

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 5, 2017

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Industry Development and Market Analysis (Whitfield, Breman, Crawford, Hinton, Laux) *mrl DH CH*
Division of Economics (Higgins, Stratis) *MS WBNV BO*
Division of Engineering (Ellis, Lee) *POE*
Office of the General Counsel (Mapp, DuVal) *KRM JS MA*

RE: Docket No. 20170009-EI – Nuclear cost recovery clause.

AGENDA: 10/17/17 – Special Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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List of Acronyms and Abbreviations

AFUDC	Allowance for Funds Used During Construction
BR	Brief
CCRC	Capacity Cost Recovery Clause
COL	Combined Operating License (issued by the NRC)
Commission	Florida Public Service Commission
CR3 Uprate Project	Multi-phased uprate project at DEF's Crystal River Unit 3
CWIP	Construction Work In Progress
DEF	Duke Energy Florida, LLC
EPC Contract	Engineering, Procurement, and Construction Contract
EXH	Exhibit
F.A.C.	Florida Administrative Code
FIPUG	Florida Industrial Power Users Group
FPL	Florida Power & Light Company
FRF	Florida Retail Federation
F.S.	Florida Statutes
Levy Project	DEF's Levy Units 1 & 2 Project
Miami	City of Miami
MW	Megawatt (1,000,000 watts)
NCRC	Nuclear Cost Recovery Clause
NRC	Nuclear Regulatory Commission
OPC	Office of Public Counsel
PCS Phosphate	White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate -White Springs
SACE	Southern Alliance for Clean Energy
TP Project	FPL's Turkey Point Units 6 & 7 Project
TR	Transcript

Case Background

This recommendation addresses petitions for alternative cost recovery of new nuclear generation project costs through the Nuclear Cost Recovery Clause (NCRC) pursuant to Rule 25-6.0423, Florida Administrative Code (F.A.C.), and Section 366.93, Florida Statutes (F.S.), that were filed by Florida Power & Light Company (FPL) and Duke Energy Florida, LLC., (DEF).

Traditionally, all power plant construction projects are generally afforded the same regulatory accounting and ratemaking treatment. That is, once the need for a power plant is determined, the utility records expenditures associated with the project into Account 107, Construction Work in Progress (CWIP), for that particular project. A monthly allowance-for-funds-used-during-construction (AFUDC) rate is applied to the average balance in the CWIP account and the resulting dollar amount is then added to the account. This process continues until the project is completed. If a construction project is terminated prior to commercial service, the utility may petition to recover the related CWIP account balance over a period of years.

Once a power plant is in commercial service, the CWIP account balance is transferred to the appropriate plant-in-service accounts and becomes part of the utility's rate base. The impact of including the total project costs in a utility's rate base, as well as the impact of plant operating expenses, is addressed during a subsequent proceeding to determine whether customer base rates should be changed in order to provide the utility the opportunity to fully recover those costs and expenses.

In 2006, the Florida Legislature enacted Section 366.93, F.S., to encourage utility investment in nuclear electric generation in Florida. Section 366.93, F.S., directed the Florida Public Service Commission (Commission) to establish, by rule, alternative cost recovery mechanisms allowing investor-owned electric utilities to recover certain costs during the licensing and construction process. In 2007, Section 366.93, F.S., was amended to include integrated gasification combined cycle plants, and in 2008, the statute was amended to include new, expanded, or relocated transmission lines and facilities necessary for the new power plant. In 2013, the Florida Legislature further amended the statute to change the applicable carrying costs, restrict cost recovery during the license application process, and require Commission approval prior to commencing certain activities and purchases. The 2013 amendments also established timeframes within which the utility's physical construction activities must commence after obtaining a combined operating license (COL) from the Nuclear Regulatory Commission (NRC).¹

In 2007, the Commission adopted Rule 25-6.0423, F.A.C., establishing the alternative nuclear cost recovery process. The Commission utilized a cost recovery clause methodology for reviewing and approving annual nuclear cost recovery amounts. The clause methodology involves conducting an annual evidentiary proceeding whereby the Commission would review activities and costs projected to occur in the subsequent year. The Commission would then approve a recovery amount and establish a cost recovery factor that would allow the company to recover the projected costs as they are incurred. In that subsequent year those projected costs

¹ The Commission revised Rule 25-6.0423, F.A.C., by Order No. PSC-14-0022-FOF-EI, issued January 10, 2014, in Docket No. 130222-EI, In re: Proposed amendment of Rule 25-6.0423, F.A.C., Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery.

would be further refined, based upon partial-year actual costs, and adjustments would be made to better match revenues to estimated costs. In the following year the Commission would conduct audits and approve a final true-up to ensure final revenues match actual costs. In sum, under this methodology, the Commission approves cost recovery on a projected basis and then spends two years trueing-up those projections to actuals. Following the evidentiary proceeding, the Commission makes particular findings when evaluating projected costs, actual/estimated costs, and the final true up of actual costs. For the projected year and the current year, the Commission determines whether the projected costs and the current year re-estimated costs are reasonable. A determination of reasonableness permits a utility to recover costs on a projected basis. For the final true-up of actual costs the Commission makes a finding of prudence. As discussed later, a prudence review involves certain standards, such as a prohibition on hindsight review. Rule 25-6.0423(6), F.A.C., establishes the process and filing requirements associated with the annual proceedings.

Pursuant to Rule 25-6.0423(5) and (6), F.A.C., once a utility obtains an affirmative need determination for a power plant covered by Section 366.93, F.S., the utility may petition for cost recovery using the alternative mechanism. Pursuant to Section 366.93(2), F.S., and Rule 25-6.0423(6), F.A.C., all prudently incurred preconstruction costs, as well as the carrying charges on prudently incurred construction costs, are to be recovered directly through the Capacity Cost Recovery Clause (CCRC). Rule 25-6.0423(6)(c)5., F.A.C., states that each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant (feasibility analysis).

When a nuclear power plant enters commercial service, pursuant to statute and rule, a utility is allowed to increase its base rates. Section 366.93(4), F.S., describes the method for calculating the increase, and Rule 25-6.0423(8), F.A.C., provides further details on the calculations and the process. In the event a utility elects not to complete or is precluded from completing the power plant project, Section 366.93(6), F.S., and Rule 25-6.0423(7), F.A.C., allow a utility to collect its unrecovered prudently incurred costs over a period of at least 5 years.

FPL and DEF filed petitions on March 1, 2017, seeking prudence reviews and final true-up of actual costs incurred in prior years for certain nuclear power plant projects. On May 1, 2017, FPL and DEF filed additional petitions seeking various approvals. Cost recovery of any approved amounts from these petitions will occur in 2018 through the CCRC. This is the tenth year the Commission has convened an evidentiary hearing to examine alternative cost recovery for new nuclear generation construction projects.

FPL's petitions addressed continued development of new nuclear units Turkey Point 6 and 7 (TP Project), for which FPL obtained an affirmative need determination in 2008.² DEF's petitions addressed two nuclear projects: the uprate of Crystal River Unit 3 (CR3 Uprate Project), and the construction of new units Levy 1 and 2 (Levy Project). DEF obtained affirmative need

²Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, in Docket No. 070650-EI, In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company.

determinations for the CR3 Uprate Project in 2007 and the Levy Project in 2008.³ DEF announced the cancelation of these projects in 2013.

The following parties intervened in this year's proceeding: the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), Southern Alliance for Clean Energy (SACE), White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate), the City of Miami (Miami), and Florida Retail Federation (FRF). Testimony was submitted by FPL, DEF, Miami, and Commission staff.

On June 16, 2017, OPC and PCS Phosphate filed a Motion to Temporarily Hold in Abeyance and Reschedule the hearing for DEF's Levy Project until October 24, 2017. On July 10, 2017, by Order No. PSC-2017-0260-PCO-EI, the hearing on DEF's Levy Project was rescheduled for October 25, 2017. On August 29, 2017, DEF filed a Motion to further Defer or Continue the Levy Project portion of the hearing so that the Commission could consider a recently filed petition for a Limited Proceeding to Approve the 2017 Second Revised and Restated Settlement Agreement. If this settlement agreement is approved by the Commission, all remaining Levy Project issues in this docket will be resolved. On August 30, 2017, by Order No. PSC-2017-0341-PCO-EI, the Commission approved DEF's Motion to Defer or Continue.

On August 11, 2017, Miami filed a notice of withdrawal from this docket. On August 15, 2018, the Commission convened the evidentiary hearing in the 2017 NCRC proceeding. As part of the preliminary matters, the Commission acknowledged Miami's withdrawal from the proceeding. (TR 8-9) In addition, the Commission was presented with proposed stipulations on all DEF CR3 Uprate Project issues. (TR 42-43) Upon discussion with the parties, the Commission approved the stipulations. (TR 43) Therefore, for the CR3 Uprate Project, DEF is authorized to include \$49,648,457 in the calculation of its 2018 CCRC factors.

The remaining contested issues pertain to FPL's TP Project. Issue 1 addresses the prudence of FPL's 2015 and 2016 project management while Issue 2 identifies the associated costs and final true-up amounts. Issue 3 presents FPL's proposal to defer recovery and file annual reports during the deferral period. The focus of Issue 4 is whether deferred costs remain eligible for NCRC treatment. Issue 5A addresses the reasonableness of FPL's decision to continue pursuit of a COL. Issue 6B addresses the requirement for an analysis of the long-term feasibility of completing the TP Project. Issue 7 addresses FPL's compliance with Order No. PSC-16-0266-PCO-EI. In Issue 8, staff presents FPL's net NCRC amount for the 2018 period based on the resolution of all prior issues. Issues 9 and 10 are fact-based issues addressing the current estimated TP Project total cost and commercial operation date. Issue 16 addresses whether the docket should be closed. On August 31, 2017, post-hearing briefs were filed by FPL, OPC, FIPUG, FRF, and SACE.

³Order No. PSC-07-0119-FOF-EI, issued February 8, 2007, in Docket No. 060642-EI, In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C. and for cost recovery through fuel clause, by Progress Energy Florida, Inc.; Order No. PSC-08-0518-FOF-EI, issued August 12, 2008, in Docket No. 080148-EI, In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

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The Commission has jurisdiction over these matters pursuant to Section 366.93, F.S., as well as Sections 366.04, 366.041, 366.05, 366.06 and 366.07, F.S.

Discussion of Issues

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?

Recommendation: Yes. Staff recommends the Commission find FPL's 2015 and 2016 Turkey Point Units 6 & 7 project management, contracting, accounting and cost oversight controls reasonable and prudent. (Breman, Whitfield)

Position of the Parties

FPL: Yes. Regarding intervenors' feasibility arguments, FPL notes that it filed feasibility analyses when it sought recovery of its 2015 and 2016 cost projections. Those costs were recovered but remained subject to a prudence review. A 2017 feasibility analysis is irrelevant to the prudence of costs previously incurred, and there is no record evidence disputing the prudence of FPL's 2015-2016 Project costs. Accordingly, there is no factual or legal support for any disallowance.

OPC: No position.

FIPUG: No.

FRF: No Position.

SACE: No.

Staff Analysis: This issue addresses the prudence of FPL's 2015 and 2016 project management, contracting, accounting and cost oversight controls for the TP Project.

Parties' Arguments

FPL

In its brief, FPL argued that Section 403.519(4)(e), F.S., states that the "right of a utility to recover any costs incurred prior to commercial operation . . . shall not be subject to a challenge unless and only to the extent the Commission finds based on a preponderance of the evidence . . . that certain costs were imprudently incurred." (FPL BR 9)

FPL maintained that all TP Project costs were incurred as a result of a deliberately managed process at the direction of a well-informed, properly qualified management team. (TR 105; FPL BR 10) Its management decisions and costs were subject to a robust system of internal controls. (FPL BR 11) FPL asserted that these controls are regularly assessed and audited. (TR 97, 311 - 314; FPL BR 11) FPL noted that the Commission's Office of Auditing and Performance Analysis audited FPL's costs and found no exceptions. (EXH 22, 23; FPL BR 11) Additionally, no intervening party presented any testimony or elicited any evidence supporting the imprudence of any TP Project management decisions or actions in 2015 or 2016. (FPL BR 11) FPL asserted

that it has complied with all filing requirements related to demonstrating its prudence. (FPL BR 14)

Delays in the first wave of new nuclear construction projects by other electric utilities prompted FPL's 2016 decision to pause the TP Project upon receipt of its license. (TR 79 - 80; FPL BR 16) At the time of its decision, FPL was cognizant of the historically low natural gas price forecasts and delays in emission compliance costs. (TR 86 - 87; FPL BR 16) FPL asserted that the combination of these factors reduced the financial imperative for beginning post-licensing preconstruction work. (TR 87; FPL BR 16) FPL opined that recent events, such as the Westinghouse bankruptcy, reduce the certainty of prior cost estimates and schedules for the first wave projects and underscore the appropriateness of FPL's plan. (TR 110; FPL BR 16)

In its brief, FPL asserted that the intervenors relied solely on legal arguments based on the perceived need for FPL to file a feasibility analysis in an attempt to persuade the Commission that it should disallow costs. (FPL BR 11-12) However, when FPL sought recovery of its projected 2015 costs in 2014, it filed a feasibility analysis. (FPL BR 12, 14) FPL filed a feasibility analysis again in 2015, when FPL sought cost recovery of its projected 2016 costs. (FPL BR 12, 14)

According to FPL, use of a 2017 feasibility analysis to assess prudence of costs incurred in 2015 and 2016 would require the application of a hindsight review. (FPL BR 13) FPL opined that in Florida, a management decision is prudent if it is within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. (FPL BR 13) Consequently, hindsight review is prohibited. (FPL BR 13) FPL noted that the Commission has refused to use a forward-looking feasibility analysis to judge the prudence of historic costs in NCRC dockets in the past. (FPL BR 13)

OPC and FRF

OPC and FRF took no position and did not brief this issue.

