

STATE OF FLORIDA



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Public Service Commission

December 4, 2013

Kenneth J. Plante, Coordinator
Joint Administrative Procedures Committee
Room 680, Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

RE: Docket No. 130222-EI; Rule 25-6.0423, F.A.C.

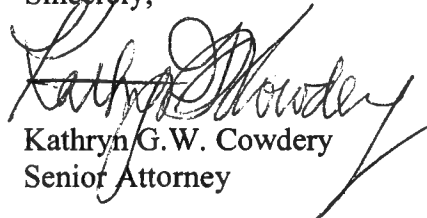
Dear Mr. Plante:

Enclosed are the following materials concerning the above referenced proposed rule:

1. A copy of the proposed rule.
2. A copy of the materials incorporated by reference in the rule.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. The Statement of Estimated Regulatory Costs for the rule.
6. A copy of the F.A.R. notice.

If there are any questions with respect to this rule, please do not hesitate to call me at 413-6216.

Sincerely,



Kathryn G.W. Cowdery
Senior Attorney

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Enclosures
cc: Office of Commission Clerk

1 **25-6.0423 Nuclear or Integrated Gasification Combined Cycle Power Plant Cost**

2 **Recovery.**

3 (1) Purpose. The purpose of this rule is to establish alternative cost recovery mechanisms for
4 the recovery of costs incurred in the siting, design, licensing, and construction of nuclear or
5 integrated gasification combined cycle power plants in order to promote electric utility
6 investment in nuclear or integrated gasification combined cycle power plants and allow for the
7 recovery in rates of all such prudently incurred costs.

8 (2) Definitions. As used in this rule, the following definitions shall apply:

9 (a) "Nuclear power plant" is an electrical power plant which ~~that~~ utilizes nuclear materials as
10 fuel, ~~as defined in Sections 403.503(13) and 366.93(1)(c), F.S.~~

11 (b) "Integrated gasification combined cycle power plant" is an electrical power plant which
12 ~~that~~ uses synthesis gas produced by integrated gasification technology, as defined in Sections
13 403.503(14)(13) and 366.93(1)(c), F.S.

14 (c) "Power plant" or "plant" means a nuclear power plant or an integrated gasification
15 combined cycle power plant.

16 (d) "Cost" includes, but is not limited to, all capital investments including rate of return, any
17 applicable taxes, and all expenses, including operation and maintenance expenses, related to or
18 resulting from the siting, licensing, design, construction, or operation of the nuclear power
19 plant, including new, expanded, or relocated electrical transmission lines or facilities of any
20 size which are necessary thereto, or of the integrated gasification combined cycle power
21 plant, as defined in Section 366.93(1)(a), F.S.

22 (e) "Site selection." A site will be deemed to be selected upon the filing of a petition for a
23 determination of need for a nuclear or integrated gasification combined cycle power plant
24 pursuant to Section 403.519, F.S.

25 (f) "Site selection costs" are costs that are expended prior to the selection of a site.

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1 (g) "Pre-construction costs" are costs that are expended after a site has been selected in
2 preparation for the construction of a nuclear or integrated gasification combined cycle power
3 plant, incurred up to and including the date the utility completes site clearing work.

4 (h) Site selection costs and pre-construction costs include, but are not limited to: any and all
5 costs associated with preparing, reviewing and defending a Combined Operating License
6 (COL) application for a nuclear power plant; costs associated with site and technology
7 selection; costs of engineering, designing, and permitting the nuclear or integrated gasification
8 combined cycle power plant; costs of clearing, grading, and excavation; and costs of on-site
9 construction facilities (i.e., construction offices, warehouses, etc.).

10 (i) "Construction costs" are costs that are expended to construct the nuclear or integrated
11 gasification combined cycle power plant including, but not limited to, the costs of constructing
12 power plant buildings and all associated permanent structures, equipment and systems.

13 (j) "Carrying Costs" shall be calculated using the utility's most recently approved pretax
14 allowance for funds used during construction (AFUDC) rate at the time an increment of cost
15 recovery is sought.

16 (3) After the Commission has issued a final order granting a determination of need for a power
17 plant pursuant to Section 403.519, F.S., a utility may file a petition for Commission approvals
18 pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification combined
19 cycle cost recovery proceeding, or a separate proceeding limited in scope to address only the
20 petition for approval.

21 ~~(4)(3)~~ Deferred Accounting Treatment. Site selection and pre-construction costs shall be
22 afforded deferred accounting treatment and shall, except for projected costs recovered on a
23 projected basis in one annual cycle, accrue a carrying costs ~~charge equal to the utility's~~
24 ~~allowance for funds used during construction (AFUDC) rate~~ until recovered in rates.

25 ~~(5)(4)~~ Site Selection Costs. After the Commission has issued a final order granting a

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1 determination of need for a power plant pursuant to Section 403.519, F.S., a utility may file a
2 petition for a separate proceeding, to recover prudently incurred site selection costs. This
3 separate proceeding will be limited to only those issues necessary for the determination of
4 prudence and alternative method for recovery of site selection costs of a power plant.

5 ~~(6)~~(5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After the
6 Commission has issued a final order granting a determination of need for a power plant
7 pursuant to Section 403.519, F.S., a utility may petition the Commission for recovery of pre-
8 construction costs and carrying costs of construction cost balance as follows:

9 (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost
10 Recovery Clause, its actual and projected pre-construction costs. The utility may also recover
11 the related carrying costs ~~charge~~ for those costs not recovered on a projected basis. Such costs
12 will be recovered within 1 year, unless the Commission approves a longer recovery period.
13 Any party may, however, propose a longer period of recovery, not to exceed 2 years. Actual
14 pre-construction costs incurred by a utility prior to the issuance of a final order granting a
15 determination of need pursuant to Section 403.519, F.S., shall be included in the initial filing
16 made by a utility under this subsection for review, approval, and a finding with respect to
17 prudence.

