

Diamond Williams

110009-EI

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Sent: Friday, July 01, 2011 4:17 PM
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Subject: FILING: DOCKET NO. 110009-EI
Attachments: Docket No. 110009 PEF's Motion for Deferral and Exhibit No. 1.pdf

Electronic Filing:

a. The person responsible for this electronic filing is:

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b. Docket No. 110009-EI, Nuclear Cost Recovery Clause

c. This filing is being made on behalf of Progress Energy Florida, Inc.

d. There are a total of sixteen (16) pages in the attached document

e. The document is Progress Energy Florida, Inc.'s Motion For Deferral of the Approval of the Long-term Feasibility and the Reasonableness of Projected Construction Expenditures and Associated Carrying Costs for the Crystal River Unit 3 Uprate Project and Petition for a Temporary Variance or Waiver of Rule 25-6.0423(3)(c)2, 5, F.A.C. on an Emergency Basis and attached Exhibit No. 1.

Thank you.

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FPSC-COMMISSION CLERK

7/1/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause

Docket No. 110009-EI
Submitted for Filing: July 1, 2011

**PROGRESS ENERGY FLORIDA, INC.'S MOTION FOR DEFERRAL OF THE
APPROVAL OF THE LONG-TERM FEASIBILITY AND THE REASONABLENESS OF
PROJECTED CONSTRUCTION EXPENDITURES AND ASSOCIATED CARRYING
COSTS FOR THE CRYSTAL RIVER UNIT 3 UPRATE PROJECT AND PETITION
FOR A TEMPORARY VARIANCE OR WAIVER OF RULE 25-6.0423(3)(c)2, 5, F.A.C.
ON AN EMERGENCY BASIS**

Progress Energy Florida, Inc. ("PEF" or the "Company") moves the Florida Public Service Commission (the "Commission") to defer (1) the approval of the long-term feasibility of completing the Crystal River Unit 3 ("CR3") Extended Power Uprate ("EPU") Project ("CR3 Uprate project") and (2) the determination of the reasonableness of PEF's actual/estimated 2011 and projected 2012 construction expenditures and associated carrying costs for the EPU phase of the CR3 Uprate project under Rule 25-6.0423(3)(c)2 and 5, F.A.C., respectively, from Docket No. 110009-EI to the continuing Nuclear Cost Recovery Clause ("NCRC") docket in 2012. To the extent necessary, PEF further petitions on an emergency basis for a temporary variance or waiver of Rule 25-6.0423(3)(c)2 and 5, F.A.C. for this year only to accomplish the deferral of these specific CR3 Uprate project determinations from this docket to the 2012 NCRC docket.

BACKGROUND

1. On May 2, 2011, PEF filed direct testimony and exhibits in support of its actual/estimated 2011 and projected 2012 construction expenditures and associated carrying costs for the CR3 Uprate project consistent with Section 366.93, Florida Statutes, and Rule 25-6.0423(3), F.A.C. The testimony and exhibits included the Company's analysis of the long-term

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feasibility of completing the CR3 Uprate project consistent with Rule 25.6.0423(3)(c)5, F.A.C. The Company's long-term feasibility analysis was completed and its actual/estimated 2011 and projected 2012 costs for the CR3 Uprate project were developed prior to the March 14, 2011 discovery of the second delamination event at CR3. As explained in the Company's testimony, the feasibility of completing the CR3 Uprate project was not affected by the second delamination event because the CR3 Uprate project can be completed on the current project schedule under several options to repair the second delamination and return CR3 to service that were evaluated. Accordingly, PEF's actual/estimated 2011 and projected CR3 Uprate project costs reasonably reflect completion of the CR3 Uprate project on the Company's current project schedule.