FIPUG

In support of its position, FIPUG argued in its brief that the Commission should not allow FPL to recover 2015 and 2016 costs through the NCRC due to the lack of a feasibility analysis. (FIPUG BR 3)

SACE

SACE's brief provided no argument in support of its position.

Analysis

FPL's 2015 and 2016 activities consisted primarily of licensing and permitting. FPL witness Scroggs provided a general description of FPL's project management structure, staffing approach, and elements of its project management process. Elements of FPL's project management process include periodic internal reports, risk management, flow of information, procurement process, and expenditure authorizations. (TR 88-98; EXH 5, 6, 7)

Commission audit staff witnesses Lehmann and Rich independently reviewed FPL's 2015 and 2016 project management controls. (TR 472-473; EXH 24, 25) The review examined the adequacy of FPL's project management and internal controls with respect to planning, management and organization, cost and schedule controls, contractor selection and management, and auditing. (TR 443-445; EXH 24, 25) Audit staff asserted the information gathered was questioned, cross verified with relevant documentation, and analyzed against best industry practices. (TR 447) Only information known and knowable at the time of any action taken by FPL was considered. (TR 447) Audit staff reported that FPL's TP Project internal controls were adequate, reasonable, effective, and responsive to the current project requirements. (TR 446; EXH 24, 25) Audit staff's review did not present any findings.

FPL's TP Project accounting and related controls were generally described by FPL witness Grant-Keene. (TR 303, 305, 310-315) Witness Grant-Keene noted that the 2015 and 2016 costs and controls were subject to audits. (TR 312, 314)

Commission staff accounting audit witness Piedra provided testimony and sponsored an accounting audit report of FPL's 2015 and 2016 costs associated with the TP Project. (TR 427; EXH 22, 23) As noted in witness Piedra's testimony, staff's audit activities included tracing and verification of the 2015 and 2016 costs and the final true-up amounts. (TR 427-428; EXH 22, 23) Witness Piedra also verified that FPL's final true-up NCRC filings were consistent with, and in compliance with, Section 366.93, F.S., and Rule 25-6.0423, F.A.C. (TR 428; EXH 22, 23) Witness Piedra did not report any findings. (TR 427-428; EXH 22, 23)

SACE, in its post-hearing brief, maintained its position that the Commission should not find FPL prudent. However, SACE's brief did not provide support for its position.

Staff notes that FIPUG also maintained a position that the Commission should not find FPL's project management, accounting, and cost oversight controls were prudent. However, FIPUG's argument was focused on the fact that FPL did not file a feasibility analysis. (FIPUG BR 3, 8) FPL acknowledged it did not file a feasibility analysis in 2016 and 2017. (FPL BR 6-8; TR 178-179; EXH 24) In its post-hearing brief, FIPUG noted by a footnote, that FPL would be free to seek recovery of such costs in its next base rate case, assuming it could prove that such costs were prudently incurred. (FIPUG BR 3) FIPUG also asserted that future analysis of deferred costs would "arguably be limited to only reviewing whether FPL's nuclear costs were prudent." (FIPUG BR 10) Thus, based on the entirety of FIPUG's arguments, a prudence determination of FPL's 2015 and 2016 project management and oversight does not rest on whether FPL filed a 2016 or 2017 feasibility analysis because FIPUG acknowledged cost recovery can be sought outside of Section 366.93, F.S.

Staff notes that pursuant to longstanding Commission practice, the standard for determining prudence is consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances which were known, or reasonably should have been known at the time the decision was made.⁴ As discussed in Issues 3, 4, and 6B, a feasibility analysis is

⁴ Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million, at 3; Order No. PSC-08-0749-FOF-EI, issued November 12, 2008, in Docket No. 080009-EI, In re: Nuclear cost recovery

forward looking. Consequently, staff agrees with FPL that use of a feasibility analysis prepared and filed after 2015 and 2016 to assess prudence of costs incurred in 2015 and 2016 would require the application of a hindsight review which is inappropriate because a feasibility analysis is forward looking. (FPL BR 6, 13) Furthermore, as previously discussed, audit staff reviewed FPL's 2015 and 2016 actions and reported no findings. Staff believes that there is no record evidence identifying any FPL 2015 and 2016 TP Project management decisions or accounting practices as imprudent.

Conclusion

Staff recommends the Commission find FPL's 2015 and 2016 Turkey Point Units 6 & 7 project management, contracting, accounting and cost oversight controls reasonable and prudent.

clause, at 28; Order No. PSC-09-0783-FOF-EI, issued November 19, 2009, Docket No. 090009-EI, In re: Nuclear cost recovery clause, at 11, 13; Order No. PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 26, 28, 57, 61, 91, 93; Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, In re: Nuclear cost recovery clause, at 23, 24, 32, 59, 60; Order No. PSC-13-0493-FOF-EI, issued October 18, 2013, in Docket No. 130009-EI, In re: Nuclear cost recovery clause, at 26; Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket No 150009-EI, In re: Nuclear cost recovery clause, at 22-23.

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?

Recommendation: The Commission should approve \$46,978,739 (jurisdictional) as FPL's combined final 2015 and 2016 prudently incurred costs and an over recovery of \$7,305,202 as FPL's 2015 and 2016 combined final true-up amount for the TP Project. (Whitfield, Breman)

Position of the Parties

FPL: The Commission should approve FPL's final true-up of 2015 and 2016 costs as filed:

2015 Preconstruction expenditures: \$17,309,494
Preconstruction carrying charges: \$6,668,729
Site Selection carrying charges: \$160,088
The net 2015 jurisdictional true-up amount is (\$1,306,211).

2016 Preconstruction expenditures: \$15,673,982
Preconstruction carrying charges: \$7,007,051
Site Selection carrying charges: \$159,395
The net 2016 jurisdictional true-up amount is (\$5,998,991).

OPC: The Commission should approve FPL's actual 2015 prudently incurred costs and final over-recovery of \$1,306,211 as the true-up amount and approve returning to ratepayers the amount identified as an over-recovery of \$5,998,991 for 2016. Since FPL has failed to file the required feasibility study or obtain a rule waiver, the Commission should not approve any new costs associated with the Turkey Point Units 6 and 7 project in this year's NCRC proceeding.

FIPUG: None. FPL seeks to recover more than 24 million dollars from customers for 2015 but failed to file a feasibility analysis as required by Commission Rule 25-6.0423 F.A.C. FPL seeks to recover more than 22 million dollars from customers for 2016 but failed to file a feasibility analysis as required by Commission Rule 25-6.0423 F.A.C. FPL cannot meet its statutory burden that it has to show that FPL intends to complete the project that is realistic and practical, as required by s. 366.93(f)(3) F.S.

FRF: The Commission should approve zero dollars for recovery through the NCRC, because FPL has not met its burden of proof – that it has a “realistic and practical” intent to construct the Turkey Point Project – in order to entitle it to a Commission order approving any cost recovery in this 2017 NCRC Docket. The final true-up amount should be a credit or refund to customers of the \$53,964,509 that FPL collected in 2015 and 2016.

SACE: None. SACE maintains that FPL did not complete and properly analyze a realistic feasibility analysis in 2015. See SACE's 2015 post-hearing brief. As such, requested cost recovery flowing from that deficient feasibility analysis, is not reasonable, nor prudently incurred, and should be denied. Moreover, FPL provided no evidence in 2016 that cost were prudently incurred.

Staff Analysis: This issue addresses the prudence of FPL's 2015 and 2016 actions, incurred costs, and resultant final true-up amounts that will either be refunded or collected during 2018.

Parties' Arguments

FPL

In its brief, FPL asserted that during 2015 and 2016, FPL continued to make progress on the TP Project licensing and permitting activities and maintained costs within the annual budget. (TR 74; EXH 2, 3, 8, 9; FPL BR 10) FPL asserted that it achieved important milestones in all aspects of the licensing process. (FPL BR 10) In particular, FPL received a final recommendation letter from the Advisory Committee on Reactor Safeguards, and the Final Safety Evaluation Report and the Final Environmental Impact Statement from the NRC, all supporting NRC approval of the TP Project on FPL's anticipated timeline. (TR 74; FPL BR 10) FPL also asserted it completed a land exchange resulting in completion of a key step in finalizing the western transmission lines associated with the TP Project. (FPL BR 10) FPL further stated that it continued work with the U.S. Army Corp of Engineers to obtain necessary authorizations for the TP Project. (TR 81, 83-84; FPL BR 10)

FPL opined that no intervenor presented any direct evidence that any particular cost was imprudently incurred. (FPL BR 9) FPL argued the intervenors instead attempted to commingle all of the elements of the Commission's review into one, "do not file feasibility, do not pass go" argument. (FPL BR 14) FPL maintained that this argument is inconsistent with the law of prudence and the process by which the NCRC Rule's annual filing requirements are made each year in this docket. (FPL BR 14) FPL noted that each year the utility's final true-up and prudence support is due to be filed around the first of March. (FPL BR 13) Filing requirements for the utility's current and subsequent year projects and feasibility analysis are filed separately around the first of May. (FPL BR 13-14) Furthermore, FPL argued that there is no language in the rule linking the feasibility analysis filing requirement to a determination that historical costs were prudently incurred. (FPL BR 12)

FPL maintained that the only record evidence in this case supports a determination that FPL's 2015 and 2016 costs should be found to have been prudently incurred. (FPL BR 14)

OPC

OPC stated that without an economic feasibility study, the Commission lacks any evidence or information about the reasonableness of the costs to complete the project to make prudence and reasonableness decisions. (OPC BR 6) OPC argued that since FPL failed to file the required feasibility study in 2017, or obtain a waiver of the Commission's rule, the Commission should not approve any new costs associated with the Turkey Point Units 6 and 7 Project in this year's NCRC proceeding. (OPC BR 7) As a result, the Commission should only approve for recovery FPL's actual 2015 prudently incurred costs and a final over-recovery of \$1,306,211 as the true-up amount for the Turkey Point Units 6 and 7 Project. (OPC BR 7) Further, OPC stated that the Commission should approve returning to ratepayers the amount identified as an over-recovery of \$5,998,991. (OPC BR 7)

FIPUG

FIPUG stated that the Commission should not approve any amount as FPL's actual 2015 and 2016 prudently incurred costs or final true-up amounts for the Turkey Point Units 6 & 7 Project. (FIPUG BR 3) FIPUG asserted that FPL failed to file a feasibility analysis for its 2016 cost recovery request and failed to offer its 2015 feasibility study as evidence in this case to support its request of recovery of 2015 costs. (FIPUG BR 8) Therefore, FIPUG argued the Commission should disallow FPL's request to recover 2015 and 2016 dollars through the nuclear cost recovery clause proceeding due to FPL's failure to comply with the Commission's feasibility analysis rule. (FIPUG BR 8)

FRF

FRF stated that the Commission should order FPL in 2018 to refund to Customers \$53,964,509 as the final true-up amount of 2015 and 2016 Turkey Point Nuclear Project incurred costs. (FRF BR 5) FRF argued that FPL failed to comply with applicable requirements of, and failed to meet its burden of proof as required by, Section 366.93, F.S., and the Commission's Rule 25-6.0423, F.A.C. (FRF BR 1) FRF further argued that to qualify for any cost recovery, pursuant to Section 366.93(3)(f)3., F.S., a utility must prove that it intends to construct its proposed plant and that its intent is realistic and practical. (FRF BR 2) FRF argued that FPL did not meet its burden to prove the required intent and therefore, by law, is not entitled to any order by the Commission approving cost recovery for any expenditures associated with its proposed Turkey Point Nuclear Project. (FRF BR 1)

SACE

In its statement of positions, SACE stated that the Commission should not approve any 2015 or 2016 Turkey Point Units 6 & 7 Project costs as being prudently incurred. (SACE BR 4) SACE further stated that FPL did not complete a properly analyzed and realistic feasibility analysis in 2015. (SACE BR 4) As such, SACE stated that the requested cost recovery flowing from the deficient feasibility analysis, is not reasonable, nor prudently incurred, and should be denied. (SACE BR 4) SACE further stated that FPL provided no evidence in 2016 that costs were prudently incurred. (SACE BR 4) SACE did not provide specific arguments to support its position on this issue. However, SACE combined its arguments for Issues 3 through 10 in its brief. (SACE BR 8-19) SACE further asserted that FPL did not meet its burden of proof concerning intent. (SACE BR 3, 15)

Analysis

2015 and 2016 TP Project Activities and Jurisdictional Amounts

FPL witness Scroggs provided summary descriptions of the 2015 and 2016 TP Project activities and costs for licensing, permitting, engineering and design, reevaluation of the project schedule, and data on executed contracts. (TR 74-75, 81-88, 98-106; EXH 2, 3, 8, 9) The licensing category of activities consisted of FPL employee and contractor labor as well as specialty consulting services necessary to support the COL and state certification applications. (TR 99; EXH 11) The permitting category of activities consisted of additional support provided by employees and legal services. (TR 99-100; EXH 2, 3, 8, 9) The engineering and design category of activities included employee and/or consulting services supporting the continued permitting of the underground injection exploratory well, and membership fees for Electric Power Research

Institute's advanced nuclear technology working group and the AP1000 Owners Group. (TR 100; EXH 2, 3, 8, 9) Witness Scroggs explained that FPL did not incur any costs during 2015 or 2016 for long-lead procurement advance payments, power block engineering and procurement, or transmission facilities. (TR 101, 104-105)

Witness Scroggs provided, in Exhibit 4, a listing of 57 different federal, state, and local licenses, permits, and authorizations necessary for the TP Project. He stated that in 2014 the Power Plant Siting Board approved the Site Certification for the TP Project and issued its Final Order. This Final Order was appealed by Miami-Dade County, the City of Miami, the City of South Miami, and the Village of Pinecrest.⁵ The Third District Court of Appeal (3rd DCA) heard arguments from the parties in 2015. (TR 82) In April 2016, the 3rd DCA reversed and remanded certain elements of the Site Certification. (TR 82-83) FPL petitioned for a rehearing en banc, which was denied. (TR 83) The 3rd DCA Mandate was issued in December 2016. (TR 83) FPL sought certiorari review by the Florida Supreme Court in late 2016. (TR 82-83) Other events regarding FPL progress toward obtaining a COL for the Turkey Point 6 & 7 Project in 2015 included the NRC publishing its Draft Environmental Impact Statement, receiving comments from a range of stakeholders, and finalizing technical information on the Safety Evaluation. (TR 81-82)

FPL provided a series of schedules in Exhibits 2 and 3 detailing its final 2015 and 2016 project costs that included a calculation of its requested 2015 and 2016 recovery amount. FPL witnesses Grant-Keene and Scroggs indicated that the jurisdictional expense amount for 2015 was \$17,309,494. (EXH 2, 14) The associated carrying costs totaled \$6,828,817. (EXH 2, 14) The result is total jurisdictional costs of \$24,138,311 for 2015. The jurisdictional expense amount for 2016 was \$15,673,982. (EXH 3, 14) The associated carrying costs totaled \$7,166,446. (EXH 3, 14) The result is total jurisdictional costs of \$22,840,428 for 2016. Consequently, FPL's total 2015 and 2016 jurisdictional amount, including carrying costs, is \$46,978,739 (\$24,138,311 + \$22,840,428 = \$46,978,739).