18 ~~1. Actual pre-construction costs incurred by a utility prior to the issuance of a final order~~
19 ~~granting a determination of need pursuant to Section 403.519, F.S., shall be included in the~~
20 ~~initial filing made by a utility under this subsection for review, approval, and a finding with~~
21 ~~respect to prudence.~~

22 ~~2. The Commission shall include pre-construction costs determined to be reasonable and~~
23 ~~prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as~~
24 ~~specified in subparagraph (5)(e)3. of this rule. Such costs shall not be subject to disallowance~~
25 ~~or further prudence review.~~

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1 (b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover, through the
2 utility's Capacity Cost Recovery Clause, the carrying costs on the utility's annual projected
3 construction cost balance associated with the power plant. The actual carrying costs recovered
4 through the Capacity Cost Recovery Clause shall reduce the ~~allowance for funds used during~~
5 ~~construction~~ (AFUDC) that would otherwise have been recorded as a cost of construction
6 eligible for future recovery as plant in service.

7 ~~1. For power plant need petitions submitted on or before December 31, 2010, the associated~~
8 ~~carrying costs shall be computed based on the pretax AFUDC rate in effect on June 12, 2007;~~

9 ~~2. For power plant need petitions submitted after December 31, 2010, the utility's pretax~~
10 ~~AFUDC rate in effect at the time the petition for determination of need is filed is presumed to~~
11 ~~be appropriate unless the Commission determines otherwise in its need determination order;~~

12 ~~3. The Commission shall include carrying costs on the balance of construction costs~~
13 ~~determined to be reasonable or prudent in setting the factor in the annual Capacity Cost~~
14 ~~Recovery Clause proceedings, as specified in paragraph (5)(c) of this rule.~~

15 (c) Capacity Cost Recovery Clause for Nuclear or Integrated Gasification Combined Cycle
16 Power Plant Costs.

17 1. Each year, pursuant to the order establishing procedure in the annual cost recovery
18 proceeding, a utility shall submit, for Commission review and approval, as part of its cost
19 recovery Capacity Cost Recovery Clause filings:

20 a. True-Up for Previous Years. ~~By March 1,~~ A utility shall submit its final true-up of pre-
21 construction expenditures, based on actual preconstruction expenditures for the prior year and
22 previously filed expenditures for such prior year and a description of the pre-construction
23 work actually performed during such year; or, once construction begins, its final true-up of
24 carrying costs on its construction expenditures, based on actual carrying costs on construction
25 expenditures for the prior year and previously filed carrying costs on construction

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1 expenditures for such prior year and a description of the construction work actually performed
2 during such year.

3 b. True-Up and Projections for Current Year. ~~By May 1,~~ Aa utility shall submit for
4 Commission review and approval its actual/estimated true-up of projected pre-construction
5 expenditures based on a comparison of current year actual/estimated expenditures and the
6 previously-filed estimated expenditures for such current year and a description of the pre-
7 construction work projected to be performed during such year; or, once construction begins,
8 its actual/estimated true-up of projected carrying costs on construction expenditures based on
9 a comparison of current year actual/estimated carrying costs on construction expenditures and
10 the previously filed estimated carrying costs on construction expenditures for such current
11 year and a description of the construction work projected to be performed during such year.

12 c. Projected Costs for Subsequent Years. ~~By May 1,~~ Aa utility shall submit, for Commission
13 review and approval, its projected pre-construction expenditures for the subsequent year and a
14 description of the pre-construction work projected to be performed during such year; or, once
15 construction begins, its projected construction expenditures for the subsequent year and a
16 description of the construction work projected to be performed during such year.

17 2. The Commission shall, ~~prior to October 1 of each year,~~ conduct an annual a hearing to and
18 determine the reasonableness of projected pre-construction expenditures and ~~the~~ prudence of
19 actual pre-construction expenditures expended by the utility; or, once construction begins, to
20 determine the reasonableness of projected construction expenditures and ~~the~~ prudence of
21 actual construction expenditures expended by the utility, and the associated carrying costs.
22 ~~Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the~~
23 ~~Commission shall make a prudence determination of the prior year's actual construction costs~~
24 ~~and associated carrying costs. To facilitate this determination, t~~The Commission shall conduct
25 an on-going auditing and monitoring program of prior year actual construction costs and

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1 related contracts pursuant to Section 366.08, F.S. In making its determination of
2 reasonableness and prudence the Commission shall apply the standard provided pursuant to
3 Section 403.519(4)(e), F.S.

4 ~~3. The Commission shall include those costs it determines, pursuant to this subsection, to be~~
5 ~~reasonable or prudent in setting the Capacity Cost Recovery Clause factor in the annual Fuel~~
6 ~~and Purchased Power Cost Recovery proceedings. Upon a determination of prudence, Such~~
7 ~~prior year actual costs associated with power plant construction subject to the annual~~
8 ~~proceeding shall not be subject to disallowance or further prudence review.~~

9 4. The final true-up for the previous year, actual/estimated true-up for the current year, and
10 subsequent year's projected power plant costs as approved by the Commission pursuant to
11 subparagraph ~~(6)~~(5)(c)2. will be included for cost recovery purposes as a component of the
12 following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery
13 Clause. The utility must file all necessary revisions to the fuel and purchased power cost
14 recovery filings no later than eight business days after the Commission's vote ~~October 15 of~~
15 ~~the current year.~~

16 5. ~~By May 1 of each year, A~~along with the filings required by this paragraph, each year a
17 utility shall submit for Commission review and approval a detailed analysis of the long-term
18 feasibility of completing the power plant. Such analysis shall include evidence that the utility
19 intends to construct the nuclear or integrated gasification combined cycle power plant by
20 showing that it has committed sufficient, meaningful, and available resources to enable the
21 project to be completed and that its intent is realistic and practical.