2. The Company determined the reasonable course of action was to take steps to preserve the option of completing the EPU phase of the CR3 Uprate project on the current project schedule without unnecessarily incurring costs for the project pending completion of the Company's evaluation of the second delamination event. The Company explained in its testimony the steps taken on the CR3 Uprate project to slow down or defer Uprate project work where reasonable to do so in order to preserve the option of completing the project as planned at a reasonable cost. The Company further explained that it expected to implement this approach to the CR3 Uprate project for several months to allow the Company time to complete its engineering analyses and evaluations of the second delamination event and determine the appropriate course of action for CR3 and the CR3 Uprate project.

3. Based on the Company's analyses and evaluations of the second delamination event, the Company determined the reasonable and prudent plan is to repair CR3 using a selected repair option rather than decommission it. As a result of this plan, the Company is updating its analysis of the feasibility of completing the CR3 Uprate project to determine if there is a more

cost effective option to complete the CR3 Uprate project in line with the repair option that PEF has selected. This updated feasibility analysis will consider a range of available options to complete the CR3 Uprate project as a result of the second delamination event repair option selected by the Company. These options include completion of the CR3 Uprate project on the current project schedule and costs upon which the Company's actual/estimated 2011 and projected 2012 project costs are based. However, other options to complete the CR3 Uprate project increase the probability of adjustments in the project schedule and cost projections for 2011 and 2012. The updated feasibility analysis and cost projections for the CR3 Uprate project are in the process of being finalized and approved.

4. Rule 25-6.0423, F.A.C. implements Section 366.93, Florida Statutes. Section 366.93(2), Florida Statutes, required the Commission to establish alternative cost recovery mechanisms "designed to promote utility investment in" nuclear power plants and allow for the recovery in rates of all prudently incurred costs. *Id.* Rule 25-6.0423, F.A.C. establishes the required alternative cost recovery mechanisms for the recovery of prudently incurred nuclear power plant costs consistent with this legislative purpose. Specifically, the Commission shall annually make a prudence determination of the prior year's actual construction costs and associated carrying costs. Rule 25-6.0423(3)(c)2, F.A.C. Rule 25-6.0423(3)(c)2 further provides in relevant part that the Commission shall conduct a hearing each year and determine the reasonableness of projected construction expenditures and the associated carrying costs. Rule 25-6.0423(3)(c)2, F.A.C. Rule 25-6.0423(3)(c)5, also provides that a utility shall submit each year for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Rule 25-6.0423(3)(c)5, F.A.C.

5. The Commission can make a prudence determination of the prior year's actual construction costs and associated carrying costs for the CR3 Uprate project. The prudence of the Company's 2009 and 2010 CR3 Uprate project actual construction costs and associated carrying costs are not affected by the second delamination event that occurred in March 2011 and the Company's subsequent evaluation of that event. That evaluation, however, has now led to an updated feasibility analysis and updated projected cost estimates for the CR3 Uprate project that will be completed in the next few weeks. These circumstances potentially affect the Commission's review and approval of the CR3 Uprate project feasibility analysis under Rule 25-6.0423(3)(c)5 and the Commission's determination of the reasonableness of the CR3 Uprate project actual/estimated 2011 and projected 2012 costs under Rule 25-6.0423(3)(c)2.

REQUESTED RELIEF

6. There are three paths the Commission can take to address the required determinations under Rule 25-6.0423(3)(c) 2 and 5, F.A.C., for the CR3 Uprate project in the 2011 nuclear cost recovery docket. The Commission can proceed to hearing to approve the Company's feasibility analysis for the project and determine the reasonableness of the actual/estimated and projected project costs because the feasibility analysis was complete and the estimated and projected costs were reasonable at the time they were filed with the Commission. The feasibility analysis and the cost projections, however, will likely be updated prior to the hearing this summer. Alternatively, PEF can file the updated feasibility analysis and cost projections for the CR3 Uprate project when they are finalized and approved based on the plan with respect to the second delamination event and a hearing can be held on the updated project information. This may occur as early as July 2011, but it may not occur until August 2011, based on current expectations. In either case, there will be little if any time for discovery and

potential intervenor testimony related to the updated feasibility and cost information prior to the currently scheduled hearing.