FPL witness Scroggs presented a review of FPL's 2015 and 2016 internal project controls, processes, and procedures and opined that FPL appropriately and prudently managed the TP Project. (TR 89-95) Audit staff witnesses Lehmann and Rich reported no findings based on their review of FPL's 2015 and 2016 project management oversight and controls. (EXH 24, 25)

As discussed in Issue 1, no record evidence was presented challenging the prudence of FPL's 2015 and 2016 project oversight.

Final 2015 and 2016 True-up of Recoverable Amounts

In support of the final 2015 and 2016 true-up recovery amount, witness Scroggs described variances in project activities compared to FPL's May 2015 filings. (TR 99-105; EXH 2, 3) FPL reported a decrease in costs for licensing activities in 2015 due to unused contingency, partially offset by additional NRC fees and engineering costs associated with completing the seismic reviews and additional legal costs associated with addressing the single admitted contention at the NRC. (TR 99; EXH 2) Decreased costs for licensing activities in 2016 were due to lower than anticipated software license costs and unused contingency. (TR 103; EXH 3) Costs for

⁵Miami-Dade County v. Florida Power & Light Co., 208 So. 3d 111 (Fla. 3d DCA 2016)

permitting decreased in 2015 due to reductions in employee support and legal services. (TR 100; EXH 2) Decreased costs for permitting activities in 2016 were due to reduced project development and legal support. (TR 100-104; EXH 3) FPL witness Scroggs noted a net decrease in engineering and design costs compared to prior projections due to lower than anticipated AP1000 Owners Group costs and reduced support requirements for both 2015 and 2016. (TR 101-104; EXH 2, 3)

FPL witness Grant-Keene provided additional support for the reported costs and methods used to determine the requested 2015 and 2016 final true-up recovery amounts. (TR 305-310; EXH 2, 3, 12, 13, 14) Witness Grant-Keene explained that actual 2015 project costs were compared to the prior estimate of 2015 project costs to determine the final true-up amount of \$1,306,211 over recovery. (TR 305-307; EXH 2, 12, 14) The requested 2015 final true-up amount includes \$1,328,727 over recovery of pre-construction expenses and an under recovery of \$22,516 for associated carrying charges. (TR 305-307; EXH 12, 14) Witness Grant-Keene gave a similar explanation for the actual 2016 project costs compared to the prior estimate of 2016 project costs to determine the final true-up as an over recovery of \$5,998,991. (TR 308-310; EXH 3, 13, 14) The requested 2016 final true-up amount includes \$5,383,328 over recovery of pre-construction expenses and \$615,662 over recovery of associated site selection carrying charges. (TR 308-310; EXH 13, 14) The result is a combined final true-up over recovery amount for 2015 and 2016 of \$7,305,202 ($\$1,306,211 + \$5,998,991 = \$7,305,202$). (TR 308-310; EXH 13, 14)

Commission staff accounting audit witness Piedra provided testimony and sponsored accounting audit reports of FPL's 2015 and 2016 actual costs associated with the TP Project. (TR 427; EXH 22, 23) As noted in witness Piedra's testimony, staff's audit activities included tracing and verification of the 2015 and 2016 costs and the final true-up amounts. (TR 427-428; EXH 22, 23) Witness Piedra also verified that FPL's final true-up NCRC filings were consistent with and in compliance with Section 366.93, F.S., and Rule 25-6.0423, F.A.C. (TR 427-428; EXH 22, 23) Witness Piedra did not report any findings. (TR 427-428; EXH 22, 23)

Staff reviewed the intervenors' arguments in support of their positions of denial or refund of costs incurred during 2015 and 2016. Staff believes that these arguments are legal in nature and do not directly address the reasonableness or prudence of the requested final true-up amounts. FIPUG, FRF and SACE stated that FPL's failure to file a feasibility analysis in 2016 and 2017 must, by law, only allow the Commission to make a decision to deny FPL's cost recovery request since FPL did not comply with the requirements of Section 366.93 F.S., and Rule 25-6.0423 F.A.C. (FIPUG BR 2, 7-8; FRF BR 1, 3-4, 15-17; SACE BR 11-12, 15) Similarly, FIPUG, FRF and SACE stated that the Commission cannot approve any recovery of costs in 2018 since FPL did not meet its burden of proof concerning intent to construct as required by Section 366.93(3)(f)3., F.S. (FRF BR 1-2, 12-15; FIPUG BR 4, 8; SACE BR 15-17)

OPC argued that the Commission may not approve future cost recovery due to FPL's failure to file a feasibility analysis. However, OPC did not join with the other intervenors who took the positions that the Commission should deny recovery of costs or order refunds of costs that were incurred in past periods. (OPC BR 2 - 3, 6)

As discussed in Issue 4, non-compliance with statute and Commission rule requirements can be grounds for the Commission to deny requests for the recovery of future costs. However, consistent with staff's recommendation in Issue 1, staff does not believe that FPL failed to comply with the NCRC Statute or the requirements of Commission rule concerning the final true-up and prudence determination requested in this issue. As noted by FPL's witnesses Scroggs and Grant-Keene, FPL initially presented its projections of activities and costs in the 2014 and 2015 NCRC proceedings. These projections were supported with feasibility analyses and all other required filings. (FPL BR 6, 14; TR 105-106, 305; EXH 2, 3, 12, 13, 22, 23, 24, 25) In March of this year, these witnesses also filed the required true-up data and testimony to support the prudence of FPL's project activities and the reasonableness of the actual level of incurred costs related to these project activities. (FPL BR 6; TR 105-106, 305; EXH 2, 3, 12, 13, 22, 23, 24, 25)

Staff notes that pursuant to longstanding Commission practice, the standard for determining prudence is consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances which were known, or reasonably should have been known, at the time the decision was made.⁶ As discussed in Issues 1, 3, 4, and 6B, a feasibility analysis is forward looking. Consequently, staff agrees with FPL that the use of a feasibility analysis to assess prudence of costs incurred in 2015 and 2016 would require the application of a hindsight review, which is prohibited. (FPL BR 6, 13)

As staff notes in Issue 1, none of the intervening parties presented any testimony or elicited any evidence supporting the imprudence of any TP Project management decision or action in 2015 and 2016, or that the resulting costs from those actions were imprudently incurred. In addition, staff found no evidence that FPL did not comply with all filing requirements as they related to the demonstration of prudence during this time period. Thus, staff believes no adjustment to FPL's final true-up of 2015 and 2016 TP Project costs should be made.

Conclusion

Consistent with staff's verification of FPL's calculations, a preponderance of the evidence in the record, and the resolution of Issue 1, staff recommends the Commission find FPL's final combined 2015 and 2016 prudently incurred TP Project costs were \$46,978,739 (jurisdictional) for the TP Project. Staff also recommends the Commission find that FPL appropriately identified a combined 2015 and 2016 final true-up amount as an over recovery of \$7,305,202.

⁶ Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million, at 3; Order No. PSC-08-0749-FOF-EI, issued November 12, 2008, in Docket No. 080009-EI, In re: Nuclear cost recovery clause, at 28; Order No. PSC-09-0783-FOF-EI, issued November 19, 2009, Docket No. 090009-EI, In re: Nuclear cost recovery clause, at 11, 13; Order No. PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 26, 28, 57, 61, 91, 93; Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, In re: Nuclear cost recovery clause, at 23, 24, 32, 59, 60; Order No. PSC-13-0493-FOF-EI, issued October 18, 2013, in Docket No. 130009-EI, In re: Nuclear cost recovery clause, at 26; Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket No 150009-EI, In re: Nuclear cost recovery clause, at 22-23.

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?

Recommendation: Not at this time. Staff recommends the Commission find that there is insufficient record evidence in this proceeding to make an informed decision concerning prospective matters pertaining to the TP Project. Staff also recommends that if FPL intends to pause participation in the NCRC, then it should file annual budget and actual cost updates as required by Section 366.93(5), F.S., as well as a summary presentation of what is causing or expected to cause the project costs to change. (Breman, Lee, Mapp)

Position of the Parties

FPL: Yes. The proposed deferral aligns with the Project "pause" and lower spending. Of the annual costs estimated, about half is carrying costs on the DTA associated with historical costs. All parties will have the opportunity to review and challenge cost recovery in the future, when it is requested. Neither the Statute nor Rule precludes the Commission from granting FPL's request. FPL will continue to file its TOR-2 as required by Section 366.93(5) and Rule 25-6.0423(9)(f).

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. Based on FPL's lack of compliance with Rule 25-6.0423, F.A.C., requiring a feasibility analysis, costs incurred in 2016, 2017 and any subsequent years should not be permitted to be deferred for later recovery through the NCRC.

FIUG: No. FPL cannot establish, as required by s. 366.93(f)(3) F.S., that it has committed significant, meaningful and available resources to enable the project to be completed and that FPL's intent to complete the project is realistic and practical. Furthermore, no recovery should be permitted given the lack of a current feasibility study.

FRF: No. FPL's request is substantively a request for approval of cost recovery of its future costs, but FPL has not satisfied the requirements of Section 366.93(3)(f), Florida Statutes, nor has FPL complied with the Commission's Rule, and accordingly, FPL is not entitled to the requested relief. Specifically, FPL has failed to meet the required burden of proof that it has a "realistic and practical intent" to construct the Turkey Point Project.

SACE: No. FPL has not filed the required long-term feasibility analysis for 2016 or 2017, or filed specific projected preconstruction expenditures for the subsequent years, nor has it filed a rule waiver request this year. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

Staff Analysis: This issue addresses FPL's request to suspend future NCRC hearings for up to five years during an extended pause in TP Project development. Rather than annual recovery of costs, FPL requested deferred cost recovery beginning January 1, 2017. (FPL BR 1)

Parties' Arguments

FPL

In its brief, FPL combined its arguments for Issues 3 and 4. (FPL BR 14-24) FPL argued that the annual cost recovery allowed by Section 366.93, F.S., and Rule 25-6.0423, F.A.C., is optional. (FPL BR 19) Section 366.93(3)(a), F.S., as well as Rule 25-6.0423(6), F.A.C., state "a utility may petition for cost recovery." (FPL BR 19) FPL could exit the NCRC process entirely and continue with the TP Project as a base rate project. (FPL BR 19) Alternatively, FPL could continue to seek annual cost recovery, despite the significant near-term uncertainty and without meaningful updates to its total non-binding cost estimate range or feasibility analysis. (FPL BR 19)

FPL ultimately proposed to suspend the annual NCRC process for up to five years. (FPL BR 1, 15) FPL asserted that its proposal is aligned with its plan to pause the TP Project upon receipt of its license. (FPL BR 1, 16) The TP Project pause was anticipated to last four to six years. (TR 164; FPL BR 23) Costs that otherwise would be recovered each year through the NCRC would remain eligible for recovery at a later time, inclusive of associated carrying costs and deferred return on the deferred tax asset. TP Project costs will continue to be tracked and accounted for in the same manner and with the same level of detail as before. Intervening parties will have the same opportunity to challenge FPL's TP Project expenditures afforded by the rule at a future date. (TR 324, 337; FPL BR 15-16, 24)

Pursuant to its brief, the costs FPL is incurring pertain to obtaining the combined operating license and other approvals. After receipt of the license, costs will be incurred to keep the license current and for activities associated with the Florida Site Certification. (TR 126-128, 292-293; FPL BR 17) Over the maximum five-year deferral period, the estimated total cost would be about \$90 million. (TR 409; FPL BR 17) Approximately \$45 million of the total is carrying costs. (TR 407; FPL BR 17) Approximately \$35 million of the carrying cost total represents FPL return on its deferred tax asset that is associated with its historical costs recovered through 2016. (TR 320, 414-416; FPL BR 17) FPL noted that the incremental carrying costs that would result from the deferral over a five-year period would be close to \$10 million based on the above figures. (FPL BR 17)

FPL contended that Intervenors' claimed that the Commission cannot legally allow deferral of cost recovery without a feasibility analysis are not supported by statute, rule, or logic. (FPL BR 22-23) FPL maintained that there is no basis for this argument in Section 366.93, F.S. (FPL BR 23) Arguments that FPL has not made a sufficient showing pursuant to Section 366.93(3)(f)3., F.S., are misplaced. (FPL BR 22) Paragraph (3)(f) addresses two scenarios where a utility has not begun construction after receiving the license from the NRC, one 10 years and the other 20 years. (FPL BR 22) Accordingly, paragraph (3)(f) cannot apply until, at the earliest, 10 years after FPL has received its combined license. (FPL BR 22)