22 ~~(7)~~(6) Failure to Enter Commercial Service. Following the Commission's issuance of a final
23 order granting a determination of need for the power plant, in the event the utility elects not to
24 complete or is precluded from completing construction of the power plant, the utility shall be
25 allowed to recover all prudent site selection costs, pre-construction costs, and construction

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1 costs.

2 (a) The utility shall recover such costs through the Capacity Cost Recovery Clause over a
3 period equal to the period during which the costs were incurred or 5 years, whichever is
4 greater.

5 (b) The amount recovered under this subsection will be the remaining unrecovered
6 Construction Work in Progress (~~CWIP~~) balance at the time of abandonment and future
7 payment of all outstanding costs and any other prudent and reasonable exit costs. The
8 unrecovered balance during the recovery period will accrue interest at the utility's overall
9 pretax weighted average midpoint cost of capital on a Commission adjusted basis as reported
10 by the utility in its Earnings Surveillance Report filed in December of the prior year, utilizing
11 the midpoint of return on equity (ROE) range or ROE approved for other regulatory purposes,
12 as applicable.

13 ~~(8)(7)~~ Commercial Service. As operating units or systems associated with the power plant and
14 the power plant itself are placed in commercial service:

15 (a) The utility shall file a petition for Commission approval of the base rate increase pursuant
16 to Section 366.93(4), F.S., separate from any cost recovery clause petitions, that includes any
17 and all costs reflected in such increase, whether or not those costs have been previously
18 reviewed by the Commission; provided, however, that any actual costs previously reviewed
19 and determined to be prudent in the Capacity Cost Recovery Clause shall not be subject to
20 disallowance or further prudence review except for fraud, perjury, or intentional withholding
21 of key information.

22 (b) The utility shall calculate the increase in base rates resulting from the jurisdictional annual
23 base revenue requirements for the power plant in conjunction with the Capacity Cost
24 Recovery Clause projection filing for the year the power plant is projected to achieve
25 commercial operation. The increase in base rates will be based on the annualized base revenue

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1 requirements for the power plant for the first 12 months of operations consistent with the cost
2 projections filed in conjunction with the Capacity Cost Recovery Clause projection filing.

3 (c) At such time as the power plant is included in base rates, recovery through the Capacity
4 Cost Recovery Clause will cease, except for the difference between actual and projected
5 construction costs as provided in subparagraph (6)(5)(c)4. above.

6 (d) The rate of return on capital investments shall be calculated using the utility's most recent
7 actual Commission adjusted basis overall weighted average rate of return as reported by the
8 utility in its most recent Earnings Surveillance Report prior to the filing of a petition as
9 provided in paragraph (8)(7)(a). The return on equity cost rate used shall be the midpoint of
10 the last Commission approved range for return on equity or the last Commission approved
11 return on equity cost rate established for use for all other regulatory purposes, as appropriate.

12 (e) The jurisdictional net book value of any existing generating plant that is retired as a result
13 of operation of the power plant shall be recovered through an increase in base rate charges
14 over a period not to exceed 5 years. At the end of the recovery period, base rates shall be
15 reduced by an amount equal to the increase associated with the recovery of the retired
16 generating plant.

17 (9)(8) A utility shall, contemporaneously with the filings required by paragraph (6)(5)(c)
18 above, file a detailed statement of project costs sufficient to support a Commission
19 determination of prudence, including, but not limited to, the information required in
20 paragraphs (9)(8)(b) – (9)(8)(e), below.

21 (a) Subject to suitable confidentiality agreements or, to the extent necessary, protective orders
22 issued by the Commission, a utility will ensure reasonably contemporaneous access, which
23 may include access by electronic means, for review by parties of all documents relied on by
24 utility management to approve expenditures for which cost recovery is sought. Access to any
25 information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10 C.F.R.

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1 73.21, incorporated by reference into this Rule, shall only be in accordance with applicable
2 Nuclear Regulatory Commission requirements. 42 U.S.C. §2167 (2012) may be accessed at
3 http://www.flrules.org[hyperlink address]. 10 C.F.R. §73.21 (2013) may be accessed at
4 http://www.flrules.org[hyperlink address].

5 (b) Regarding technology selected, a utility shall provide a description of the technology
6 selected that includes, but is not limited to, a review of the technology and the factors leading
7 to its selection.

8 (c) The annual true-up and projection cost filings shall include a list of contracts executed in
9 excess of \$1 million to include the nature and scope of the work, the dollar value and term of
10 the contract, the method of vendor selection, the identity and affiliation of the vendor, and
11 current status of the contract.

12 (d) Final true-up filings and actual/estimated true-up filings will include monthly expenditures
13 incurred during those periods for major tasks performed within Site Selection, Preconstruction
14 and Construction categories. A utility shall provide annual variance explanations comparing
15 the current and prior period to the most recent projections for those periods filed with the
16 Commission.

17 (e) Projection filings will include monthly expenditures for major tasks performed within Site
18 Selection, Preconstruction and Construction categories.