7. A third option is that the determination of the feasibility of completing the CR3 Uprate project and the reasonableness of the actual/estimated and projected 2011 and 2012 costs can be deferred to the nuclear cost recovery docket next year. Deferral of these determinations until the nuclear cost recovery docket next year will provide PEF sufficient time to update its feasibility analysis and project costs based on the Company's plan with respect to the CR3 second delamination event. It will also provide all parties the opportunity to take discovery and prepare testimony, if any, in response to this updated feasibility and cost information. If the Commission agrees that this is the reasonable option the impact would be to reflect only the carrying costs on spend incurred prior to 2011 in the 2012 rates. Spends in 2011 and 2012 will still be tracked in actual costs and accrue a carrying cost at the appropriate rate until recovered in rates after the Commission and all parties have had the opportunity to review PEF's updated feasibility analysis and cost projections. PEF has attached Exhibit No. 1 that reflects the changes approving this option would effectuate. As can be seen on Exhibit No. 1 the impact would be to reduce the revenue requirements placed in 2012 rates from \$22.3 million down to \$5.7 million. PEF believes this is the reasonable course of action under the circumstances and, accordingly, PEF moves the Commission to defer review and approval of the feasibility of completing the CR3 Uprate project and the determination of the reasonableness of the actual/estimated and projected costs until the 2012 NCRC docket.

8. The Commission can defer and has deferred determinations pursuant to the nuclear cost recovery statute and rule when the circumstances warranted the deferral of a determination. In Docket No. 080009-EI, the Commission agreed to defer the prudence

determination for the Levy Nuclear Units 1 & 2 and the Turkey Point Units 6 & 7 projects from the 2008 NCRC docket to the 2009 NCRC docket. There, PEF's and Florida Power & Light's ("FPL") respective petitions for cost recovery were amended in July and May, respectively, to include the new plants because they had only recently received affirmative need determinations. See Order No. PSC-08-0749-FOF-EI, Docket No. 080009-EI (Nov. 12, 2008). The Commission acknowledged that the "shortened timeframe was insufficient to perform a prudence review" and agreed to the deferral of the prudence determinations to the 2009 NCRC docket. Id.¹ Additionally, last year, in Docket No. 100009-EI, the Commission agreed to defer consideration of all FPL issues until this year (Docket No. 110009-EI) based on FPL's agreement with the Office of Public Counsel ("OPC") and Florida Industrial Power User's Group ("FIPUG") that more time was needed to further investigate certain cost issues. See Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI (Feb. 2, 2011). The Commission has, therefore, recognized that the NCRC is a continuing docket and, when warranted by the circumstances, deferred certain cost and/or feasibility determinations under the nuclear cost recovery rule to the subsequent docket year.

9. The current circumstances facing the CR3 Uprate project warrant the deferral of the review and approval of the feasibility analysis for the project and the determination of the reasonableness of the actual/estimated and projected 2011 and 2012 project costs to the NCRC docket next year. The Company's plan to repair CR3 will lead to updated feasibility analyses to determine the most cost effective option to complete the CR3 Uprate project and potentially updated project cost projections. The updated feasibility analyses and potentially updated cost

¹ In this case, it bears emphasis that PEF is not seeking a deferral of the Commission's prudence review and determination for the CR3 Uprate project 2009 and 2010 actual costs. These costs were incurred prior to discovery of the second delamination event in March 2011 and, therefore, the prudence review and determination are unaffected by that event.

projections for the CR3 Uprate project are being completed now. Proceeding to a hearing on the CR3 Uprate project feasibility analysis and the reasonableness of projected Uprate project costs this year means these determinations will be made based on information that will soon be updated. Deferral of these determinations to the 2012 NCRC docket will allow these determinations to be made based on the updated information. Accordingly, PEF moves the Commission to defer the Commission's review and approval of the feasibility analysis of completing the CR3 Uprate project and the reasonableness of PEF's actual/estimated 2011 and projected 2012 CR3 Uprate project costs from Docket No. 110009-EI to the 2012 NCRC docket.

