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Sent: Friday, July 31, 2009 3:26 PM
To: Filings@psc.state.fl.us
Cc: Keino Young; Joseph Mcglothlin, Esq.; J. R. Kelly ; J. Michael Walls ; Dianne Triplett; John T. Burnett; 'alex.glenn@pgnmail.com'; John McWhirter; Paul Lewis; Jon C. Moyle Jr.; Vicki Gordon Kaufman ; E. Leon Jacobs; James Brew; Anderson, Bryan; Cano, Jessica
Subject: Electronic Filing - Docket # 090009-EI
Attachments: Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4 (re-filed).doc; Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4 (re-filed).pdf

Electronic Filing

a. Person responsible for this electronic filing:

Bryan S. Anderson, Esq.
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b. Docket No. 090009-EI

IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of five (5) pages.

e. The document attached for electronic filing is:

Joint Petition for Variance From or Partial Waiver of Rule 25-6.0423(5)(c)4

(See attached file(s): Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4 (re-filed).doc; Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4 (re-filed).pdf)

Regards,
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7/31/2009

DOCUMENT NUMBER-DATE
07863 JUL 31 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant)
Cost Recovery Clause)

Docket No. 090009-EI
Filed: July 31, 2009

**JOINT PETITION FOR VARIANCE FROM
OR PARTIAL WAIVER OF RULE 25-6.0423(5)(c)4**

NOW BEFORE THIS COMMISSION, through undersigned Counsel, comes Florida Power & Light Company ("FPL") and Progress Energy Florida, Inc. ("PEF") and, pursuant to Section 120.542, Florida Statutes and Rule 28-104.002, Florida Administrative Code, hereby petition this Commission for a variance from or partial waiver of Rule 25-6.0423(5)(c)4 of the Florida Administrative Code. This petition was previously filed on May 20, 2009. To enable certain procedural steps to be taken, that petition was withdrawn on July 30, 2009 and is being re-filed at this time. In support of this Petition, FPL and PEF ("the utilities") state as follows:

1. FPL is an investor-owned utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") pursuant to Chapter 366 of the Florida Statutes, with headquarters at 700 Universe Boulevard, Juno Beach, Florida 33408. PEF is an investor-owned utility subject to the jurisdiction of the Commission pursuant to Chapter 366 of the Florida Statutes, with headquarters at 299 1st Ave. N., St. Petersburg, Florida 33701.

2. Any pleading, motion, notice, order or other document required to be served upon the petitioners or filed by any party to this proceeding should be served upon the following individuals:

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DOCUMENT NUMBER-CASE

07863 JUL 31 09

FPSC-COMMISSION CLERK

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3. Rule 25-6.0423, Florida Administrative Code, was adopted by the Commission to implement Section 366.93, Florida Statutes, providing for alternative cost recovery for costs incurred in the development of nuclear power plants. FPL and PEF are currently engaged in cost recovery proceedings for their respective nuclear projects pursuant to this rule. Alternative cost recovery pursuant to the applicable statute and rule is achieved by incorporating the Commission-approved nuclear cost recovery amount into the utility's capacity cost recovery factor. Subsection (5)(c)4 of Rule 25-6.0423 sets forth the timeframe by which the utility must file revisions to its fuel and purchased power cost recovery filings ("fuel clause filings"). It states:

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.

4. In the instant docket, the Commission has scheduled a special agenda conference on October 16, 2009 to determine the nuclear cost recovery amounts that FPL and PEF will be permitted to recover. The date of the agenda conference falls outside of the timeframe established by Rule 25-6.0423(5)(c)2, Fla. Admin. Code, which provides for a Commission

determination in the nuclear cost recovery docket by October 1 of each year. FPL and PEF have notified Commission Staff of their agreement to the special agenda conference date.

5. Due to the date of the special agenda conference, FPL and PEF will not be able to comply with the timeframe established by Rule 25-6.0423(5)(c)4, Fla. Admin. Code. Because the Commission will not make its determination in this docket until October 16, 2009, FPL and PEF cannot revise their fuel clause filings until after that date. Accordingly, strict application of Rule 25-6.0423(5)(c)4, Fla. Admin. Code, requiring the utilities to make their filings by the 15th, or before the Commission has ruled in this proceeding, would cause substantial hardship and violate basic principles of fairness.

6. Due to the inability to comply with the filing date set forth in Rule 25-6.0423(5)(c)4, FPL and PEF request that they be permitted to submit their fuel clause filing revisions by October 23, 2009. This variance request is temporary, because it is only being sought for 2009. The variance request is also consistent with the underlying purpose of Rule 25-6.0423(5)(c)4, which is to provide the utility with enough time to revise its fuel clause filings (i.e., at least 15 days), and also to provide the Commission with enough time to include the utility's revisions in its determination and order in the fuel and purchase power cost recovery docket. The requested variance or partial waiver will still achieve those purposes. In fact, the seven-day time frame proposed herein would result in a quicker submittal from the utilities than that provided for by the rule.

WHEREFORE, for the above and foregoing reasons, FPL and PEF request a variance from or partial waiver of Rule 25-6.0423(5)(c)4, Fla. Admin. Code, so that each company can submit its fuel clause filing revisions after October 16, 2009 but not later than October 23, 2009.

Respectfully submitted this 31st day of July, 2009,

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**CERTIFICATE OF SERVICE
DOCKET NO. 090009-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery this 31st day of July, 2009, to the following:

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