19 (f) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following issuance
20 of the final order granting a determination of need and until commercial operation of the
21 power plant, a utility shall include the budgeted and actual costs as compared to the estimated
22 in-service costs of the power plant as provided in the petition for need determination in its
23 annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates provided in the petition
24 for need determination are non-binding estimates. Some costs may be higher than estimated
25 and other costs may be lower. A utility shall provide such revised estimated in-service costs

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1 as may be necessary in its annual report.

2 *Specific Authority 350.127(2), 366.05(1), 366.93(2) FS. Law Implemented 366.93 FS.*

3 *History—New 4-8-07, Amended 2-3-08, _____.*

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42 USC 2167: Safeguards information

Text contains those laws in effect on September 25, 2013

From Title 42-THE PUBLIC HEALTH AND WELFARE**CHAPTER 23-DEVELOPMENT AND CONTROL OF ATOMIC ENERGY**

Division A-Atomic Energy

SUBCHAPTER XI-CONTROL OF INFORMATION**Jump To:****Source Credit****Codification****§2167. Safeguards information****(a) Confidentiality of certain types of information; issuance of regulations and orders; considerations for exercise of Commission's authority; disclosure of routes and quantities of shipment; civil penalties; withholding of information from Congressional committees**

In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed-

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2) ¹

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection-

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this chapter shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 2282 of this title. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(b) Regulations or orders issued under this section and section 2201(b) of this title for purposes of section 2273 of this title

For the purposes of section 2273 of this title, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 2201(b) of this title.

(c) Judicial review

Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5.

(d) Reports to Congress; contents

Upon prescribing or issuing any regulation or order under subsection (a) of this section, the Commission shall submit to Congress a report that:

- (1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;
- (2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and
- (3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

(Aug. 1, 1946, ch. 724, title I, §147, as added Pub. L. 96-295, title II, §207(a)(1), June 30, 1980, 94 Stat. 788; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

CODIFICATION

Subsection (e) of this section, which required the Commission to submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 7 on page 186 of House Document No. 103-7.

¹ So in original. Probably should be followed by a semicolon.

§73.21

part 70 of this chapter formula quantities of strategic special nuclear material; takes delivery of formula quantities of strategic special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transportation; or imports or exports formula quantities of strategic special nuclear material, shall establish and maintain or make arrangements for a physical protection system which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threats of theft or diversion of strategic special nuclear material and radiological sabotage as stated in §73.1(a).

(b) To achieve the general performance objective of paragraph (a) of this section a licensee shall establish and maintain, or arrange for, a physical protection system that:

(1) Provides the performance capabilities described in §73.25 for in-transit protection or in §73.45 for fixed site protection unless otherwise authorized by the Commission;

(2) Is designed with sufficient redundancy and diversity to ensure maintenance of the capabilities described in §§73.25 and 73.45;

(3) Includes a safeguards contingency capability that can meet the criteria in appendix C to this part "Licensee Safeguards Contingency Plans;" and

(4) Includes a testing and maintenance program to assure control over all activities and devices affecting the effectiveness, reliability, and availability of the physical protection system, including a demonstration that any defects of such activities and devices will be promptly detected and corrected for the total period of time they are required as a part of the physical protection system.

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall establish, maintain, and follow NRC-approved safeguards physical protection and safeguards contingency plans that describe how the licensee will comply with the require-

10 CFR Ch. I (1-1-13 Edition)

ments of paragraphs (a) and (b) of this section.

[44 FR 68188, Nov. 28, 1979, as amended at 57 FR 33430, July 29, 1992]

§ 73.21 Protection of Safeguards Information: Performance requirements.

(a) *General performance requirement.*

(1) Each licensee, certificate holder, applicant, or other person who produces, receives, or acquires Safeguards Information (including Safeguards Information with the designation or marking: Safeguards Information—Modified Handling) shall ensure that it is protected against unauthorized disclosure. To meet this general performance requirement, such licensees, certificate holders, applicants, or other persons subject to this section shall:

(i) Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in §73.22 related to: Power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production or conversion facilities; fuel fabrication facilities; uranium enrichment facilities; independent spent fuel storage installations; and geologic repository operations areas.

(ii) Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in §73.23 related to: Panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source material, or byproduct or special nuclear material in greater than or equal to Category 2 quantities of concern; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of source, byproduct, or special nuclear material in greater than or equal to Category 1 quantities of concern.

(iii) Protect the information in accordance with the requirements of § 73.22 if the Safeguards Information is not described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Information protection procedures employed by Federal, State, Tribal, and local law enforcement agencies are presumed to meet the general performance requirement in paragraph (a)(1) of this section.

(b) *Commission authority.* (1) Pursuant to Section 147 of the Atomic Energy Act of 1954, as amended, the Commission may impose, by order or regulation, Safeguards Information protection requirements different from or in addition to those specified in this Part on any person who produces, receives, or acquires Safeguards Information.

(2) The Commission may require, by regulation or order, that information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, related to facilities or materials not specifically described in §§ 73.21, 73.22 or 73.23 be protected under this part.

[73 FR 63574, Oct. 24, 2008, as amended at 77 FR 34205, June 11, 2012]

§ 73.22 Protection of Safeguards Information: Specific requirements.

This section contains specific requirements for the protection of Safeguards Information in the hands of any person subject to the requirements of § 73.21(a)(1)(i) and related to power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production or conversion facilities, fuel fabrication facilities, and uranium enrichment facilities; independent spent fuel storage installations; geologic repository operations areas and Safeguards Information in the hands of any person subject to the requirements of § 73.21(a)(1)(iii).