**PETITION FOR EMERGENCY AND TEMPORARY WAIVER OR VARIANCE OF
RULE 25-6.0423(3)(c) 2 AND 5 FOR THE 2011 NCRC DOCKET**

10. While PEF believes that a waiver or variance is not necessary, PEF, in an abundance of caution, petitions the Commission on an emergency basis for a temporary variance or waiver of Rule 25-6.0423(3)(c)2 and 5, F.A.C. for this year only to defer these specific CR3 Uprate project determinations from the 2011 NCRC docket to the 2012 NCRC docket.

11. A petition for emergency waiver or variance of a rule is appropriate when (1) the requirements of Section 120.542, Florida Statutes, for a rule waiver or variance are met, (2) the specific facts make the situation an emergency, and (3) the facts demonstrate that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, Florida Statutes. See Rule 28-104.004, F.A.C. The time frames under Section 120.542, Florida Statutes, provide for a final determination on a requested petition for waiver or variance of a rule requirement within ninety (90) days after receipt of the petition. There is inadequate time under Section 120.542, Florida Statutes, then, to obtain a determination that the requested waiver or temporary variance of Rule 25-6.0423(3)(c)2 and 5 should be granted before the currently scheduled hearing for the NCRC

docket commences on August 10, 2011. PEF will be denied its statutory right to request a variance or waiver of Rule 25-6.0423(3)(c) 2 and 5 under Section 120.542, Florida Statutes, unless the petition is considered an emergency request. See In re: Petition for a Determination of Need for an Electrical Power Plant in Martin County by Florida Power & Light Co., 2002 Fla. PUC LEXIS 378, Order No. PSC-02-0703-PCO-EI, Docket No. 020262-EI (May 23, 2002) (granting request for waiver of 90-day requirement to hold a need determination hearing on an emergency basis because a decision on the rule waiver petition on a non-emergency basis yielded a decision more than a month past the current need determination schedule). Accordingly, for the reasons provided below, PEF's petition for a temporary waiver or variance of the identified requirements in Rule 25-6.0423(3)(c)2 and 5, F.A.C. this year should be granted on an emergency basis.

12. Under Section 120.542, Florida Statutes, "variances or waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." §120.542(2), Fla. Stats. A substantial hardship is "a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver." Id. These statutory requirements are satisfied by the temporary variance or waiver this year of the requirements in Rule 25-6.0423(3)(c)2 and 5, F.A.C. that the Commission approve the Company's filed feasibility analysis for the CR3 Uprate project and determine that the filed CR3 Uprate project costs are reasonable.

13. The purpose of Section 366.93, Florida Statutes, is to establish alternative cost recovery mechanisms in order to promote electric utility investment in nuclear power plants and allow for the recovery in rates of all such prudently incurred costs. §366.93(2), Fla. Stats. Rule

25-6.0423(1), F.A.C. expressly implements this legislative purpose. Rule 25-6.0423(1), F.A.C. This statutory purpose can still be achieved if there is a temporary variance or waiver of the requirements to approve the feasibility of completing the CR3 Uprate project and determine the reasonableness of estimated and projected CR3 Uprate project costs this year. The Commission can determine the prudence of actual 2009 and 2010 CR3 Uprate project construction costs and associated carrying costs this year and allow for the recovery of the prudently incurred CR3 Uprate project costs consistent with Section 366.93. Further, the Commission can still allow for the recovery of all prudently incurred 2011 CR3 Uprate project costs consistent with Section 366.93 following a prudence determination next year if the temporary variance or waiver of Rule 25-6.0423(3)(c) 2 and 5, F.A.C. is granted this year. Thus, the purpose of Section 366.93, Florida Statutes, will be achieved if the temporary variance or waiver is granted. See generally, In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C. submitted by Florida Public Utility Company, 2007 Fla. PUC LEXIS 342, Order No. PSC-07-0557-FOF-EI, Docket No. 070300-EI (July 2, 2007) (finding that underlying purpose of the statute would be met even with the granting of a waiver to provide an additional 60 days to file a storm hardening plan because Florida Public Utility Company did not seek to be excused altogether and the extension would not deny staff or intervenors the opportunity to review and evaluate the plan).

