

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost Recovery  
Clause.

DOCKET NO.: 20170009-EI

FILED: July 20, 2017

**PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2017-0057-PCO-EI, issued February 20, 2017, and Order No. PSC.2017-0260-PCO-EI, issued July 10, 2017, hereby submit this Prehearing Statement.

**APPEARANCES:**

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Deputy Public Counsel  
Patricia A. Christensen  
Associate Public Counsel  
Erik L. Sayler  
Associate Public Counsels  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida

1. **WITNESSES:**

NONE

2. **EXHIBITS:**

NONE

## STATEMENT OF BASIC POSITION

### FPL

In this year's Nuclear Cost Recovery Clause ("NCRC") proceeding FPL has requested that the Commission: (1) find it is reasonable for FPL continue to pursue its Combined Operating License (COL); and (2) allow FPL to create a deferred regulatory asset for these costs, with ongoing and continuing applicable carrying charges, for later recovery through the NCRC. Section 366.93(3)(f)(3), F.S., requires that

in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to construct a nuclear or integrated gasification combined cycle power plant **only if** the utility proves by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical.** (Emphasis added)

In 2015, FPL filed a stale long-term feasibility study in that year's NCRC docket. In 2016, FPL did not file a long-term feasibility study in the NCRC docket and instead sought a waiver of Rule 25-6.0423(6)(c)(5), F.A.C. FPL subsequently withdrew its requested waiver and was granted a deferral on its NCRC issues until this year's NCRC proceeding. See, Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI (20160009-EI) at p. 2 and 3. Further, this Order stated that "FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket." Id. However, FPL failed again to file a long-term feasibility study in accordance with Rule 25-6.0423(6)(c)(5), F.A.C., in this year's 2017 NCRC proceeding.

In addition, there have been major developments which call into question the validity and value of pursuing the COL for Turkey Point Units 6 & 7, and whether FPL can demonstrate by the *preponderance of the evidence* that "its intent is realistic and practical." See Section 366.93(3)(f) 3., F.S. Westinghouse, who owns the design rights to the AP1000, filed for bankruptcy protection in the Spring of 2017 and has publicly stated it would no longer construct additional nuclear power

plants in the future. Moreover, FPL has stated that it has not spoken with anyone at Westinghouse regarding whether they would maintain a traditional role of an engineering and procurement contractor. The first wave of Westinghouse's AP 1000 plants are being built by Georgia Power Company at Plant Vogtle and South Carolina Electric & Gas Co. at Plant Summer. Each of these projects have experienced, and continue to experience, significant delays and massive cost overruns. These major changes in circumstances, along with other factors, call into question whether FPL's continued pursuit of the COL and related costs is realistic and practical.

FPL argues that it is not required to provide a long-term feasibility study pursuant to Rule 25-6.0423(6)(c)(5), F.A.C., because it is not seeking to recover costs for several years. However, this argument is meritless. First, FPL is asking this Commission to make a finding that incurring costs to be paid by FPL's customers for the COL is reasonable now which would bind future Commissions and create a future liability, in the form of potentially fruitless expenditures and statutorily required carrying costs, for customers at some level of cost recovery. Second, FPL is asking to defer these COL related costs for an indefinite period of time for subsequent recovery through the NCRC with applicable carrying charges.

Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs which include COL 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.**" Unlike the single year deferral granted last year by the Commission in Order No. PSC-16-0266-PCO, FPL is requesting deferral for at least a minimum of 4 years. In addition, as part of its request for creation of a deferred asset, FPL is asking the Commission to approve carrying charges for the COL costs. According to FPL's testimony, over a ten year period, customers could become liable for more

than \$100 million in COL related costs and yet FPL could still not build Turkey Point Units 6 & 7.

In addition, Rule 25-6.0423(6)(c)(5), F.A.C., requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing, “a detailed analysis of the long-term feasibility of completing the power plant.” FPL has not made this filing. Based on FPL’s failure to comply with this rule and the lack of a 2017 long-term feasibility study demonstrating that its Turkey Point Units 6 & 7 project is feasible going forward, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

#### 4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

##### FPL

**Issue 1: Should the Commission find that FPL’s 2015 and 2016 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?**

OPC: No Position.