(a) *Information to be protected.* The types of information and documents that must be protected as Safeguards Information include non-public security-related requirements such as:

(1) *Physical protection.* Information not classified as Restricted Data or National Security Information related to physical protection, including:

(i) The composite physical security plan for the facility or site;

(ii) Site-specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system not easily discernible by members of the public;

(iii) Alarm system layouts showing the location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources for security equipment, and duress alarms not easily discernible by members of the public;

(iv) Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events;

(v) Site-specific design features of plant security communications systems;

(vi) Lock combinations, mechanical key design, or passwords integral to the physical security system;

(vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents or other matter as vital for purposes of physical protection, as contained in security plans, contingency measures, or plant specific safeguards analyses;

(viii) The composite safeguards contingency plan/measures for the facility or site;

(ix) The composite facility guard qualification and training plan/measures disclosing features of the physical security system or response procedures;

(x) Information relating to on-site or off-site response forces, including size, armament of response forces, and arrival times of such forces committed to respond to security contingency events;

(xi) The adversary characteristics document and related information, including implementing guidance associated with the Design Basis Threat in § 73.1(a)(1) or (a)(2); and

STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE

Subsection 366.93(2), F.S., requires the Commission to establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the 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. Rule 25-6.0423, F.A.C., implements Section 366.93, F.S. The Legislature amended Section 366.93 in 2013 by Ch. 2013-184. The amendments modified the alternative cost recovery mechanism set forth in the statute, established a procedure and requirements for cost recovery based on preconstruction and construction phases; provided that the commission may not determine that a utility intends to complete construction of a power plant unless the utility proves its efforts by a preponderance of the evidence. The proposed rule amendments implement these statutory changes.

STATEMENT ON FEDERAL STANDARDS

There are no federal standards for this these rule.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: October 17, 2013
TO: Kathryn G.W. Cowdery, Senior Attorney, Office of the General Counsel
FROM: C. Donald Rome, Jr., Public Utility Analyst II, Division of Economics *CDR*
RE: Statement of Estimated Regulatory Costs for Proposed Amendments to Rule 25-6.0423, Florida Administrative Code (F.A.C.), Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery

The purpose of existing Rule 25-6.0423, F.A.C., is to establish alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear or integrated gasification combined cycle power plant, as required by Section 366.93, Florida Statutes (F.S.). The rule amendments will implement changes to Section 366.93, F.S., passed during the 2013 legislative session by Chapter 2013-184 Laws of Florida. These changes to Rule 25-6.0423, F.A.C., are being recommended so that agency rules will continue to be consistent with the requirements of the empowering statute. Therefore, any economic impacts that might be incurred by affected entities would be a result of changes to Section 366.93, F.S., and not caused by the recommended changes to Rule 25-6.0423, F.A.C. Key changes that are discussed in the attached Statement of Estimated Regulatory Costs (SERC) are summarized below.

Draft Paragraph 25-6.0423(2)(j), F.A.C., is being recommended to implement changes to Subsection 366.93(2), F.S. In accordance with the statutory changes effective July 1, 2013, carrying costs shall be calculated using a utility's most recently approved allowance for funds used during construction (AFUDC) rate at the time an increment of cost recovery is sought. Therefore, affected investor-owned utilities are required to apply a different AFUDC rate subsequent to July 1, 2013, than they were required to apply prior to the revision to statute.

Draft Subsection 25-6.0423(3), F.A.C., provides that a utility may file a petition for Commission approval pursuant to Subsection 366.93(3), F.S., in the annual nuclear or integrated gasification combined cycle cost recovery (NCRC) proceeding, or in a separate proceeding limited in scope to address only the petition for approval. The draft rule does not require utilities to file petitions for approval outside of the Commission's annual NCRC process; it merely offers utilities that option if they wish to choose it.

In accordance with the changes to Subsection 366.93(3), F.S., effective July 1, 2013, affected utilities are required to submit additional petitions to the Commission for approval. Paragraph 366.93(3)(c), F.S., provides that after a utility obtains a plant license or certification, it must petition the Commission for approval before proceeding with preconstruction work beyond

those activities necessary to obtain or maintain a license or certificate. Paragraph 366.93(3)(d), F.S., provides that after a utility obtains approval to proceed with preconstruction work, it must petition the Commission for approval of any preconstruction materials or equipment purchases that exceed one percent of the total projected cost for the project. Paragraph 366.93(3)(e), F.S., provides that a utility must petition the Commission for approval before beginning the construction phase. Subparagraph 366.93(3)(f)1.a., F.S., provides that ten years after the date on which the utility obtains a license or certification, the utility must submit a petition demonstrating that it remains intent upon building the plant. Amended Subparagraph 25-6.0423(6)(c)5., F.A.C., is being recommended in order to implement Subparagraph 366.93(3)(f)3., F.S., which provides that the utility must demonstrate in each cost recovery filing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical. It is anticipated that most of the foregoing petitions will be handled in conjunction with the annual NCRC filings.

No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: (Draper, Daniel, Dean, Hinton, Cibula, SERC file)

**FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Section 25-6.0423, F.A.C.**

1. Will the proposed rule have an adverse impact on small business?
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?
[120.541(2)(a)1, F.S.]

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes No

Productivity Yes No

Innovation Yes No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are discussed below in Sections B through F of this SERC.

The recommended rule amendments will implement changes to Section 366.93, Florida Statutes (F.S.), that were enacted during the 2013 legislative session. These changes to Rule 25-6.0423, Florida Administrative Code (F.A.C.), are being recommended so that agency rules will continue to be consistent with the requirements of the empowering statute as revised during the 2013 legislative session. Therefore, any economic impacts that might be incurred by affected entities would be a result of statutory changes to Section 366.93, F.S., and not caused by the recommended changes to Rule 25-6.0423, F.A.C.