FPL argued that Rule 25-6.0423(6)(a), F.A.C., addresses a proposed “recovery period” or “period of recovery” and not a deferral period. (FPL BR 21) The rule section will apply when FPL returns and seeks cost recovery. (FPL BR 21) FPL also asserted that a feasibility analysis is only required within the context of Rule 25-6.0423(6), F.A.C., addressing the manner in which a utility may petition for cost recovery. (FPL BR 23) FPL has not requested cost recovery. FPL has only requested suspending cost recovery up to five years. (FPL BR 23 - 24)

FPL stated that during the deferral period, it will continue to file the information required by Section 366.93(5), F.S., and Rule 25-6.0423(9)(f), F.A.C. (FPL BR 18) FPL contended that these are filing requirements that are separate from the cost recovery process. (FPL BR 18)

OPC

OPC argued in its brief that FPL has sought a determination of reasonableness to incur costs in 2017 and in future years. (OPC BR 8, 10) OPC argued that this request invokes all of the requirements of Section 366.93, F.S., and Rule 25-6.0423, F.A.C. (OPC BR 8) 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. (OPC BR 8) Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs “will be recovered within 1 year, unless the Commission approves a longer period. Any party may, however, propose a longer period of recovery, not to exceed 2 years.” (OPC BR 10) 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.” (OPC BR 8)

OPC contended that the NCRC process is structured to allow for annual recovery of preconstruction costs and discourage the year-to-year accrual of carrying costs. (OPC BR 8, 10) FPL proposed to defer costs incurred in 2017 and afterwards for a minimum of 4 years. (OPC BR 10 - 11) Since carrying costs would accrue in each year, OPC argued that FPL’s request is contrary to the requirements of the rule. OPC opined that the rule caps the period of carrying cost accrual at two years. (OPC BR 10-12)

OPC also asserted that, pursuant to the rule, FPL is obligated to file a long-term feasibility analysis of completing the power plant. (OPC BR 10) FPL failed to make this filing in 2017. (TR 79, 179; OPC BR 8) OPC maintained that, contrary to FPL’s assertion that a feasibility study serves no purpose at this point in the project, the analysis is absolutely necessary for the Commission to make an informed and reasoned decision as to whether the project should move forward. OPC contended that without the information, it is inappropriate to find that incurring costs, and deferring it for later recovery, is reasonable. (OPC BR 12)

FIPUG

In its brief, FIPUG opined that the Commission should decline or defer its response to FPL’s request for multiple reasons. (FIPUG BR 8-9) First, the duration of FPL’s pause is unclear. (TR 117, 258-259, 265, 276, 327, 354, 368-370, 458; FIPUG BR 9)

Secondly, the carrying costs during the undefined pause period are significant and a burden on FPL’s customers. Half of the annual costs are carrying costs. (FIPUG BR 9) FIPUG argued that

if the Commission approved FPL's request, these carrying costs will compound and accrue, and the statute was put in place to implement a "pay as you go" approach. (FIPUG BR 9)

Third, FPL's approach is not reasonable at this time because: FPL has not submitted a feasibility analysis since May 1, 2015, the Commission cannot make a finding of reasonableness as requested based on such outdated information, and the Commission should not embark upon a two-step rate increase methodology where the future review would be limited to only a prudence determination. (FIPUG BR 9-10)

FRF

In its brief, FRF combined its arguments for Issues 2, 3, 4, 5A, 6B, and 8. (FRF BR 10) FRF argued that FPL is not entitled to any Commission ordered relief without satisfying the statutory burden of proof that it has realistic and practical intent to construct the TP Project. (FRF BR 10, 15-16) FRF maintained that Section 366.93(3)(f)3., F.S., expressly requires that, in order to qualify for any cost recovery, FPL must prove that it intends to construct its proposed plant. Section 366.93(3)(f)3., F.S., states:

Beginning January 1, 2014, 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.

(FRF BR 12)

In Order No. PSC-15-0521-FOF-EI, the Commission explained the intent and requirements of the rule, stating at page 19, that:

The January 29, 2014 amendment to Rule 25-6.0423(6)(c)5., F.A.C., requires that FPL provide evidence of intent to construct the TP Project. The rule specifies that the utility show "it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

(FRF BR 11, 15)

FRF opined that notwithstanding the clear, express, and specific requirements, FPL provided no evidence of intent to construct the TP Project. (FRF BR 16) In the context of the rule, the possibility that the TP Project would or could be built is untested because of FPL's failure to provide the feasibility analysis. (FRF BR 16) FRF contended that FPL has failed to give the Commission the information that it needs to fulfill its duty under Section 366.93, F.S., and Rule 25-6.0423, F.A.C.

FRF maintained that the deferral period is unknown and the deferred amount is unspecified. (FRF BR 10) FRF opined that the only "intent" FPL has is to pause its consideration of whether to construct the TP Project. (TR 110; FRF BR 11, 17) Thus, FRF argued that FPL is not entitled to a Commission order authorizing deferral of costs for future recovery. (FRF BR 16-17)

SACE

In its brief, SACE combined its arguments for Issues 3, 4, 5A, 6B, 7, and 8. (SACE BR 8-15) Additionally, SACE combined its arguments for Issues 3, 4, 5A, 6B, 7, 8, 9, and 10. (SACE BR 15-19) Based on its arguments, SACE maintained that as matter of law, the Commission cannot grant FPL's request. (SACE BR 8)

SACE contended that FPL's request is not consistent with the statute controlling cost recovery, Section 366.93, F.S., nor the Commission's rule for cost recovery, Rule 25-6.0423, F.A.C. (SACE BR 3) Therefore, SACE concluded, as a matter of law, the Commission cannot grant the relief requested by FPL. (SACE BR 3, 8-15)

SACE opined that Section 366.93(2), F.S., requires the Commission to establish a rule to implement the statute. (SACE BR 8-9) The statute also provides that a utility may petition the Commission for cost recovery as permitted by Section 366.93, F.S., and the Commission's rules. (SACE BR 8-9) SACE maintained that Rule 25-6.0423(6)(c)5., F.A.C., states "along with the filing required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combine cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical." Additionally, Rule 25-6.0423,(6)(c)1.c., F.A.C., requires a utility to "submit, for Commission review and approval its projected preconstruction expenditures." Further, Rule 25-6.0423,(6)(c)2., F.A.C., states the "Commission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures." (SACE BR 11-12, 15)

SACE also opined that FPL failed to file a feasibility analysis and it did not file projected expenditures. (SACE BR 12-13) SACE argued that without such filings it has not provided the Commission with the facts necessary for the Commission to render the required determination it must make pursuant to its rules. (SACE BR 12, 14-15)

Analysis

FPL decided it will pause TP Project development after the COL is secured in late 2017 or early 2018. (TR 110; EXH 24) FPL currently estimates the pause period could be four to six years. (TR 164) During the pause period, FPL requested deferred review and deferred recovery of costs associated with obtaining and maintaining its licenses and permits beginning with its 2017 incurred costs. (TR 110, 137; FPL BR 1) FPL's deferral request includes deferral of all Commission NCRC reviews for up to five years. (FPL BR 1)

Staff notes that granting FPL's deferral would preclude any prospective Commission reviews that would otherwise occur during the deferral period. Consequently, resolution of this issue hinges on whether the Commission has sufficient information to grant FPL's deferral request pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C.

Arguments raised by the parties include the Commission's prospective reviews, a history of NCRC deferrals, estimated carrying cost impact, adjusting FPL's carrying cost, and annual TP Project status reports. Staff's analysis addresses each of these topics.

Prospective Reviews

Section 366.93(2), F.S., requires:

[T]he Commission to establish by rule, alternative cost recovery mechanisms for the recovery of siting, design, licensing and construction of a nuclear power plant, including new, expanded, or relocated electrical transmission lines, and facilities that are necessary thereto, or of an integrated gasification combined cycle power plant. Such mechanisms must be designed to promote utility investment in nuclear or integrated gasification combined cycle power plants and allow for recovery in rates of all prudently incurred costs

The Commission established Rule 25-6.0423, F.A.C., and implemented the requirements of Section 366.93, F.S. The rule describes various prospective regulatory reviews. Rule 25-6.0423(6)(c)1.b., F.A.C., states in part that:

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

In addition, Rule 25-6.0423(6)(c)1.c., F.A.C., states in part that:

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

Further, Rule 25-6.0423(6)(c)5., F.A.C., states that:

Along with the filings required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear . . . power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

Staff notes that FPL did not seek a waiver of any part of Rule 25-6.0423, F.A.C. Instead, FPL requested deferral of the Commission's reviews. In discussing specific considerations included in the rule, FPL witness Scroggs stated that:

Annually, within the cost recovery process, the applicant must provide a full accounting for all project activities and costs for which a utility is seeking recovery. This transparency allows the FPSC to conduct in-depth oversight of the utility's actions in real time – as the project proceeds, rather than in hindsight decades after decisions are made and money is spent. The FPSC then makes a

“reasonableness” determination as to the costs projected for the project (prior to any recovery of those costs), and reviews historical costs for “prudence.”

(TR 115)

Staff notes that FPL witness Scroggs described the rule as requiring FPL to provide a full explanation of all project activities and costs for which it is seeking recovery on a projected basis. Staff agrees. The Commission’s prospective reviews, as identified by rule, address future project activities and costs as well as a detailed analysis of the long-term feasibility of completing the power plant.

Future Project Activities and Costs

FPL witness Scroggs stated that FPL would, at a later date, ask for recovery of costs incurred “and be subject to reasonableness and prudence reviews at that time.” (TR 161-162) Witness Scroggs explained that FPL’s filed schedules did not provide any insight as to the possible magnitude of 2017 and 2018 expenses because FPL was not seeking cost recovery at this time. (TR 245; EXH 10) Similarly, FPL witness Grant-Keene noted that FPL “is not seeking the Commission’s review or the recovery of 2017 or 2018 activities and costs at this time.” (TR 319) Therefore, witness Grant-Keene did not include 2017 actual/estimated or 2018 projected schedules in her testimony. (TR 317)

FPL represented that in 2017, and in subsequent years, the TP Project development would be limited to activities necessary to obtain and maintain TP Project licenses and permits. (TR 292-293; FPL BR 17) FPL witness Grant-Keene estimated that over a five-year period the deferred balance would be in the range of \$90 million and about half of the total, or \$45 million, would be carrying charges. (TR 409; FPL BR 17) The carrying charge estimate included an annual accrual of approximately \$7 million or a total of \$35 million, associated with the deferred tax asset due to prior NCRC recoveries. (TR 414-416, 320; FPL BR 17)

Staff notes that in this proceeding, FPL did not request a reasonableness determination of its activities and costs for 2017 and beyond. Instead, FPL asked to defer the Commission’s reasonableness determination for a period of up to 5 years. (FPL BR 1)

FIPUG urged the Commission not to embark upon a two-step rate increase methodology where the future review would be limited to only a prudence determination. (FIPUG BR 9-10) Staff notes that by deferring the Commission’s prospective reasonableness determination, FPL may be putting at risk its ability to recover the above costs through the NCRC. Arguably, it is possible that when FPL does seek recovery, the Commission may determine that FPL was unreasonable to undertake specific actions and incur associated costs.

Feasibility Analysis

FPL did not provide a feasibility analysis in 2016 or 2017. (TR 252, 370; EXH 24, 25; FPL BR 6; OPC BR 6; FIPUG BR 8; FRF BR 3; SACE BR 12) In 2016, FPL determined that a feasibility analysis would have no bearing on the logic to finish its near-term TP Project licensing activities. (TR 79) FPL witness Scroggs cautioned that he would not recommend the Commission rely on any feasibility analysis that FPL could have put forth today. (TR 213-214) He opined that FPL does not have the information that would provide an accurate, relevant

update of the feasibility analysis. (TR 282) He also believed that the absence of a feasibility analysis does not mean the TP Project is no longer feasible. (TR 253) Nevertheless, witness Scroggs also acknowledged that the Commission has never made a determination of reasonableness to continue with the project without the benefit of a feasibility analysis. (TR 252) The Commission inquired whether FPL considered submitting an updated report that explained the information FPL did and did not have. (TR 283-284) Witness Scroggs responded, “no.” (TR 284)

As previously noted, FPL did not request a reasonableness determination of its activities in 2017 and beyond. Instead, FPL asked to defer the Commission’s reasonableness reviews for a period of up to 5 years. (FPL BR 1, 19) FPL argued that Rule 25-6.0423(6), F.A.C., addresses the manner in which a utility may petition for cost recovery. (FPL BR 21, 23) Since FPL did not seek recovery of prospective costs and prospective Commission reviews at this time, FPL reasoned that the rule requirement for a feasibility analysis is not applicable. (FPL BR 23, 29-30)

As addressed in Issues 4 and 6B, the rule establishes the requirement for a feasibility analysis. In its brief, FPL noted the structure of Rule 25-6.0423, F.A.C., indicates that a feasibility analysis is informational in nature. (FPL BR 12) OPC argued that FPL’s feasibility analysis is necessary for the Commission to make an informed and reasoned decision. (OPC BR 12) FIPUG similarly asserted that without the important information found within a feasibility analysis, the Commission should defer addressing FPL’s requested relief. (FIPUG BR 3) FRF asserted that FPL simply failed to give the Commission the information it needs to fulfill its duty under the statute and rule. (FRF BR 16) FRF also opined that in the absence of the 2017 feasibility analysis, the Commission cannot make a determination regarding the reasonableness of completing the TP Project. (FRF BR 11) SACE contended that FPL has not provided the requisite information for a reasonableness determination. (SACE BR 13)

Staff observes that the Intervenors’ focus is on the usefulness of a feasibility analysis when the Commission is assessing the reasonableness of prospective matters. As previously noted, FPL asserted it has not requested a prospective reasonableness determination. Staff disagrees. FPL’s request in this issue to defer review and cost recovery in combination with the requested finding in Issue 5A, that continuing forward with securing the COL is reasonable, are by nature prospective reasonableness determinations.