14. The determination of what is a hardship and what makes it substantial is made by the agency that enacted the rule consistent with the legislative policy the rule implements. See generally, Fla. Dep't of Bus. & Prof'l Regulation, Div. of Para-Mutuel Wagering v. Inv. Corp. of Palm Beach, 747 So. 2d 374, 383 n7 (Fla. 1999) ("[Section 120.542] is intended to give agencies much-needed flexibility to address unique or unusual situations that are not contemplated by

agency rules that, by necessity, are written to address general circumstances.”) (quoting, Blanton & Rhodes, Flexibility, Flexibility, Flexibility, The New Variance & Waiver Provision, Fla. B.J., Mar. 1997 at 35, 38-39). The Florida Legislature deferred to the Commission the enactment of alternative cost recovery mechanisms for nuclear power plant costs consistent with the Legislative purpose that the Commission’s cost recovery mechanisms promoted utility investment in nuclear power plants and allowed for the recovery in rates of all prudently incurred costs. §366.93(1), (2), Fla. Stats. The Commission, therefore, has the discretion to determine what warrants a waiver of its requirements for review and approval of feasibility analyses and the reasonableness of projected costs on nuclear power plant projects under the substantial hardship test of Section 120.542.

15. The Commission can find that there is a substantial hardship to PEF if strict compliance with the requirements in Rule 25-6.0423(3)(c)2 and 5 F.A.C., is required this year. These specific requirements exist only in Rule 25-6.0423, F.A.C. They are not requirements under Section 366.93, Florida Statutes. They exist to assist the Commission in its review and approval of costs incurred on nuclear power plant projects and to promote the utility investment in nuclear power plants by allowing recovery of reasonable projected costs subject to true-up and a subsequent determination that the costs were prudently incurred. As a result, the Commission can temporarily waive or grant a variance of these specific requirements this year and preserve these benefits of the rule in the continuing NCRC docket next year.

16. In fact, PEF, the Commission, and all other parties to this docket will benefit from the temporary waiver or variance of these requirements this year because they will have the benefit of the on-going, current update of the information required by these rule requirements in the NCRC docket next year. Applying these rule requirements this year, therefore, would be a

substantial hardship. See generally, Order No. PSC-07-0557-FOF-EI (July 2, 2007) (rule waiver granted when FPUC intended to comply with filing requirement and staff and others had the opportunity to review and evaluate the plan when filed); In re: Petition for waiver of Rule 25-17.250(1) and (2)(a), F.A.C., 2008 Fla. PUC LEXIS 523, Order No. PSC-08-0706-TRF-EI, Docket No. 080501-EI (Oct. 23, 2008) (waiving rule requiring filing of standard offer contract when it was factually inapplicable to PEF's situation). Indeed, strict application of these requirements in Rule 25-6.0423(3)(c) 2 and 5, F.A.C. at this time imposes on PEF a requirement that does not serve the purpose of the statute or even these rule requirements at this time. See generally, In Re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., 2007 Fla. PUC LEXIS 647, Order No. PSC-07-0999-PAA-TX, Docket No. 070611-TX (Dec. 12, 2007) (waiving individual customer authorization of carrier change rule requirement when strict compliance served no useful purpose because adequate public notice to customers was provided and individual authorization could cause confusion and claims to detriment of utility and customers).