Staff submitted a data request to entities that would be required to comply with the draft rule revisions. Based upon the information provided in response to the data request, staff believes that none of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Potentially affected entities include two investor-owned electric utilities in Florida with nuclear generation facilities that serve a total of approximately 6.29 million retail Florida customers. Other Florida investor-owned electric utilities also would be affected if they seek to add nuclear or integrated gasification combined cycle power plants in the future.

(2) A general description of the types of individuals likely to be affected by the rule.

Staff sent a data request to two investor-owned electric utilities (Duke and FPL) that would be required to comply with the draft rule revisions. The response provided by Duke indicated that the utility did not have any projects that would be affected by the recommended rule amendments. Therefore, the statutory changes underlying the recommended rule changes are currently expected to affect one investor-owned utility, FPL, that serves approximately 4,617,500 retail customers. Of this total, approximately 4,085,000 customers are residential, 519,900 are commercial, and 12,600 are industrial and miscellaneous "other" customers. [Source: FPL 2013-2022 Ten-Year Site Plan]

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

- None. To be done with the current workload and existing staff.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule.
[120.541(2)(d), F.S.]

- None. The rule will only affect the Commission
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

The statutory changes that triggered the initiation of the current rulemaking effort have two primary effects related to transactional costs on the affected utility and its customers: (1) changes in carrying cost rates to be used at the time cost recovery is sought by the utility from the Commission, and (2) requirements for additional information to be submitted by the utility in nuclear cost recovery filings with the Commission.

(1) Changes in carrying cost rates

Rule Paragraph 25-6.0423(2)(j), F.A.C., is being recommended to implement changes to Subsection 366.93(2), F.S. In accordance with the statutory changes effective July 1, 2013, carrying costs shall be calculated using the utility's most recently approved pretax allowance for funds used during construction (AFUDC) rate at the time an increment of cost recovery is sought. FPL's response to staff's data request states that the utility currently applies a lower AFUDC rate as a result of the statutory changes. Thus, for the projects on which FPL calculates carrying costs, the amount of carrying costs recoverable by the utility from its customers through the utility's capacity cost recovery clause is reduced.

Prior to July 1, 2013, FPL applied a pretax AFUDC rate of 11.04 percent. Subsequent to July 1, 2013, the applicable pretax AFUDC rate is 9.63 percent. This translates into an estimated reduction in recoverable carrying costs from utility customers of \$5,715,995 through 2018 as shown below:

Year 2013:	\$598,316
Year 2014:	\$1,025,133
Year 2015:	\$992,636
Year 2016:	\$1,024,068
Year 2017:	\$1,035,755
Year 2018:	\$1,040,087
Total reduction:	\$5,715,995

[Source: FPL response to staff data request]

[NOTE: For purposes of this example, the current pretax AFUDC rate was assumed to be constant through 2018. Also, the potential impacts of over- or under-recoveries (e.g., for a given year) were not considered. These estimates are based on projected pre-construction costs and are subject to future revision.]

Although FPL's allowable recovery of carrying costs is reduced, all of the utility's customers may benefit by paying less through their electric bills. Therefore, changes to Subsection 366.93(2), F.S., and the recommended rule paragraph 25-6.0423(2)(j), F.A.C., are not anticipated to result in additional transactional regulatory costs.

(2) Additional Transactional Costs Associated with Cost Recovery Proceedings

(a) Option of Filing Separate Limited Proceedings for Cost Recovery Approval

Recommended Rule Subsection 25-6.0423(3), F.A.C., provides that a utility may file a petition for Commission approval pursuant to Section 366.93(3), F.S., in the annual nuclear or integrated gasification combined cycle cost recovery (NCRC) proceeding, or in a separate proceeding limited in scope to address only the petition for approval. As such, a utility has the option of when it may choose to file a petition for approval with the Commission pursuant to Section 366.93(3), F.S. To the extent that statutory changes might cause possible incremental transactional costs to the utility in association with its petitions for approval, it is anticipated that in most cases, any incremental transactional costs that might be incurred by the utility would be less in conjunction with the annual NCRC proceeding than what they potentially could be in a separate proceeding.

In its response to staff's data request, FPL stated that there are two general sets of circumstances which could affect the decision as to whether a limited proceeding outside of the annual NCRC proceeding might be pursued: (1) the relative timing of the receipt of the final license or certification of a project with the annual NCRC filing, and (2) the relative duration of a limited proceeding in comparison to the annual NCRC filing.

FPL stated that it might be granted licenses or other certifications out of synchronization with the Commission's NCRC cycle, which potentially could make it advantageous to file a separate request for approval to proceed. It also is possible that project benefits would be deferred by some period of time if the utility were to wait for the next annual NCRC cycle, in which case the utility might choose to initiate a separate approval proceeding.

In deciding whether to initiate a separate proceeding, FPL stated it would consider whether it would be more advantageous for its customers if it were to proceed with a limited petition outside of the NCRC process. In such a case, the utility might pursue approval on a time frame that is shorter than the annual NCRC proceeding.

Recommended Subsection 25-6.0423(3), F.A.C., does not require utilities to file petitions for approval outside of the Commission's annual NCRC process; it merely offers utilities that option. Based on FPL's response to staff's data request, it appears that the utility would choose the option of a separate limited proceeding only in situations where the benefits of doing so would warrant it. Therefore, it appears to be unlikely that the possibility of potential incremental transactional costs would pose a significant barrier to utilities that might wish to exercise their choice to file separate limited proceedings.