Staff believes that if FPL had filed a 2017 feasibility analysis, the Commission would have assurance that it reviewed all pertinent matters pertaining to completing the TP Project. This is because a 2017 feasibility analysis is expected to contain information related to FPL’s intent to complete the TP Project. Under this hypothetical scenario, the Commission’s determination concerning the 2017 TP Project feasibility analysis could have informed a decision in this issue concerning FPL’s request to begin implementing deferred recovery of its future licensing and permitting costs.

Staff believes that due to the absence of FPL’s 2017 feasibility analysis there is insufficient record evidence in this proceeding for the Commission to make an informed regulatory decision concerning prospective matters pertaining to the TP Project.

History of NCRC Deferral

FPL argued that the Commission has previously granted deferred recovery in other NCRC proceedings. (FPL BR 20) In 2015, the Commission approved deferred recovery of FPL's Initial Assessment Study costs.⁷ (FPL BR 20) FPL further argued that its deferral request is not without precedence and listed a series of Commission Orders that granted deferred Commission review to the subsequent NCRC proceeding.⁸ (FPL BR 20)

However, the Commission's decision in the 2015 case is distinguishable from FPL's current request because in that proceeding, the Commission reviewed the reasonableness of FPL undertaking the Initial Assessment Studies.⁹ As noted above, in the instant case, FPL asked the Commission to defer its reasonableness determination. In addition, deferred recovery of Initial Assessment Study costs was necessary because Section 366.93(3)(b), F.S., limits the types of costs that may be recovered prior to obtaining the COL. Section 366.93(3)(b), F.S., states that:

During the time that a utility seeks to obtain a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle plant, the utility may recover only costs related to, or necessary for, obtaining such license or certification.

Consequently, once the Commission had determined the reasonableness of undertaking the Initial Assessment Studies for purposes other than securing the COL, the Commission appropriately addressed the timing of recovery by granting deferred treatment.¹⁰

By Order No. PSC-11-0095-FOF-EI, the Commission found that it has the authority to address options related to the timing of recovery and matters associated with rate impacts over the term of the projects.¹¹ Additionally, the Commission has approved a one-year deferral of its reviews in response to joint motions and unopposed motions. (FPL BR 20)¹² In 2016, the Commission approved such a deferral in Order No. PSC-16-0266-PCO-EI.

Staff believes the forgoing analysis demonstrates that, on a case-by-case basis, deferral of the Commission's reviews and a decision on deferred cost recovery is permissible. However, as discussed above, this case is distinguishable from prior deferral requests. Staff believes that there is insufficient record evidence in this proceeding for the Commission to make an informed regulatory decision concerning prospective matters pertaining to the TP Project.

⁷ Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 30-32.

⁸ Order No. PSC-11-0095-FOF-EI, at 5; Order No. PSC-12-0650-FOF-EI, at 5; Order No. PSC-13-0493-FOF-EI, at 5; Order No. PSC-16-0266-PCO-EI, at 3.

⁹ Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 30-31.

¹⁰ Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 29-30.

¹¹ Order No. PSC-11-0095-FOF-EI, issued February 2, 2011, in Docket 100009-EI, In re: Nuclear cost recovery clause, at 9.

¹² Order No. PSC-11-0095-FOF-EI, at 5; Order No. PSC-12-0650-FOF-EI, at 5; Order No. PSC-13-0493-FOF-EI, at 5; Order No. PSC-16-0266-PCO-EI, at 3.

Estimated Carrying Cost Impact

In its brief, FPL argued that Rule 25-6.0141, F.A.C., sets forth requirements that a non-nuclear power plant project, like a combined cycle power plant, would be eligible for accumulated CWIP and would accrue AFUDC. (FPL BR 18) Costs for a non-nuclear power plant project would annually accrue AFUDC and project expenses. (TR 390-391) When the power plant goes into service, the utility would then begin to recover the accrued and deferred costs through depreciation. (TR 391)

The NCRC differs from the traditional cost recovery mechanisms by affording the utility recovery of carrying costs equivalent to its AFUDC as well as recovery of preconstruction costs prior to a nuclear power plant entering commercial service. (TR 391-392) FPL, OPC, and FIPUG, in their respective briefs, asserted that annual NCRC recovery of AFUDC avoids the accumulation of AFUDC. (FPL BR 21, 23; OPC BR 3, 8; FIPUG BR 9) However, OPC further argued that FPL's deferral request is inconsistent with the intent of the NCRC process because the NCRC process contemplates annual recovery of AFUDC. (OPC BR 3) FIPUG similarly argued that the NCRC process was put into place with a pay as you go approach rather than the compounding and accrual of carrying costs associated with FPL's request. (FIPUG BR 9)

OPC additionally opined that 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, but not to exceed 2 years." OPC asserted that FPL's request should be denied because it is contrary to the rule. FPL contended that the rule addresses a recovery period, not a deferral of cost recovery. (FPL BR 21) Staff agrees.

As discussed above, FPL's proposed five year deferral period would accrue approximately \$45 million in carrying costs. Most of the carrying costs, approximately \$35 million, would not stem from costs incurred after 2016. Instead, it is the result of an annual accrual of \$7 million that is associated with deferred tax assets, a consequence of NCRC recoveries prior to 2017. (TR 414-416, 320; FPL BR 17)

Adjusting FPL's Carrying Cost

In its brief, FIPUG urged the Commission to "eliminate or greatly reduce the effective carrying costs for the TP Project. (FIPUG BR 10) FIPUG asserted that "FPL shareholders have virtually no 'skin in the nuclear cost recovery game' and the sharing of carrying costs between ratepayers and shareholders is warranted and in order." (FIPUG BR 10)

Staff notes that FIPUG is rearguing the concept of risk sharing which the Commission has previously addressed.¹³ The Commission has repeatedly declined to implement risk sharing because the Commission does "not have the authority under the existing statutory framework to require a utility to implement a risk sharing mechanism that would preclude a utility from

¹³ Order No. PSC-11-0095-FOF-EI, issued February 2, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause, at 7-9; Order No. PSC-11-0224-FOF-EI, issued May 16, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause, at 9-10.; PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 57.

recovering all prudently incurred costs resulting from the siting, design, licensing, and construction of a nuclear power plant.”¹⁴

The Commission has also addressed consideration of adjusting a utility’s carrying cost.¹⁵ In Order No. PSC-12-0650-FOF-EI, the Commission responded to arguments that the Commission had an inherent authority to disallow any costs found unreasonable or imprudent. The Commission found that “the statute does not appear to provide for the partial disallowance of a portion of any prudently incurred carrying costs.” Therefore, carrying costs are either entirely prudent or entirely imprudent.

Additionally, Section 366.93(2)(b), F.S., states in part that:

To encourage investment and provide certainty, associated carrying costs must be equal to the most recently approved pretax AFUDC at the time an increment of cost recovery is sought.

Based on the plain and unambiguous language of the statute, FPL’s carrying cost is explicitly prescribed and the statute affords no latitude for adjustment within the NCRC process.

Annual TP Project Status Reports

If FPL intends to pause participation in the NCRC, then it should file annual budget and actual cost updates as required by Section 366.93(5), F.S. Section 366.93(5), F.S., states in part that:

The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated inservice cost of the nuclear . . . power plant provided by the utility pursuant to s. 403.519(4), until the commercial operation of the nuclear . . . 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 . . . power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

Thus, as part of the requirements of Rule 25-6.0423, F.A.C., associated with cost recovery, FPL is required to annually update the Commission with cost information. Staff believes that simply requiring FPL to only state total cost numbers is not meaningful. To be informative, the annual updates should include a summary presentation of what is causing or expected to cause the project costs to change.

In its response to discovery, FPL supported the concept of a summary annual status report consistent with the requirements of Section 366.93(5), F.S. (EXH 50) Additionally, witness Scroggs described factors influencing the TP Project. (TR 120-131) In its brief, FPL asserted it will continue to file information required by Section 366.93(5), F.S., and Rule 25-6.0423(9)(f), F.A.C. (FPL BR 18) FPL asserted these filings are separate from the cost recovery process. (FPL BR 18) Additionally, FPL confirmed its offer to include a brief update on the status of the

¹⁴ Order No. PSC-11-0095-FOF-EI, issued February 2, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause, at 9.

¹⁵ Order No. PSC-12-0650-FOF-EI, issued December 11, 2012, in Docket No. 120009-EI, In re: Nuclear cost recovery clause, at 7-8

TP Project and factors influencing FPL's review. (FPL BR 19) None of the Intervenor's post-hearing briefs addressed annual project status reports.

Based on the foregoing, staff believes that if FPL intends to suspend participation in the NCRC, then it should file annual budget and actual cost updates as required by Section 366.93(5), F.S. The annual updates should include a summary presentation of what is causing or expected to cause the project costs to change.

Conclusion

Staff recommends that the Commission should not, at this time, 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. There is insufficient record evidence in this proceeding for the Commission to make an informed decision concerning prospective matters pertaining to the TP Project.

Staff also recommends that if FPL intends to pause participation in the NCRC, then it should file annual budget and actual cost updates as required by Section 366.93(5), F.S. The annual updates should include a summary presentation of what is causing or expected to cause the project costs to change.

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.?

Recommendation: No. In the absence of a long-term detailed feasibility analysis, FPL's deferred costs are not eligible for cost recovery in a future time period pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. However, such costs may be eligible for recovery through the process of traditional rate making. (Mapp, Breman)

Position of the Parties

FPL: Yes. Nothing in Section 366.93 or Rule 25-6.0423 precludes the deferral and later recovery of NCR eligible costs. Such costs would be "eligible" but not "guaranteed" for future recovery. Intervenor's claims to the contrary, such as arguments comparing the requested deferral to a credit card, either wholly misunderstand FPL's request or are intentionally misrepresenting FPL's request to the public and this Commission.

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. FPL proposes to defer these costs for an indefinite period, but at a minimum of 4 years. This request is contrary to the Rule 25-6.0423(6)(a), F.A.C., and should be denied.

FIPUG: No. Agree with OPC.

FRF: No. FPL's request for approval of deferred cost recovery is substantively a request for cost recovery, and FPL has not satisfied the express requirement of Section 366.93(3)(f), Florida Statutes, to prove that it has a realistic and practical intent to construct the Turkey Point Nuclear Project. In fact, FPL did not provide any testimony or any evidence of its intent to construct the Project, and accordingly, its request must be denied.

SACE: No. FPL has not filed the required long-term feasibility analysis, or filed specific projected preconstruction expenditures for the subsequent year, nor has it filed a rule waiver request. FPL cannot be granted deferred recovery of costs or be granted a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

Staff Analysis: This issue addresses whether FPL's deferred costs, beginning January 1, 2017, are eligible for future recovery pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C.

Parties' Arguments

FPL

FPL argued that annual TP Project expenditures and carrying costs on its deferred tax asset (DTA), accrued during FPL's proposed pause period, would remain eligible for recovery at a later time. (FPL BR 15) FPL committed to return to the Commission within five years to present the costs incurred during that time for a prudence review. (FPL BR 16) During the pause period,

FPL stated that the only types of costs it expects to incur after it receives its COL would be processing fees to the NRC that are required for all licenses as well as costs associated with keeping FPL's license current. (FPL BR 17) FPL affirmed that during its proposed pause period it would continue to file all information required by Section 366.93(5), F.S., and Rule 25-6.0423(9)(f), F.A.C., as well as the budgeted and actual costs of a nuclear power plant project as compared to the estimated in-service costs of the power plant as it was provided in the need determination. (FPL BR 18)

FPL stated that while the annual cost recovery allowed by the NCR statute and rule is optional, FPL intends to maintain all the protections and oversight afforded the Commission, intervening parties, and itself under Section 366.93, F.S., and Rule 25-6.0423, F.A.C., while deferring review and recovery of costs for a period of five years. (FPL BR 19) FPL argued that deferred accounting treatment is expressly contemplated within Rule 25-6.0423(4), F.A.C., and should be considered by the Commission in evaluating FPL's requested deferral. Rule 25-6.0423(4), F.A.C., states, in part, that site selection and pre-construction costs shall be afforded deferred accounting treatment and accrue carrying costs until recovered in rates. (FPL BR 19-20) FPL relied on Order Nos. PSC-11-0095-FOF-EI, PSC-12-0650-FOF-EI, PSC-13-0493-FOF-EI, PSC-15-0521-FOF-EI, and PSC-16-0266-PCO-EI to support its contention that deferral is not without precedent within the NCR docket, and the Commission's authority to grant prior deferral requests has never been challenged. (FPL BR 20-21)

FPL also rebutted potential legal arguments that Intervenor either have made in advance of FPL's filing, or could make within each's post-hearing filing. (FPL BR 21) In response to a potential argument by OPC and other Intervenor concerning the language of Rule 25-6.0423(6)(a), F.A.C., allegedly limiting deferrals to a period of two years, FPL characterized such purported interpretation of the rule as incorrect. (FPL BR 21) Alternatively, FPL contended that Rule 25-6.0423(6)(a), F.A.C., refers only to the manner in which a utility may petition for cost recovery, and that the "recovery period" as used within the rule has nothing to do with FPL's proposal to defer review and cost recovery. (FPL BR 21) FPL asserted that the "two year" provision is only applicable when FPL returns after its five-year pause period and petitions the Commission for cost recovery. (FPL BR 21) FPL also contended that the requirements of Section 366.93(3)(f)3., F.S., do not apply until a utility begins construction 10 or 20 years after receipt of its license from the NRC. (FPL BR 22) Accordingly, FPL argued that Section 366.93(3)(f)3., F.S., cannot apply until, at the earliest, 10 years after FPL has received its combined license. (FPL BR 22)

