just wonderfully intellectually stimulating to have

1 some of this debate and discussion as the next step in that
2 process; tedious but yet intellectually stimulating.

3 And when we went then after that point in time, and
4 Mr. McWhirter mentioned it in particular, the Legislature gave
5 us six months to adopt a rule, and we spent a lot of time
6 during that six to eight months, and I know the staff went
7 through many, many, many drafts and iterations and trying to
8 think through next steps and steps two, three, four, five, six
9 years down the road. And I remember at the time here at the
10 bench and some of our discussion in my own mind thinking that
11 with the rule that we ultimately adopted that there may be a
12 point in time years down the road where it may need to be
13 clarified or some additional language added just because we
14 were all going to be kind of learning together. I also know in
15 my mind at the time the rule was proposed and then adopted by
16 this Commission that I felt like we had done really an
17 excellent, excellent job, realizing that we never have complete
18 knowledge of the future and how things will ultimately be
19 implemented and what issues will ultimately arise as we all
20 move forward. But I know that we had a full, full discussion,
21 lots of participation, which always pleases me.

22 And in my mind, and I remember from the discussion, I
23 think, and others as well there was very much the desire and we
24 hoped the actuality of putting into the rule some
25 clarification. But even in addition to that, additional

1 reassurances, additional steps to protect the ratepayers, to
2 protect the state, this Commission, quite frankly, and the
3 applicants such that it was a process that could move forward
4 but that would have procedural due process and lots and lots
5 and lots of light shined on what was happening at different
6 steps through the process and through the years.

7 So I say all of that just because as I've been
8 listening to the discussion I have been thinking back over some
9 of the discussions that we have had on these issues over the
10 last couple of years, and I know we will have more, and that is
11 the beauty and also probably the tedium of the annual review
12 process that is built into the rule, for the project that this
13 Commission has recently issued a need determination and
14 potentially for other projects in the future as well.

15 So with all of that I think we have had some really,
16 really great discussion. I expect that we will be talking
17 about many of these issues and related issues more in future
18 proceedings, some in the very near future, and I look forward
19 to that as well. But yet I'm going to try to bring us back to
20 the issues that are before us which are somewhat narrower than
21 some of the discussion that we've had, and that is on the, on
22 Issue 1, the request for hearing, although I always love a good
23 hearing, in this instance in my mind, you know, this is a legal
24 issue, it is a legal interpretation, and I'm not sure I see
25 questions of fact that a hearing would, would really be the

1 most effective venue for pursuing.

2 On Issue 2, I think that it is actually in my mind
3 fairly narrow. I do see the rule as being, again, an
4 additional refinement and implementation of the statute, not a
5 broadening. I know in my mind when I voted for the rule I did
6 not see it at all as a broadening.

7 And then I'm looking for Issue 3, which is a close
8 the docket. So, Mr. Chairman, if we're at the appropriate
9 time, realizing that we have had full and thorough discussion,
10 I would make a motion in support of the staff recommendation on
11 Issues 1, 2 and 3, and, again, with the recognition that we
12 will have future items on this, on related issues over the next
13 few years, and I look forward to participating in those.

14 **CHAIRMAN CARTER:** Thank you.

15 Commissioner McMurrian.

16 **COMMISSIONER McMURRIAN:** Thank you. If it's the
17 appropriate time as well, I would second that motion.

18 I just want to say, I know Commissioner Argenziano
19 feels that it ties our hands, and I disagree with that because
20 I believe that -- and I think we got some consensus about that.
21 I think there was some confusion as to what was stated here
22 versus how it was stated exactly in there, but I think FPL has
23 represented to us today that the way staff has worded it here
24 is correct with the way they see the issue as well. And so I
25 think if we issue this order consistent with this staff

1 recommendation, that I believe that we will be in the nuclear
2 cost recovery clause looking at not only the amounts and
3 whether they're prudent, but they have to show that it is
4 indeed a long-lead item and that there are advance payments. I
5 believe they have to make those showings in order for those
6 dollars to attach to anything or else they would have to come
7 get some other declaratory statement about whatever else it is
8 that they're looking for. That's my opinion anyway. So I
9 don't know if I've changed the spirit of the motion or not, but
10 that's the way I see it. I just wanted to be clear about that.
11 But I definitely second the motion and believe this is
12 consistent with the statute and the rule law.

13 **CHAIRMAN CARTER:** We've got a motion and a second.
14 Commissioners, we are in debate.

15 **COMMISSIONER ARGENZIANO:** Excuse me.

16 **CHAIRMAN CARTER:** Commissioner Skop -- I'll come back
17 to you.

18 **COMMISSIONER ARGENZIANO:** Okay.