(b) Additional Filings Required by Statutory Changes

Revisions to Commission rules are being recommended to implement changes to Subsection 366.93(3), F.S. Effective July 1, 2013, statutory changes require an affected utility to make the following filings with the Commission for approval:

- Approval to proceed with preconstruction work [366.93(3)(c), F.S.]
- Approval of any preconstruction materials or equipment purchases that exceed one percent of the total projected cost for the project [366.93(3)(d), F.S.]
- Approval to proceed with the construction phase [366.93(3)(e), F.S.]
- Approval of a petition demonstrating that the utility remains intent upon building the plant, if construction has not begun with 10 years of receipt of a combined operating license [366.93(3)(f)1.a., F.S.]
- Approval of a demonstration by the utility in each cost recovery filing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical [366.93(3)(f)3., F.S.]

In its response to staff's data request, FPL stated that it potentially could incur some incremental transactional costs when seeking Commission approval of petitions to proceed with preconstruction work, for purchases that exceed 1 percent of total projected costs, and to proceed with the construction phase. FPL states that the incremental costs associated with such filings would depend on the nature and extent of the request and related regulatory proof required (witnesses, documentation), the extent of discovery, and other Commission requirements. To the extent that approval is sought during the course of FPL's annual NCRC proceeding, some of these costs may be avoided.

Regarding petitions submitted for Commission approval pursuant to Subparagraph 366.93(3)(f)1.a., F.S., and to Subparagraph 366.93(3)(f)3., F.S., (as implemented by recommended Rule Subparagraph 25-6.0423(6)(c)5., F.A.C.), FPL stated that the Commission's review was anticipated to occur in conjunction with the annual NCRC proceedings, during which the utility would demonstrate continued feasibility of the project. FPL indicated that it did not expect that compliance with the "intent to build" and "intent to construct" provisions of the statutes would result in material additional transactional costs to the company's annual NCRC filings.

Although FPL was unable to provide an estimate of potential incremental transactional costs at this time, none of the information presented in the response to staff's data request indicated that the utility anticipated any significant economic impacts. Also, as noted in Section A, above, any economic impacts that might be incurred by affected entities would be a result of statutory changes to Section 366.93, F.S., and not caused by the recommended changes to Rule 25-6.0423, F.A.C.

**E. An analysis of the impact on small businesses, and small counties and small cities:
[120.541(2)(e), F.S.]**

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

It is difficult to estimate the number of the affected utility's customers that would meet the definition of "Small Business" as defined in Section 288.703, F.S. However, as indicated in Section D, above, significant incremental transactional costs that potentially might be passed on to utility customers are not anticipated. Also, as noted in Section A, above, any economic impacts that might be incurred by affected entities would be a result of statutory changes to Section 366.93, F.S., and not caused by the recommended changes to Rule 25-6.0423, F.A.C.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

"Small cities" and "small counties" as defined by Section 120.52, F.S., are not expected to be affected other than in the unlikely scenario where such entities might be direct customers of the affected utility. However, as indicated in Section D, above, significant incremental transactional costs that potentially might be passed on to utility customers are not anticipated. Also, as noted in Section A, above, any economic impacts that might be incurred by affected entities would be a result of statutory changes to Section 366.93, F.S., and not caused by the recommended changes to Rule 25-6.0423, F.A.C.

**F. Any additional information that the Commission determines may be useful.
[120.541(2)(f), F.S.]**

None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

No regulatory alternatives were submitted.

A regulatory alternative was received from

Adopted in its entirety.

Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

Notice of Proposed Rule

PUBLIC SERVICE COMMISSION

RULE NO.: RULE TITLE:

25-6.0423 Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery

PURPOSE AND EFFECT: The rule amendments will implement changes to Section 366.93, F.S., enacted by the 2013 Legislature

Docket No. 130222-EI

SUMMARY: The amendments to Rule 25-6.0423, F.A.C., include amending definitions, addressing the statutory requirement that utilities petition the Commission for approval before proceeding with certain activities, updating the rule for accuracy and procedural flexibility, and streamlining the rule by deleting unnecessary and duplicative language.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the agency.

The SERC examined the factors required by Section 120.541(2), F.S., and concluded that the rule amendments will not have an adverse impact or exceed any of the impact/cost criteria established in Section 120.541(2)(a), F.S.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: based upon the information contained in the SERC.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 350.127(2), 366.05(1), 366.93(2) FS.

LAW IMPLEMENTED: 366.93 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kathryn G.W. Cowdery, Office of General Counsel, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, (850)413-6216, kcowdery@psc.state.fl.us

THE FULL TEXT OF THE PROPOSED RULE IS:

25-6.0423 Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery.

(1) through (2) No change.

(a) "Nuclear power plant" is an electrical power plant which that utilizes nuclear materials as fuel, ~~as defined in Sections 403.503(13) and 366.93(1)(c), F.S.~~

(b) "Integrated gasification combined cycle power plant" is an electrical power plant which that uses synthesis gas produced by integrated gasification technology, as defined in Sections 403.503(14)(13) and 366.93(1)(c), F.S.

(c) No change.

(d) "Cost" includes, but is not limited to, all capital investments including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant, including new, expanded, or relocated electrical transmission lines or facilities of any size which are necessary thereto, or of the integrated gasification combined cycle power plant, as defined in Section 366.93(1)(a), F.S.

(e) through (g) No change.

(h) Site selection costs and pre-construction costs include, but are not limited to: any and all costs associated with preparing, reviewing and defending a Combined Operating License (COL) application for a nuclear power plant; costs associated with site and technology selection; costs of engineering, designing, and permitting the nuclear

or integrated gasification combined cycle power plant; costs of clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction offices, warehouses, etc.).

(i) No change.

(j) “Carrying Costs” shall be calculated using the utility’s most recently approved pretax allowance for funds used during construction (AFUDC) rate at the time an increment of cost recovery is sought.