FPL further asserted that a feasibility analysis is not required in order for the Commission to find in favor of a deferral of cost recovery. (FPL BR 22-23) FPL contended that Section 366.93, F.S., required a feasibility analysis only at such a time when a utility petitions to begin preconstruction work, and that Rule 25-6.0423(6)(c)5., F.A.C., addresses only the manner in which a utility may petition for cost recovery. (FPL BR 23) FPL concluded that nothing in Section 366.93, F.S., or Rule 25-6.0423, F.A.C., precludes the Commission from granting FPL's request for deferral of cost recovery. (FPL BR 24)

OPC

In its brief, OPC adopted the arguments it made in Issue 3. It further stated that 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 complete the project and that the intent to complete must be realistic and practical. (OPC BR 13) Further, OPC argued that FPL's request to defer costs for a minimum of four years is contrary to Rule 25-6.0423(6)(a), F.A.C., and, therefore, should be denied. (OPC BR 13)

FIPUG

In its brief, FIPUG agreed with the arguments propounded by OPC. In response to the question: "[i]f 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 25-6.4023, F.A.C.?" FIPUG answered "no." (FIPUG BR 4)

FRF

In its brief, FRF argued its positions on Issues 2, 3, 4, 5A, 6B, and 8. (FRF BR 10) In addition to its arguments already reflected within Issues 2 and 3, FRF argued that the Commission must deny "FPL's request for advance approval for its proposal to create a regulatory asset for recovery of costs that it intends to incur but defer for recovery from customers at some unspecified future date." (FRF BR 13) FRF characterized FPL's request to defer recovery to future NCRC proceedings as a request for approval of cost recovery; an action that FRF argued is barred by the NCRC statute and rule. (FRF BR 16) FRF further stated that FPL's request should "be rejected as a matter of common sense, given the grave doubt surrounding the future of FPL's chosen technology and further given the fact that FPL has no clear intent to build the Turkey Point Project." (FRF BR 17)

SACE

SACE argued its positions on Issues 3, 4, 5A, 6B, 7, and 8. (SACE BR 8-15) In addition to the arguments already reflected within each respective issue, SACE also argued that, as a matter of law, the Commission cannot grant FPL's request. (SACE BR 8) SACE stated that Section 366.93, F.S., task the Commission with establishing rules to implement the law, and provides that a utility may petition the Commission for cost recovery as permitted by this section and Commission rules. (SACE BR 8-9) SACE argued the tenets of statutory construction and that according to the plain reading of Section 366.93, F.S., and Rule 25-6.0423, F.A.C., the Commission must reject FPL's request. (SACE BR 10-11)

Analysis

This issue addresses the eligibility of costs for recovery pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C., in the event FPL continues to seek its COL but defers the review and recovery of associated costs to a future time. As noted in the Case Background, the Florida Legislature enacted Section 366.93, F.S., in 2006 to encourage utilities' investment in nuclear electric generation. Section 366.93, F.S., directed the Commission to establish an alternative cost recovery mechanism by which investor-owned electric utilities would be able to recover certain costs during the licensing and construction process of new nuclear generation. This statute was subsequently amended in 2007 and 2008 in order to expand the category of costs eligible for recovery under this statutory provision. The statute was last amended in 2013, requiring

additional Commission approvals prior to utilities being able to commence certain activities and purchases.

Section 366.93(2), F.S., tasked the Commission, within 6 months of the effective date of the act, to establish by rule alternative cost recovery mechanisms for the recovery in rates of all costs prudently incurred in the siting, design, licensing, and construction of a nuclear power plant. The Commission did as it was statutorily mandated, and established Rule 25-6.0423, F.A.C., effective April 8, 2007, to implement the statute. In developing the alternative cost recovery mechanism, the Commission adopted a recovery clause methodology whereby the Commission would approve costs and activities on a projected basis. As part of the evaluation process the Commission required utilities to file each year a detailed analysis of the long-term feasibility of completing the power plant. In 2013, the Legislature amended the statute, creating Section 366.93(3)(f)3., F.S., which states:

Beginning January 1, 2014, 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.

Following the 2013 statutory amendment, the Commission amended Rule 25-6.0423, F.A.C., effective January 29, 2014, adding the following language to the feasibility analysis requirement:

Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

FPL argued that the first time Section 366.93, F.S., requires a feasibility analysis is when a utility seeks to begin preconstruction work and not when the utility is in the licensing phase. (FPL BR 23) FPL also essentially argued that subparagraph 3 of Section 366.93(3)(f), F.S., must be read in context with all of paragraph (f) of subsection (3) of Section 366.93, F.S., and therefore only applies when a utility has failed to begin construction of a plant within ten years of receipt of a combined license from the NRC. (FPL BR 22)

However, even if FPL is correct in its contention that an annual feasibility analysis is not explicitly required within the statute, a feasibility analysis is still required by Rule 25-6.0423(6)(c)5., F.A.C., and filing requirements expressed in Commission rules need not be explicitly stated within its authorizing statute in order to be applicable or necessary. Section 120.52(18), F.S., states that agency rules are meant to be a “statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.” When adopting Rule 25-6.0423, F.A.C., to implement the statute, the Commission required utilities to make several filings that are not explicitly required within the statute. Among them, the Commission

determined a feasibility analysis was necessary to inform its evaluation of the reasonableness of projected activities and costs.

FPL opined that “[a] feasibility analysis is only required within the context of part (6) (specifically, the feasibility analysis filing requirement is found in Rule 25-6.0423(6)(c)5.), addressing the manner in which a utility may petition for cost recovery – and FPL has not petitioned for cost recovery.” (FPL BR 23) FPL defers the review and recovery of costs to a future time. FPL stated that it does intend to petition the Commission for future review and recovery of these costs through the NCRC, yet it asks the Commission to determine eligibility of such costs at this time. (TR 317, 398-399)

It is the intent to seek recovery of costs through the NCRC that triggers the requirement to provide a detailed long-term feasibility analysis, not the timing of the request or the actual recovery. While FPL is not requesting contemporaneous cost recovery at this time (instead seeking to defer cost recovery), it is asking the Commission to determine that ongoing costs associated with obtaining the COL to be incurred and recovered in the future be deemed reasonable at this time, and therefore eligible for recovery in the future. However, the “future review” contemplated by FPL would be merely a “prudence review” of costs since it would be looking back at actual costs rather than a prospective review as described by rule. Rule 25-6.0423(6)(c)5., F.A.C., requires a feasibility analysis to assess the reasonableness of all future costs, including the COL costs. The record herein is devoid of a feasibility analysis.

Staff’s recommendation in this Issue is distinguishable from staff’s recommendation that FPL’s 2015 and 2016 costs are recoverable through the NCRC in Issue 2 because FPL filed a feasibility analysis in 2014 and 2015, and the Commission found FPL’s long-term feasibility analysis reasonable in both years.¹⁶ FPL witness Scroggs testified that FPL would next file a feasibility analysis when FPL decides to seek cost recovery. (TR 265-266) However, a feasibility analysis is a forward-looking analysis;¹⁷ absence of the required analysis cannot be remedied by a future filing because such an analysis would only support the reasonableness of future project development.

Conclusion

As addressed in Issue 3, FPL’s filings, testimony, and exhibits did not include information sufficient to support deferred cost recovery through the NCRC beginning January 1, 2017. In Issue 6B, staff explains that the same information is necessary to support determinations pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Consequently, staff believes that there is insufficient record evidence at this time to support a determination that deferred 2017 costs are recoverable through the NCRC.

The NCRC is an ongoing regulatory process that provides FPL with the discretion to make petitions and file motions that it believes are in its best interest and permissible pursuant to the

¹⁶ Order No. PSC-14-0617-FOF-EI, issued October 27, 2014, in Docket No. 140009-EI, In re: Nuclear cost recovery clause, at 17; and Order No. PSC-15-0521-FOF-EI, issued November 3, 2015, in Docket No. 150009-EI, In re: Nuclear cost recovery clause, at 6.

¹⁷ Order No. PSC-11-0547-FOF-EI, issued November 23, 2011, in Docket No. 110009-EI, In re: Nuclear cost recovery clause, at 17.

NCRC statute and rule. Therefore, until such a time as FPL submits a detailed analysis of the feasibility of completing the project, staff recommends that the Commission find that costs beginning January 1, 2017 are not eligible for recovery through the NCRC pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C., because they have not been properly supported by a feasibility analysis. However, any costs incurred following the submission of an updated feasibility analysis pursuant to Rule 25-6.0423(6)(c)5., F.A.C., may be eligible for recovery pending Commission review.

This action does not conflict with the Commission's requirements pursuant to Section 366.93, F.S., because it allows FPL to recover in rates all prudently incurred 2017 TP Project costs, including associated carrying costs. However, the recovery mechanism would be traditional ratemaking rather than the alternative mechanism pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Additionally, such a filing need not be part of the annual NCRC proceeding. Rule 25-6.0423(3), F.A.C., states:

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 Commission approvals pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification combined cycle cost recovery proceeding, or a separate proceeding limited in scope to address only the petition for approval.

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

Recommendation: Staff recommends that it is premature for the Commission to consider this issue at this time. As discussed in Issues 3, 4 and 6B, staff believes a feasibility analysis is required to inform the Commission concerning prospective matters. However, FPL did not file a feasibility analysis in either 2016 or 2017. Thus, the Commission does not have sufficient information to address FPL's request at this time. (Lee, Breman, Mapp, DuVal)

Position of the Parties

FPL: Yes, FPL's decision to secure the license for Turkey Point 6 & 7 is eminently reasonable. The license may be acted upon for a period of at least 20 years, during which time economic and other factors influencing a decision to move forward may change. The alternative – halting licensing work at this time – could permanently preclude FPL's customers from ever attaining value from the licensing investment made thus far.

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. Until and unless a feasibility analysis is filed by FPL, it is not realistic or practical for FPL to incur any additional costs that its ratepayers must bear for the COL.

FIPUG: No.

FRF: No. Given the extreme doubt regarding the viability or value of ever constructing the Turkey Point Project, exacerbated by FPL's failures to comply with the NCRC Statute and NCRC Rule, the prospect of FPL building the Turkey Point Project is neither reasonable, nor realistic, nor practical. Moreover, FPL's request is beyond the scope of the Nuclear Cost Recovery Statute because it effectively seeks a declaratory statement regarding pursuing the COL, not approval of cost recovery.

SACE: No. The TP 6 & 7 project is effectively dead. There is no builder for the reactors as Westinghouse has filed for bankruptcy. Proposed AP-1000 units in South Carolina were recently abandoned due to a 41% increase in the project price -to over \$25 billion. FPL has not and cannot show the TP 6 & 7 project remains feasible. As a matter of law the Commission cannot provide FPL the relief it seeks.

Staff Analysis: This issue addresses whether it is reasonable for FPL to continue pursuit of the COL.

Parties' Arguments

FPL

In its brief, FPL argued that there is no uncertainty regarding the licensing effort. Through 2016, FPL has spent \$260 million (excluding carrying costs) in the licensing effort and is now less than

two months away from the NRC's mandatory hearing which is the penultimate step of the process. (FPL BR 26; TR 132, 157)

FPL agreed with intervenors that the issues related to the first wave of AP 1000 projects reduced the certainty of prior cost estimates and project schedules, which reinforce its decision to pause after completing licensing. (FPL BR 24-25; TR 110) Further, FPL argued that possession of a valid COL, which may be acted upon for a period of at least 20 years once issued, will enable FPL to move forward with preconstruction work at the right time. (FPL BR 26; TR 132) FPL argued that stopping licensing work at this time would be a decision to abandon the amount already recovered from FPL's customers. (FPL BR 26; TR 263)

While FPL disagreed with the Intervenors regarding the binding effect of a Commission decision, FPL did not dispute that a favorable Commission determination on FPL's decision to continue pursuing a combined operating license will be relevant to a future cost recovery request. (FPL BR 27; TR 156)

OPC

OPC argued that no feasibility analysis has been filed by FPL since 2015 and FPL's cost estimate has increased due to cost escalation and extension of project in-service dates. (OPC BR 14-15; TR 79, 179) In addition, the issues related to the first wave of AP 1000 projects severely reduce the likelihood that these projects will ever be completed and further demonstrate just how important it is for the Commission to review a feasibility analysis before rendering any further decisions on the project. (OPC BR 12, 15)

FIPUG

FIPUG argued that the Commission should decline or defer the response to FPL's request for a favorable Commission determination on FPL's decision to continue pursuing a combined operating license for a number of reasons. (FIPUG BR 9) First, FIPUG argued that the duration of FPL's pause is unclear and could range from 4 years to 10 years, or longer. (FIPUG BR 9; TR 117, 258-259) Secondly, FIPUG argued that the carrying costs during the undefined pause period are significant and a burden on FPL's customers, and if FPL's request is approved, the carrying costs will compound and accrue. (FIPUG BR 9) Third, FIPUG argued that FPL has not submitted a feasibility analysis since May 2015, which is outdated, for the Commission to make a decision on FPL's request; and such decision may tie the hands of future Commissions. (FIPUG BR 9-10)

FRF

As stated in Issues 2, 3, and 4, FRF combined its arguments for Issues 2, 3, 4, 5A, 6B, and 8. (FRF BR 10) FRF argued that FPL is not entitled to any Commission order without satisfying the statutory burden of proof that it has realistic and practical intent to construct the TP Project. (FRF BR 10, 15-16)

SACE

As stated in Issue 3, SACE combined its arguments for Issues 3, 4, 5A, 6B, 7, and 8. In addition to arguments already reflected within each respective issue, SACE also argued that a reasonableness determination, because it considers projected cost, is forward looking and since FPL failed to file a rule waiver for the feasibility analysis that is required for the NCRC recovery

of the projected cost, FPL's request should be rejected based on the plain reading of the rule requirements. (SACE BR 12-15)

Analysis

As discussed in Issues 3, 4, and 6B, staff believes a feasibility analysis is required to inform the Commission concerning prospective matters. As discussed in Issue 3, FPL did not file a feasibility analysis in 2016 and 2017. (TR 252, 370; EXH 24, 25; FPL BR 6; OPC BR 6; FIPUG BR 8; FRF BR 3; SACE BR 12) Therefore, staff recommends that there is insufficient record evidence in this proceeding to make an informed decision concerning prospective matters pertaining to the TP Project.