19 **CHAIRMAN CARTER:** Commissioner Skop, you're
20 recognized.

21 **COMMISSIONER SKOP:** And I also support the motion
22 with just the knowledge I think that Commissioner McMurrian
23 pointed out that there may be a need for separate declaratory
24 statements at a future time. And to me -- I'm not exactly sure
25 if the, if the declaratory statement has proper language. It

1 is on a case-by-case basis. I think it's implied in this that
2 they couldn't propose it and then we would just reject it at
3 the appropriate time instead of having to go through a
4 declaratory statement process. I just wanted to add that.

5 **CHAIRMAN CARTER:** Thank you.

6 Commissioner Argenziano, you're recognized. We're in
7 debate.

8 **COMMISSIONER ARGENZIANO:** Thank you, Mr. Chairman. I
9 think the debate is a healthy one. I think it's great to bring
10 out everybody's points. And, of course, we all are independent
11 and have our own opinions. I think Commissioner Skop brought
12 out some very good points, some things that I'd like to
13 address; however, not this way. And I, with all due respect,
14 was in the Legislature when we were creating policy for years
15 to come, and sat with my colleagues and I know what the intent
16 was, and I know it was to try to help us get to where we need
17 to be to build those nuclear plants, which I am in favor of,
18 but not to add in a whole bunch of other stuff that I think
19 this rule does expand the statute. So I respectfully disagree,
20 and down the road I think we're going to find that to be true.

21 And I have to commend our three consumer advocates as
22 well as the company because the company has tried, I think,
23 very hard, except we're maybe missing the point or I'm missing
24 the point to them what I would like to see to move forward, and
25 I want to move forward with the nuclear power plant. But I

1 think that you've been right on target with what I know as a
2 policymaker was supposed to be what the statute was about, the
3 statute was about. And I'm really sorry that we are not having
4 a public hearing because it's never, never a good thing to,
5 to -- and I say this with due respect. I'm not, not putting
6 down my, my fellow Commissioners. They have a right to their
7 own opinion. But it's not a good thing when the people have to
8 foot the bill to be able to turn down their representatives and
9 having a hearing that may bring out better information to even
10 help those consumers out there to understand why we need to
11 move forward with certain things and get these nuclear power
12 plants built and get more energy demand online.

13 But saying that, I want to thank everybody for their
14 opinions. But I do, do regret that we are not having a hearing
15 and I do regret that I think that we have tied our hands in the
16 future. So hopefully we can work through some of this as we
17 move along. But I want to commend you because I think your
18 points were on target. Thank you.

19 **CHAIRMAN CARTER:** Commissioners, we're in debate.
20 Any further debate? Any further debate?

21 Commissioners, we have a motion and a second to
22 accept staff's recommendations on Item 5 and the issues
23 pertaining thereunto. All those in favor, let it be known by
24 the sign of aye. Aye.

25 **COMMISSIONER SKOP:** Aye.

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COMMISSIONER EDGAR: Aye.

COMMISSIONER McMURRIAN: Aye.

CHAIRMAN CARTER: All those opposed, like sign.

COMMISSIONER ARGENZIANO: Aye.

CHAIRMAN CARTER: Show it done.

(Agenda Item 5 concluded.)

* * * * *

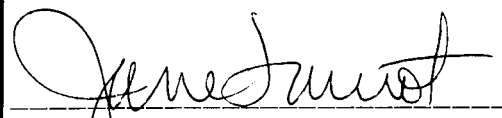
1 STATE OF FLORIDA)
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2 COUNTY OF LEON)
3


4 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR,
Official Commission Reporters, do hereby certify that the
5 foregoing proceeding was heard at the time and place herein
stated.
6

7 IT IS FURTHER CERTIFIED that we stenographically
reported the said proceedings; that the same has been
transcribed under our direct supervision; and that this
8 transcript constitutes a true transcription of our notes of
said proceedings.
9

10 WE FURTHER CERTIFY that we are not a relative,
employee, attorney or counsel of any of the parties, nor are we
a relative or employee of any of the parties' attorneys or
11 counsel connected with the action, nor are we financially
interested in the action.
12

13 DATED THIS 16th day of April, 2008.

14 
15 _____
16 JANE FAUROT, RPR
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[Title XXVII](#) [Chapter 366](#) [View Entire Chapter](#)
RAILROADS AND OTHER REGULATED UTILITIES PUBLIC UTILITIES

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 or 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" is an electrical power plant as defined in s. [403.503](#)(13) that uses synthesis gas produced by integrated gasification technology.

(d) "Nuclear power plant" or "plant" is an electrical power plant as defined in s. [403.503](#)(13) 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 has been selected through and including the date the utility completes site clearing work. Preconstruction costs 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 or integrated gasification combined cycle power plant. Such mechanisms 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, and shall include, but are not 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 shall be equal to the pretax AFUDC 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.