**Issue 2: What jurisdictional amounts should the Commission approve as FPL’s actual 2015 and 2016 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 Project?**

OPC: Based on FPL’s failure to file a 2016 long-term feasibility study demonstrating that the Turkey Point Units 6 & 7 project is feasible going forward, any 2016 costs incurred on the project should not be allowed to be recovered through the NCRC docket.

**Issue 3: Should the Commission approve FPL’s request to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.? If so, what type of information should FPL report on an annual basis in the Nuclear Cost Recovery docket?**

OPC: No. Section 366.93(3)(f)(3), F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical**. Rule 25-6.0423, F.A.C., further requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing “a detailed analysis of the long-term feasibility of completing the power plant.” FPL has not made this filing. Based on this lack of compliance, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

**Issue 4: If FPL continues to seek its combined operating license and defers the associated costs, are these costs eligible for cost recovery in a future time period pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.?**

OPC: No. Section 366.93(3)(f)(3), F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical**. Further, Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs which include COL 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**.” FPL proposes to defer these costs for an indefinite period, but at a minimum of 4 years. This request is contrary to the Commission’s Rule and should be denied.

**FPL Contested Issues**

**Issue 5:**     **A) Is FPL’s decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? (STAFF)**

**B) Is FPL’s decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.? (OPC)**

OPC:           No. Section 366.93(3)(f)(3), F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical**. Westinghouse, the AP 1000 design owner, has filed for bankruptcy protection and has publicly stated it will not be constructing any additional nuclear power plants. FPL is delaying any decision to move forward with the project indefinitely after it hopes to obtain the COL. Under these circumstances, it is not realistic or practical for FPL to incur any additional costs that its ratepayers must bear for the COL in light of such uncertainty.

**Issue 6:**     **A) Should the Commission approve what FPL has submitted as its 2017 annual detailed analysis of the long term feasibility of completing the Turkey Point 6&7 project as provided for in Rule 25-6.0423, F.A.C.? (SACE)**

**B) Was FPL required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project, pursuant to Rule 25-6.0423(6)(c)5., F.A.C.,? If so, has FPL complied with that requirement? (COM)**

OPC:           Rule 25-6.0423, F.A.C., specifically requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing “a detailed analysis of the long-term feasibility of completing the power plant.” FPL has not

made this filing. Based on this lack of compliance, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

**Issue 7:**      **Has FPL complied with Order No. PSC-16-0266-PCO-EI? If not, what action should the Commission take, if any?**

OPC:            No. In Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI (20160009-EI) at pages 2 and 3, the Commission states “FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket.” FPL failed to file in this year’s docket a long-term feasibility study in accordance with Rule 25-6.0423(6)(c)(5), F.A.C.; therefore, FPL has not complied with the Commission’s Order.

**Issue 8:**      **What is the total jurisdictional amount to be included in establishing FPL’s 2018 Capacity Cost Recovery Clause factor?**

OPC:            The jurisdictional amount to be included in the 2018 Capacity Cost Recovery Clause factor should be limited to the 2015 true-up amount.

**Issue 9:**      **What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?**

OPC:            Unknown.

**Issue 10:**     **What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?**

OPC:            Unknown.

**DEF**

**Issue 11:** Should the Commission find that during 2016, DEF's accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

OPC: No Position.

**Issue 12:** What jurisdictional amounts should the Commission approve as DEF's actual 2016 prudently incurred costs for the Crystal River Unit 3 Uprate project?

OPC: No Position.

**Issue 13** What jurisdictional amounts should the Commission approve as reasonably estimated 2017 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

OPC: No Position.

**Issue 14:** What jurisdictional amounts should the Commission approve as reasonably projected 2018 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

OPC: No Position.

**Issue 15:** What is the total jurisdictional amount for the Crystal River Unit 3 Uprate Project to be included in establishing DEF's 2018 Capacity Cost Recovery Clause Factor?

OPC: No Position.



5. STIPULATED ISSUES:

OPC stipulates to the excusal of Geoff Foster in the August hearing, assuming that all parties enter into some form of stipulation on the CR3 EPU issues.

6. PENDING MOTIONS:

None.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR  
CONFIDENTIALITY:

None.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 20<sup>th</sup> day of July, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**  
**Docket No. 20170009-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished

by electronic mail on this 20<sup>th</sup> day of July, 2017, to the following:

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