In its brief, FPL argued that it is now just a step away from the NRC's mandatory hearing and there is no uncertainty regarding the licensing effort. (FPL BR 26; TR 132, 157) FPL argued that stopping licensing work at this time would be a decision to abandon the amount already recovered from FPL's customers. (FPL BR 26; TR 263) Staff believes this argument also supports the need of a feasibility analysis as it would be unreasonable to require FPL to halt licensing work at this time without first assessing the TP Project's feasibility.

Conclusion

Staff recommends that it is premature for the Commission to consider this issue at this time. As discussed in Issues 3, 4, and 6B, staff believes a feasibility analysis is required to inform the Commission concerning prospective matters. However, FPL did not file a feasibility analysis in either 2016 or 2017. Thus, the Commission does not have sufficient information to address FPL's request at this time.

Issue 6B: 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?

Recommendation: Yes, FPL intends to seek Commission review and approval of costs incurred beginning January 1, 2017, after it concludes its pause period; therefore, it was 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. FPL has not complied with this requirement. (Mapp, Higgins, Breman)

Position of the Parties

FPL: No, FPL was not required to file an annual detailed analysis of the long term feasibility of completing Turkey Point 6 & 7. The rule requires a utility to file a feasibility analysis only in a proceeding to seek cost recovery. FPL is not seeking cost recovery at this time, nor is it seeking a guarantee of future cost recovery.

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 FPL’s lack of compliance with the Commission’s requirements, the Commission should order FPL to file a feasibility analysis before approving any new costs for recovery or deferral of any costs for later recovery.

FIUG: Yes, an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project was and is required to be submitted. FPL has not complied with this requirement.

FRF: Yes, FPL was required to make such a filing by the Turkey Point Need Order (Order No. 08-0237-FOF-EI) and also by Rule 25-6.0423(6)(c)5., F.A.C., but FPL has not complied with either the cited Turkey Point Need Order or the Commission’s NCRC Rule. Further, it is clear on its face that FPL’s failure was knowing and willful.

SACE: Yes, Commission rule clearly requires FPL to file an annual long-term detailed feasibility analysis. No, FPL has not complied with that requirement or others, nor has it filed a rule waiver request. Accordingly, FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

Staff Analysis: This issue addresses whether FPL is required to file a feasibility analysis.

Parties’ Arguments

FPL

In its brief, FPL combined its arguments for Issues 7, 9, and 10. (FPL BR 28-29) FPL has stated that “[a] 2017 feasibility analysis was neither legally required nor substantively useful in this

year's docket." (FPL BR 29) FPL conceded that if cost recovery were sought, the filing of a feasibility analysis would not be discretionary. (FPL BR 30) FPL argued that it was not seeking cost recovery for its 2017 or 2018 TP Project costs; therefore, the requirement to file an annual feasibility analysis as required by Rule 25-6.0423(6)(c)5., F.A.C., was not legally required. (FPL BR 29-30) FPL contended that a feasibility analysis would be meaningless at this time, and would not provide the Commission information that would be helpful in the Commission's consideration of the issues in this docket. (FPL BR 32) Within in its brief, FPL opined that a feasibility analysis is only an "examination of whether it makes economic sense to build the Project." (FPL BR 32)

OPC

OPC argued that Rule 25-6.0423(6)(c)5., F.A.C., is not discretionary and "requires the mandatory detailed annual filing of a long-term economic feasibility [analysis] of completing the plant." (OPC BR 16) OPC stated that FPL's intention to pause the TP Project before moving from the licensing to the preconstruction phase does not circumvent the requirements of the rule. (OPC BR 17) OPC continued that even if entering a pause were to negate the effectiveness of the rule, which OPC argued it does not, OPC stated that performing an annual feasibility analysis still holds merit. (OPC BR 16-17) OPC contended that the termination of SCANA's Summer project, the bankruptcy of Westinghouse, the cost overruns of Southern Company's Vogtle project, decreased natural gas prices, and the lack of a federal carbon emission plan for the next four years strongly suggest that, now more than ever, an economic long-term analysis is required to determine if it is realistic and practical to complete the TP Project. (OPC BR 17-18) OPC concluded that the NCRC statute and rule require that FPL show that the building of the plant remains realistic and practical, and nothing within Rule 25-6.0423(6)(c)5., F.A.C., makes the filing of a feasibility analysis contingent upon when costs are recovered. (OPC BR 19)

FIPUG

FIPUG argued that FPL failed to comply with Rule 25-6.0423(6)(c)5., F.A.C., by not providing the Commission with a TP Project feasibility analysis for a second consecutive year. (FIPUG BR 2) FIPUG contended that FPL's interpretation of Rule 25-6.0423(6)(c)5., F.A.C., is at odds with the plain language of the rule provision. (FIPUG BR 8) FIPUG stated that the rule clearly requires a long-term feasibility analysis to provide the Commission with updated information upon which to make decisions regarding cost recovery, the future of the TP Project, and other changes that affect the viability of the TP Project. (FIPUG BR 2-3)

FRF

In its brief, FRF combined its arguments for Issues 2, 3, 4, 5A, 6B, and 8. (FRF BR 10) FRF argued that FPL was required to file a detailed long-term feasibility analysis as part of its annual filings pursuant to Rule 25-6.0423(6)(c)5., F.A.C. Citing to Order No. PSC-15-0521-FOF-EI, FRF stated the Commission had defined that the purpose of this rule is for FPL to provide evidence of its intent to construct the TP Project. (FRF BR 11) FRF asserted that the language from the rule requiring that the Utility show that "it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical," tracks specific language within the NCRC statute, Section 366.93, F.S. (FRF BR 15) FRF concluded that FPL has failed to provide an annual feasibility study as required by the rule,

and has therefore failed to provide the Commission with the information it needs to fulfill its duty under the NCRC statute and rule. (FRF BR 16)

SACE

In its brief, SACE stated that “FPL has failed to follow the process established by the Florida Legislature and this Commission for cost recovery of nuclear preconstruction and construction costs pursuant to Section 366.93, F.S., or the Commission’s Rule 25-6.0423, F.A.C.” (SACE BR 6) SACE asserted that Section 366.93(2), F.S., clearly and unambiguously charged the Commission with establishing a rule for an alternative cost recovery mechanism for the recovery of costs incurred in the siting, design, and licensing of nuclear power plants. (SACE BR 9) SACE opined that while the statute and rule permissively allows recovery for nuclear related costs, it does not naturally follow that the statute and rule provides an option for a utility to recover those costs outside the framework established by the Legislature and the Commission. (SACE BR 9)

SACE contended that Rule 25-6.0423, F.A.C., created specific filing requirements to implement Section 366.93, F.S., and one of the “bedrocks” of the rule is the filing of a detailed analysis of the feasibility of completing the reactors. (SACE BR 11-12) SACE stated that FPL failed to file the required feasibility analysis in 2016 and 2017, and in so doing failed to show that its intent to build the TP Project is realistic and practical. (SACE BR 12, 15) SACE concluded by stating in failing to file a required feasibility analysis, FPL has failed to comply with both the Statute and the Rule mandated process for nuclear cost recovery. (SACE BR 20)

Analysis

Rule 25-6.0423, F.A.C., describes a process where projected activities and costs are subject to Commission review for reasonableness. Analysis of the feasibility of completing a project is a requirement necessary to support a determination that future activities and the collection of projected expenses are reasonable. However, the absence of the required analysis means that the Commission’s review cannot occur.

The absence of the required analysis cannot be remedied by a future filing because that future filing would be prospective in nature, even if it supports the reasonableness of continued project development. FPL acknowledges this fact in its brief when the Utility argued that filing a 2017 feasibility analysis should not be used by the Commission to assess the prudence of FPL’s 2015 and 2016 costs. Specifically, FPL stated that “a 2017 feasibility analysis to assess the prudence of historic costs would violate this Commission’s principle against hindsight review and therefore cannot support an interpretation of the Rule that such a filing is necessary to allow the Commission to assess the prudence of FPL’s 2015 and 2016 costs.” (FPL BR 6-7)

Staff believes that Section 366.93, F.S., and Rule 25-6.0423, F.A.C., set forth an alternative cost recovery mechanism that is contemporaneous with the demonstration that proceeding with project development is reasonable. While FPL may desire better data to support the required analysis, FPL must endeavor to present the required analysis if it seeks cost recovery pursuant to the statute and rule. FPL has stated that performing a feasibility analysis would have “no bearing on the logic of finishing the near-term, relatively low-cost activities required to complete the licensing phase of the Project.” (TR 79) However, while the Utility may not have needed to

perform a feasibility analysis for internal decision making processes or believes a feasibility analysis would not be substantively useful, staff believes that it is needed and required by the Commission in order to perform its duties pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. While FPL claims it is not seeking cost recovery at this time and intends to seek cost recovery after its pause period, the review contemplated post-pause period is a prudency review only. FPL is effectively asking the Commission to make a reasonableness determination at this time, which is tantamount to a “nod” or approval presently allowing cost recovery to take place sometime in the future. In the absence of a feasibility analysis staff believes the rule does not contemplate any form of substantive approval of the project which would effectively bind the Commission as a matter of right in the future.

Therefore, staff believes that in order to be eligible for cost recovery pursuant to Section 366.93, F.S., a detailed long-term analysis of the feasibility of completing the TP Project would need to be filed pursuant to Rule 25-6.0423(6)(c)5., F.A.C. FPL witness Scroggs testified that FPL had not filed a 2017 long-term feasibility analysis of completing the TP Project in 2016 and 2017. (TR 79, 144) FPL witness Grant-Keene additionally testified that FPL intends to petition the Commission in the future for review and recovery of TP Project costs incurred in 2017 and 2018 through the NCR clause process. (TR 317)

Conclusion

Based on the record evidence, and the analysis above, staff recommends that the Commission find that FPL was 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., and that FPL has not complied with that requirement.

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

Recommendation: Yes. While FPL has not fulfilled all of the commitments that it represented to the Commission within the Order, no affirmative requirements were placed on FPL; therefore, FPL is in compliance with the Order. No further action from the Commission is necessary. (Mapp, Breman)

Position of the Parties

FPL: Yes, because there was no particular action that FPL was ordered to take. That order granted FPL's Motion to Defer and in doing so recited two representations made by FPL, including that FPL planned to file a feasibility analysis in 2017. FPL's subsequent decision to not seek cost recovery in the 2017 NCR docket reflected a material change in FPL's filing plans that rendered the obligation to file a feasibility analysis moot.

OPC: No. In Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI (20160009-EI) at page 2, the Commission states "FPL plans to file a long-term feasibility analysis in the 2017 NCR 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 and rule.

FIPUG: No. The Commission should deny FPL the relief it seeks.

FRF: Because Order No. PSC-16-0266-PCO-EI was procedural in nature and only ordered that FPL's motion to defer was granted, it is difficult to say that FPL violated any express requirement of that Order. However, given that the Order was based on FPL's representation that it would file the requisite long-term feasibility analysis in the 2017 NCR docket, it is fair to say that FPL violated the spirit of the Order.

SACE: No. The Order was predicated on FPL filing the required feasibility analysis in this year's docket. FPL did not file it, nor has it filed a rule waiver request in this year's docket. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

Staff Analysis: This issue addresses whether or not FPL has complied with Order No. PSC-16-0266-PCO-EI.

Parties' Arguments

FPL

In its brief, FPL combined its arguments for Issues 6, 7, 9, and 10. (FPL BR 28-29) FPL stated that the language in Order No. PSC-16-0266-PCO-EI, supported its argument that a 2017 feasibility analysis was neither legally required nor substantively useful in this year's docket due to FPL's inability to meaningfully revise its cost estimate and feasibility analysis until it can

assess the lessons learned from the first wave construction projects. (FPL BR 29) FPL argued that the order did not require it to take any particular action, the order's legal effect being to grant FPL's Motion to Defer Consideration of Issues and Cost Recovery. (FPL BR 31) FPL stated that it made two representations that were captured within the order; first, that it would withdraw its Petition for Waiver of Rule 25-6.0423(6)(c)5., F.A.C., and second that FPL planned to file a long-term feasibility analysis during the 2017 Nuclear Cost Recovery process. (FPL BR 31) FPL asserted that its decision not to seek cost recovery in the 2017 NCR cycle reflected a material change in its filing plans. FPL argued that its decision not to seek contemporaneous cost recovery nullified the filing requirement within Rule 25-6.0423(6)(c)5., F.A.C., and "FPL's plan to file a feasibility analysis pursuant to that rule provision became moot." (FPL BR 31)

OPC

OPC argued that in granting FPL's requested deferral of recovery for its 2016 and 2017 costs to this year's proceeding, "the Commission specifically noted, in apparent reliance thereon, that 'FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket.'" (OPC BR 5, 21; Order No. PSC-16-0266-PCO-EI) OPC argued that by granting FPL's motion, the Commission incorporated FPL's representation that it would file a feasibility study, not a conditional representation that FPL "might" file a long-term study in this year's proceeding. (OPC BR 21) OPC argued that FPL has failed to file a long-term feasibility study in this year's docket in accordance with Rule 25-6.0423(6)(c)5., F.A.C., and therefore has failed to comply with Order No. PSC-16-0266-PCO-EI. OPC concluded by stating that the Commission should decline making any decision as to the reasonableness and appropriateness of FPL obtaining and maintaining the COL and approving any additional costs for recovery or later recovery until FPL files a long-term feasibility analysis demonstrating that its intent to complete the TP Project is realistic and practical. (OPC BR 21)