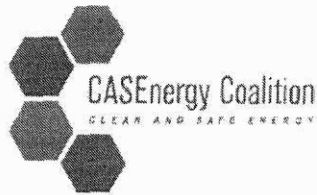
(3) After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules.

(4) When the nuclear or integrated gasification combined cycle power plant is placed in commercial service, the utility shall be allowed to increase its base rate charges by the projected annual revenue requirements of the nuclear or integrated gasification combined cycle power plant based on the jurisdictional annual revenue requirements of the plant for the first 12 months of operation. The rate of return on capital investments shall be calculated using the utility's rate of return last approved by the commission prior to the commercial inservice date of the nuclear or integrated gasification combined cycle power plant. If any existing generating plant is retired as a result of operation of the nuclear or integrated gasification combined cycle power plant, the commission shall allow for the recovery, through an increase in base rate charges, of the net book value of the retired plant over a period not to exceed 5 years.

(5) The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the nuclear or integrated gasification combined cycle power plant provided by the utility pursuant to s. 403.519(4), until the commercial operation of the nuclear or integrated gasification combined cycle power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the determination of need for the nuclear or integrated gasification combined cycle power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

(6) In the event the utility elects not to complete or is precluded from completing construction of the nuclear or integrated gasification combined cycle power plant, the utility shall be allowed to recover all prudent preconstruction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the nuclear or integrated gasification combined cycle 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 unrecovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital as reported in the commission's earnings surveillance reporting requirement for the prior year.

History.--s. 44, ch. 2006-230; s. 54, ch. 2007-5; s. 1, ch. 2007-117.



How a Nuclear Power Plant Works

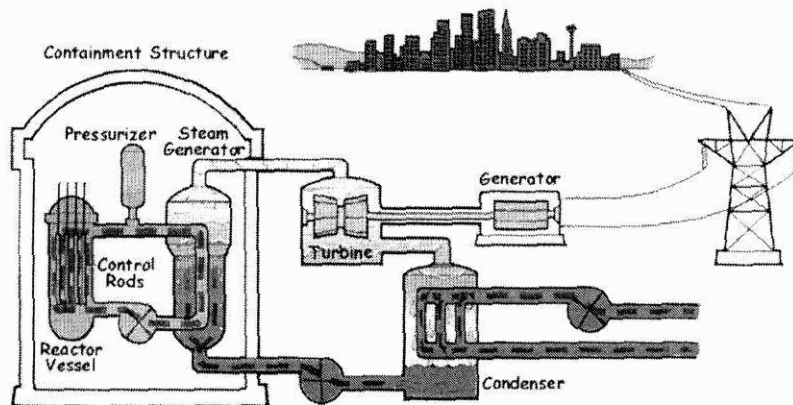
How a Nuclear Power Plant Works

Nuclear power plants run on uranium fuel. In the reactor, uranium atoms are split through a process known as fission. When atoms are split, they produce a large amount of energy that is then converted to heat. The heat boils water, creating steam that is used to turn turbines, which spins the shaft of a generator. Inside the generator, coils of wire spin in a magnetic field and electricity is produced.

Nuclear power plants in the United States use two types of reactors to achieve this process: boiling water reactors and pressurized water reactors.

Pressurized Water Reactors (PWR) keep water under pressure, so the water heats but does not boil. The heated pressurized water is run through pipes, which heat a separate water line to create steam. The water to generate steam is never mixed with the pressurized water used to heat it.

The Pressurized Water Reactor (PWR)



Boiling Water Reactors (BWR) heat water by generating heat from fission in the reactor vessel to boil water and create steam, which turns the generator. In both types of plants, the steam is turned back into water and can be used again in the process.

Boiling Water Reactor (BWR)

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 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 that uses synthesis gas produced by integrated gasification technology, as defined in Sections 403.503(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 or 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.

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

(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.

(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 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.

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

a. True-Up for Previous Years. By March 1, a 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, a 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, a 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 a hearing 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 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. 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 (5)(c)2. will be included for cost recovery purposes as a component of the following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than October 15 of the current year.

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

(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.

(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 (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 (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.

(8) A utility shall, contemporaneously with the filings required by paragraph (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 (8)(b) – (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.

(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) FS. Law Implemented 366.93 FS. History—New 4-8-07, Amended 2-3-08.

Select Year:

The 2007 Florida Statutes

[Title XXVII](#) [Chapter 366](#) [View Entire Chapter](#)
RAILROADS AND OTHER REGULATED UTILITIES PUBLIC UTILITIES

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 or 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" is an electrical power plant as defined in s. [403.503](#)(13) that uses synthesis gas produced by integrated gasification technology.