17. No other person or entity can claim any prejudice if a waiver or variance is granted. Because the information required by these specific requirements is currently being updated no party will be prejudiced by the temporary waiver or variance of these requirements until next year when this updated information will be available. See generally, In re: Petition for a Determination of Need for an Electrical Power Plant in Martin County by Florida Power & Light Co., 2002 Fla. PUC LEXIS 378, Order No. PSC-02-0703-PCO-EI, Docket No. 020262-EI (May 23, 2002) (granting request for waiver of 90-day requirement to hold a need determination hearing so that a second request for proposals (RFP) could be issued, potentially avoiding the substantial hardship of expensive, complicated litigation over issues the second RFP might

resolve). Customers and potential intervenors will have ample notice of and an opportunity to participate in the NCRC docket next year when this updated information will be addressed under Rules 25-6.0423(3)(c)2 and 5, F.A.C.

18. For purposes of this petition for temporary waiver or variance of Rule 25-6.0423(3)(c)2 and 5, F.A.C. on an emergency basis the Petitioner's name and address are: Progress Energy Florida, Inc., 299 1st Avenue North, St. Petersburg, Florida 33701. Any pleading, motion, notice, order, or other document required to be served upon PEF or filed by any party to this proceeding should be served upon the following individuals:

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19. As explained above, the Commission can grant a temporary waiver or variance this year of the identified requirements of Rule 25-6.0423(3)(c)2 and 5, F.A.C. on an emergency basis under Section 120.542 when (1) the purpose of the rule will otherwise be satisfied even though the rule is waived and (2) substantial hardship of a technological, economic, legal, or other type of hardship will result from compliance with the rule. §120.542(2), Fla. Stat. Both requirements are met here and, therefore, PEF's petition should be granted.

CONFERENCE WITH OTHER PARTIES

20. Pursuant to Rule 28-106.204(3), F.A.C., PEF has conferred or attempted to confer with all parties of record and has not obtained all parties' positions on the motion at this time subject to the parties' review of the filing.

WHEREFORE, for the all the reasons stated above, PEF respectfully requests the Commission to defer its review and approval of the feasibility analysis for the CR3 Uprate project and its determination of the reasonableness of the CR3 Uprate project actual/estimated 2011 and projected 2012 costs to the 2012 NCRC docket, approve spending in 2011 and 2012 to accrue a carrying cost at the appropriate rate until recovered in rates, and, to the extent necessary, grant PEF's petition for an emergency, temporary waiver of these requirements in Rule 25-6.0423(3)(c)2 and 5, F.A.C. this year to accomplish the deferral of these determinations to the 2012 NCRC docket.

Respectfully submitted this 1st day of July, 2011.

s/ Blaise N. Huhta

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 1st day of July, 2011.

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The result of deferring a finding of reasonableness on the 2011 and 2012 projected spend would be to reduce the 2012 revenue requirements for ratemaking purposes down from the previously filed \$22,255,605 to \$5,678,215. PEF has calculated this amount by simply removing any spend from the previously filed 2011 and 2012 NFR schedules. This has the effect of calculating a carrying cost on all spend incurred prior to 2011. See below for a brief summary of the changes.

Impact to 2012 Revenue Requirements for Rate Setting Purposes of Deferring 2011 & 2012 Projection Reasonableness Finding

	May 2 Filing Revenue Requirements	Adjusted Revenue Requirements	Change
Carrying Costs on Additions	24,671,233	12,200,044	(12,471,189)
Carrying Costs on Deferred Tax	894,474	675,703	(218,771)
Allocated or Assigned O&M	436,937	(710)	(437,647)
Other Adjustments	(3,261,939)	(3,261,939)	-
Total Projected Period Amount	22,740,705	9,613,098	(13,127,607)
Prior Period True-Up Provision	(501,113)	(3,938,968)	(3,437,855)
Total	22,239,592	5,674,130	(16,565,462)
Revenue Tax Multiplier	1.00072	1.00072	1.00072
Total 2012 Projected Revenue Requirement	22,255,605	5,678,215	(16,577,389)

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