FIPUG

FIPUG argued that FPL had not complied with Order No. PSC-16-0266-PCO-EI, and that the Commission should deny FPL any relief that it seeks. (FIPUG BR 5) Additionally, FIPUG adopted OPC's post-hearing brief to the extent that OPC's brief addressed issues or made arguments not set forth within FIPUG's own post-hearing brief. (FIPUG 1)

FRF

In its brief, FRF contended that while it would be difficult to determine if FPL violated any express requirements within Order No. PSC-16-0266-PCO-EI, FPL did represent that it would file a long-term feasibility analysis within this year's docket. (FRF BR 7) FRF argued that FPL's failure to deliver on its 2016 representation, upon which the Commission relied, to provide a long-term feasibility analysis in the 2017 NCRC docket violated the spirit of the Order. (FRF BR 7, 16)

SACE

SACE asserted that Order No. PSC-16-0266-PCO-EI was predicated on the understanding that FPL would file a feasibility analysis in this year's proceeding. (SACE BR 14) SACE argued that FPL failed to comply with the Commission's Order and failed to file a waiver request to be excused from the rule's requirements. (SACE BR 15) Therefore, SACE argued, the Commission, as a matter of law, cannot provide FPL with its requested relief. (SACE BR 15)

Analysis

Order No. PSC-16-0266-PCO-EI (Order), issued on July 12, 2016, in Docket No. 160009-EI, granted FPL's Motion to Defer Consideration of Issues and Cost Recovery (Motion) filed in last year's Nuclear Cost Recovery Clause proceeding. The effect of the Order was to defer until 2017 all NCRC issues for FPL. (TR 179) FPL argued that the Order did not require it to take any particular action, and FRF agreed and stated that FPL did not violate any express requirements within the Order. (FPL BR 31; FRF BR 7) OPC, FIPUG, and SACE argued that FPL had not complied with the Order, and the Commission should deny FPL the relief it seeks. (OPC BR 21; FIPUG BR 5; SACE BR 15)

FPL made certain representations to the Commission that were memorialized within the Order. Specifically, the Order states that:

Further, FPL states that following our approval of this motion, FPL will withdraw its Petition for Waiver. FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket. Additionally, FPL requests that the deferral be implemented consistent with the requirements of Section 366.93, F.S., and Rule 25-6.0423, F.A.C., which afford deferred accounting treatment and accrual of carrying charges equal to FPL's most recently approved allowance for funds used during construction rate until recovered in rates.¹⁸

FPL did withdraw its rule waiver request, however it did not file a 2017 feasibility analysis. (TR 144, 179) FPL argued that it takes its representations made to the Commission seriously, and that its decision not to file a 2017 feasibility analysis was the result of FPL deciding not to seek contemporaneous cost recovery, and independently determining that a feasibility analysis was not required. (FPL BR 31)

This decision was made by FPL executive management. Witness Scroggs testified that due to a significant change in circumstances, the need for a feasibility analysis had been rendered moot and not required. (TR 179-180) Witness Scroggs testified that in addition to FPL's position that a feasibility analysis is not required, the only other reason FPL did not file a feasibility analysis was because of a lack of insight into the first-wave project costs. (TR 285) In response to a question from the Commission asking if there was "anything that precludes the company from submitting a report, again, just based on best-available information," FPL witness Scroggs stated that "there was nothing that would preclude [FPL] from conducting an analysis" (TR 284)

Conclusion

In granting FPL's Motion, the Commission relied upon FPL's representation that a 2017 feasibility analysis would be filed. In failing to file a 2017 feasibility analysis, FPL has not complied with the spirit of Order No. PSC-16-0266-PCO-EI. Nevertheless, FPL and FRF are correct in their arguments that the Order did not contain any express requirements ordering FPL

¹⁸ Order No. PSC-16-0266-PCO-EI at 2.

to make any specific actions. Therefore, staff recommends that the Commission find that FPL is in compliance with Order No. PSC-16-0266-PCO-EI, and no further action should be taken.

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

Recommendation: The Commission should approve an over recovery of \$7,305,202 (jurisdictional) as FPL's 2017 NCRC amount for use in establishing FPL's 2018 Capacity Cost Recovery Clause factor. (Whitfield, Breman)

Position of the Parties

FPL: The total jurisdictional amount of (\$7,305,202) should be included in establishing FPL's 2018 CCRC factor. There is no testimony to the contrary, and no legal argument supporting a disallowance that withstands even cursory scrutiny.

OPC: The jurisdictional amount to be included in the 2018 Capacity Cost Recovery Clause factor should be limited to the over-recovery of \$1,306,211 for 2015 true-up amount and the over-recovery of \$5,998,991 for 2016.

FIPUG: Nothing.

FRF: Because FPL hasn't satisfied the express requirement of Section 366.93(3)(f), Florida Statutes, to prove that it has a realistic and practical intent to construct the Project, FPL is not entitled to any order of the Commission approving any cost recovery. Accordingly, the jurisdictional amount to be included in establishing FPL's 2018 CCR factor is a refund of \$53,964,509, i.e., all customer monies collected in 2015 and 2016 for which prudence has not been determined.

SACE: Any over-recovery in previous years should be refunded to customers. Going forward, FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. requirements. As a matter of law the Commission cannot provide FPL the relief it seeks.

Staff Analysis: This is a fall-out issue addressing the amount the Commission should establish as FPL's NCRC recovery amount to be collected through the 2018 Capacity Cost Recovery Clause factor. None of the parties presented any new arguments or concerns in this issue that are not discussed in prior issues.

In summary, staff believes no evidence of unreasonableness or imprudence was presented by the parties and thus no adjustments to FPL's requested recovery amounts are necessary. Consistent with staff's analysis in Issue 2, a total jurisdictional over recovery amount of \$7,305,202 should be used in establishing FPL's 2018 Capacity Cost Recovery Clause factor.

Conclusion

Staff recommends the Commission approve a total jurisdictional over recovery amount of \$7,305,202 as FPL's 2017 NCRC amount for use in establishing FPL's 2018 Capacity Cost Recovery Clause factor.

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?

Recommendation: The estimated non-binding cost range is \$14.96 to \$21.87 billion for FPL's proposed TP Project. (Lee, Higgins)

Position of the Parties

FPL: When time-related costs such as inflation and carrying costs are included, and in-service dates of 2031 and 2032 are assumed, the total non-binding cost estimate range is \$14.96 to \$21.87 billion for the 2,200 MW Project. FPL expects to revise its cost estimate after completion of the first wave of new nuclear construction projects.

OPC: The current total estimated all-inclusive costs are unknown.

FIPUG: More than FPL previously stated.

FRF: In light of the uncontroverted facts that FPL has no planned in-service date and no realistic and practical intent to construct the Turkey Point Project, and since it is at best highly speculative that FPL would ever build the units as proposed, the estimated cost to construct these units is unknown.

SACE: The proposed reactors will likely never be built. Regardless, the current estimated costs are too low, and the ultimate cost of the proposed TP 6 & 7 AP-1000 reactors will significantly exceed current estimates. Proposed AP-1000 units in South Carolina were recently abandoned after a projected price to complete that project was over \$25 billion – well exceeding FPL's highest projection for the TP 6 & & reactor project.

Staff Analysis: This issue addresses the current estimated cost for the TP Project.

Parties' Arguments

FPL

FPL agreed with intervenors that the issues related to the first wave of AP 1000 projects reduced the certainty of prior cost estimates and project schedules, which reinforce its decision to pause after completing licensing. (FPL BR 24-25; TR 110)

OPC

OPC argued that FPL's cost estimate has risen and continues to rise due to cost escalation and extension of project in-service dates. (OPC BR 14-15, 22; TR 79, 179; EXH, 10, 24) In addition, the issues related to the first wave of AP 1000 projects further impacted the uncertainty and costs of the project. The total estimated all-inclusive cost that customers will bear is unknown and the Commission should deny FPL's request and require FPL provide its updated analysis of the long-term feasibility before rendering any further decisions on the project. (OPC BR 23-24)

FIPUG

FIPUG argued that the all-inclusive construction cost of the TP Project will be more than FPL has estimated. (FIPUG BR 6) FIPUG detailed that during the 2015 NCRC Hearing, FPL estimated the cost range of the TP project to be from \$12.6 billion to \$18.4 billion. (FIPUG BR 6) Further, during the 2017 NCRC hearing, the same cost range had risen to \$15 billion and \$21.9 billion. (FIPUG BR 6-7) Thus, in two years, the upper-end of the cost estimate range had increased approximately \$3.5 billion. FIPUG believed the increasing estimated cost of constructing the TP Project runs afoul of the concept of cost effective, reasonable, and prudent energy resources. (FIPUG BR 7)

FRF

FRF argued that FPL has no realistic and practical intent to construct the TP Project. (FRF BR 8) Further, FRF believed it is highly speculative that the new nuclear units will ever be built, thus the estimated construction cost is unknown. (FRF BR 8)

SACE

SACE asserted FPL's current cost estimate of constructing the TP Project is too low, and that any final cost would exceed the current estimated range. (SACE BR 6) SACE offered that Santee Cooper, who holds an ownership interest in the first-wave new nuclear Summer project in South Carolina, has recently estimated the cost of completing its plants to be \$25.3 billion. (SACE BR 18) SACE believed that the estimated cost of the Summer project is more reliable than FPL's estimate due to projected in-service dates being seven years earlier. (SACE BR 18) Ultimately, SACE is of the opinion that the TP project is not economically feasible. (SACE BR 18)

Analysis

FPL witness Scroggs testified that including inflation and carrying costs, with the assumed commercial operation dates of 2031 and 2032, the total non-binding cost estimate range of the project is \$14.96 to \$21.87 billion. (EXH 10) This is higher than the range of \$13.7 to \$20.0 billion with commercial operation dates of 2027 and 2028, based on the information provided in Docket No. 150009-EI.¹⁹ The time-related costs are affected by the change in the assumed commercial operation dates. (TR 190-191)

As the Commission's decision in the 2015 NCRC proceeding noted, the finding of the cost estimate range is non-binding, and its significance and usefulness is with respect to assessing FPL's analysis of the long-term feasibility of the project compared to alternative resources with the best available information at that time, pursuant to Rule 25-6.0423(6)(c)5, F.A.C.²⁰ FPL did not file the feasibility analysis in this proceeding for the Commission to make such an assessment.

¹⁹ Order No. PSC-15-0521-FOF-EI, issued on November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 21.

²⁰ *Id.*

Conclusion

Staff believe that the estimated non-binding cost range is \$14.96 to \$21.87 billion for FPL's proposed TP Project.

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

Recommendation: FPL's current, non-binding, assumed commercial operation dates are 2031 and 2032 for the planned TP Project. (Lee, Higgins)

Position of the Parties

FPL: FPL has assumed in-service dates of 2031 and 2032 for purposes of updating its non-binding cost estimate range. FPL intends to review its project schedule when the first wave new nuclear construction projects are complete.

OPC: The current estimated planned commercial operation date is unknown.

FIPUG: Longer than FPL previously stated.

FRF: FPL has no realistic and practical intent to construct the Turkey Point Project; rather, FPL has "assumed" commercial operation dates that are 14 and 15 years in the future, i.e., 2031 and 2032 (EXH 10, Schedule TOR-7), "for purposes of updating its non-binding cost estimate range." (Prehearing Order No. 2017-0323-PHO-EI at 30). Accordingly, FPL has no planned commercial operation date of the proposed Turkey Point Project.

SACE: The reactors will likely never come into service – the current in-service dates are simply placeholder dates. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors and likely not providing engineering and procurement services beyond licensing. FPL has not and cannot show a long-term feasibility analysis that reactors remain economical, nor commit that it will build them.

Staff Analysis: This issue addresses the current estimated commercial operation date of the TP Project.

Parties' Arguments

FPL

FPL assumed in-service dates of 2031 for TP Unit 6, and 2032 for TP Unit 7, for the purposes of updating its non-binding cost estimate range. (FPL BR 29)

OPC

OPC argued that the current estimated planned commercial operation date of the TP Project is unknown. (OPC BR 24) Further, OPC asserted that FPL had established through its own testimony and exhibits that it is uncertain as to when, or whether, the TP Project will be built. (OPC BR 24-25)

FIPUG

FIPUG believed that that the current estimated planned in-service date of the TP Project will be longer than FPL stated. (FIPUG BR 5) Further, FIPUG asserted that FPL does not have a projected in-service date for the TP Project. (FIPUG BR 6)

FRF

FRF maintained that FPL has no realistic and practical intent to construct the TP Project. (FRF BR 8) FRF claimed that the projected operation dates of 2031 and 2032 are for the purposes of updating the Company's non-binding cost estimate range, thus FPL had no planned commercial operation dates. (FRF BR 8)

SACE

SACE argued that the TP Project will likely never come into service and that FPL's current estimated planned in-service dates for the TP Project are placeholder dates only. (SACE BR 6)

ANALYSIS

For the purposes of updating its non-binding cost estimate range, FPL assumed commercial operation dates of 2031 for TP Unit 6, and 2032 for TP Unit 7. (FPL BR 29; EXH 10) This compares with the commercial operation dates of 2027 and 2028 based on the information provided in Docket No. 150009-EI.²¹ Staff notes the record in this proceeding did not contain similar analysis by FPL for a feasibility assessment. As discussed in Issue 9, the finding of the cost estimate range, including the impact of the assumed commercial operation dates, is non-binding, and its significance and usefulness is with respect to assessing FPL's analysis of the long-term feasibility of the project compared to alternative resources with the best available information at that time.

CONCLUSION

Staff believes that FPL's current, non-binding, assumed commercial operation dates are 2031 and 2032 for the planned TP Project.

²¹ Order No. PSC-15-0521-FOF-EI, issued on November 3, 2015, in Docket 150009-EI, In re: Nuclear cost recovery clause, at 21.

Issue 16: Should this docket be closed?

Recommendation: No. The Nuclear cost recovery clause is an on-going docket and should remain open. (Mapp, DuVal)

Staff Analysis: The Nuclear cost recovery clause is an on-going docket and should remain open.