(d) "Nuclear power plant" or "plant" is an electrical power plant as defined in s. [403.503](#)(13) 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 has been selected through and including the date the utility completes site clearing work. Preconstruction costs 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 or integrated gasification combined cycle power plant. Such mechanisms 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, and shall include, but are not 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 shall be equal to the pretax AFUDC 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.

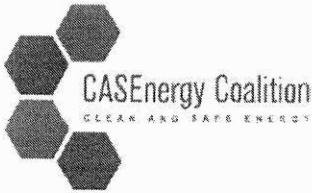
(3) After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules.

(4) When the nuclear or integrated gasification combined cycle power plant is placed in commercial service, the utility shall be allowed to increase its base rate charges by the projected annual revenue requirements of the nuclear or integrated gasification combined cycle power plant based on the jurisdictional annual revenue requirements of the plant for the first 12 months of operation. The rate of return on capital investments shall be calculated using the utility's rate of return last approved by the commission prior to the commercial inservice date of the nuclear or integrated gasification combined cycle power plant. If any existing generating plant is retired as a result of operation of the nuclear or integrated gasification combined cycle power plant, the commission shall allow for the recovery, through an increase in base rate charges, of the net book value of the retired plant over a period not to exceed 5 years.

(5) The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the nuclear or integrated gasification combined cycle power plant provided by the utility pursuant to s. [403.519\(4\)](#), until the commercial operation of the nuclear or integrated gasification combined cycle power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the determination of need for the nuclear or integrated gasification combined cycle power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

(6) In the event the utility elects not to complete or is precluded from completing construction of the nuclear or integrated gasification combined cycle power plant, the utility shall be allowed to recover all prudent preconstruction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the nuclear or integrated gasification combined cycle 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 unrecovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital as reported in the commission's earnings surveillance reporting requirement for the prior year.

History.--s. 44, ch. 2006-230; s. 54, ch. 2007-5; s. 1, ch. 2007-117.



How a Nuclear Power Plant Works

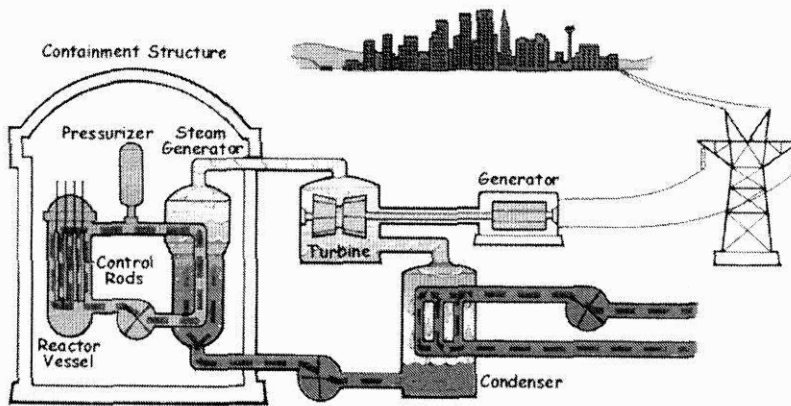
How a Nuclear Power Plant Works

Nuclear power plants run on uranium fuel. In the reactor, uranium atoms are split through a process known as fission. When atoms are split, they produce a large amount of energy that is then converted to heat. The heat boils water, creating steam that is used to turn turbines, which spins the shaft of a generator. Inside the generator, coils of wire spin in a magnetic field and electricity is produced.

Nuclear power plants in the United States use two types of reactors to achieve this process: boiling water reactors and pressurized water reactors.

Pressurized Water Reactors (PWR) keep water under pressure, so the water heats but does not boil. The heated pressurized water is run through pipes, which heat a separate water line to create steam. The water to generate steam is never mixed with the pressurized water used to heat it.

The Pressurized Water Reactor (PWR)



Boiling Water Reactors (BWR) heat water by generating heat from fission in the reactor vessel to boil water and create steam, which turns the generator. In both types of plants, the steam is turned back into water and can be used again in the process.

Boiling Water Reactor (BWR)

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 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 that uses synthesis gas produced by integrated gasification technology, as defined in Sections 403.503(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 or 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.

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

(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.

(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 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.

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

a. True-Up for Previous Years. By March 1, a 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, a 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, a 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 a hearing 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 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. 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 (5)(c)2. will be included for cost recovery purposes as a component of the following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than October 15 of the current year.

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

(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.

(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 (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 (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.

(8) A utility shall, contemporaneously with the filings required by paragraph (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 (8)(b) – (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.

(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) FS. Law Implemented 366.93 FS. History--New 4-8-07, Amended 2-3-08.