(3) After the Commission has issued a final order granting a determination of need for a power plant pursuant to 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.

~~(4)(3) Deferred Accounting Treatment. Site selection and pre-construction costs shall be afforded deferred accounting treatment and shall, except for projected costs recovered on a projected basis in one annual cycle, accrue a carrying costs charge equal to the utility’s allowance for funds used during construction (AFUDC) rate until recovered in rates.~~

~~(5)(4) Site Selection Costs. After the Commission has issued a final order granting a determination of need for a power plant pursuant to Section 403.519, F.S., a utility may file a petition for a separate proceeding, to recover prudently incurred site selection costs. This separate proceeding will be limited to only those issues necessary for the determination of prudence and alternative method for recovery of site selection costs of a power plant.~~

~~(6)(5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After the Commission has issued a final order granting a determination of need for a power plant pursuant to Section 403.519, F.S., a utility may petition the Commission for recovery of pre-construction costs and carrying costs of construction cost balance as follows:~~

~~(a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected pre-construction costs. The utility may also recover the related carrying costs charge for those costs not recovered on a projected basis. Such costs will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, not to exceed 2 years. Actual pre-construction costs incurred by a utility prior to the issuance of a final order granting a determination of need pursuant to Section 403.519, F.S., shall be included in the initial filing made by a utility under this subsection for review, approval, and a finding with respect to prudence.~~

~~1. Actual pre-construction costs incurred by a utility prior to the issuance of a final order granting a determination of need pursuant to Section 403.519, F.S., shall be included in the initial filing made by a utility under this subsection for review, approval, and a finding with respect to prudence.~~

~~2. The Commission shall include pre-construction costs determined to be reasonable and prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as specified in subparagraph (5)(c)3. of this rule. Such costs shall not be subject to disallowance or further prudence review.~~

~~(b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover, through the utility’s Capacity Cost Recovery Clause, the carrying costs on the utility’s annual projected construction cost balance associated with the power plant. The actual carrying costs recovered through the Capacity Cost Recovery Clause shall reduce the allowance for funds used during construction (AFUDC) that would otherwise have been recorded as a cost of construction eligible for future recovery as plant in service.~~

~~1. For power plant need petitions submitted on or before December 31, 2010, the associated carrying costs shall be computed based on the pretax AFUDC rate in effect on June 12, 2007;~~

~~2. For power plant need petitions submitted after December 31, 2010, the utility’s pretax AFUDC rate in effect at the time the petition for determination of need is filed is presumed to be appropriate unless the Commission determines otherwise in its need determination order;~~

~~3. The Commission shall include carrying costs on the balance of construction costs determined to be reasonable or prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as specified in paragraph (5)(c) of this rule.~~

~~(c) Capacity Cost Recovery Clause for Nuclear or Integrated Gasification Combined Cycle Power Plant Costs.~~

~~1. Each year, pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit, for Commission review and approval, as part of its cost recovery Capacity Cost Recovery Clause filings:~~

a. True-Up for Previous Years. ~~By March 1,~~ A utility shall submit its final true-up of pre-construction expenditures, based on actual preconstruction expenditures for the prior year and previously filed expenditures for such prior year and a description of the pre-construction work actually performed during such year; or, once construction begins, its final true-up of carrying costs on its construction expenditures, based on actual carrying costs on construction expenditures for the prior year and previously filed carrying costs on construction expenditures for such prior year and a description of the construction work actually performed during such year.

b. True-Up and Projections for Current Year. ~~By May 1,~~ A utility shall submit for Commission review and approval its actual/estimated true-up of projected pre-construction expenditures based on a comparison of current year actual/estimated expenditures and the previously-filed estimated expenditures for such current year and a description of the pre-construction work projected to be performed during such year; or, once construction begins, its actual/estimated true-up of projected carrying costs on construction expenditures based on a comparison of current year actual/estimated carrying costs on construction expenditures and the previously filed estimated carrying costs on construction expenditures for such current year and a description of the construction work projected to be performed during such year.

c. Projected Costs for Subsequent Years. ~~By May 1,~~ A utility shall submit, for Commission review and approval, its projected pre-construction expenditures for the subsequent year and a description of the pre-construction work projected to be performed during such year; or, once construction begins, its projected construction expenditures for the subsequent year and a description of the construction work projected to be performed during such year.

2. The Commission shall, ~~prior to October 1 of each year,~~ conduct an annual a hearing ~~to~~ and determine the reasonableness of projected pre-construction expenditures and the prudence of actual pre-construction expenditures expended by the utility; or, once construction begins, to determine the reasonableness of projected construction expenditures and the prudence of actual construction expenditures expended by the utility, and the associated carrying costs. ~~Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the Commission shall make a prudence determination of the prior year's actual construction costs and associated carrying costs. To facilitate this determination,~~ the Commission shall conduct an on-going auditing and monitoring program of prior year actual construction costs and related contracts pursuant to Section 366.08, F.S. In making its determination of reasonableness and prudence the Commission shall apply the standard provided pursuant to Section 403.519(4)(e), F.S.

3. ~~The Commission shall include those costs it determines, pursuant to this subsection, to be reasonable or prudent in setting the Capacity Cost Recovery Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings. Upon a determination of prudence, Such~~ prior year actual costs associated with power plant construction subject to the annual proceeding shall not be subject to disallowance or further prudence review.

4. The final true-up for the previous year, actual/estimated true-up for the current year, and subsequent year's projected power plant costs as approved by the Commission pursuant to subparagraph ~~(6)(5)(c)2.~~ will be included for cost recovery purposes as a component of the following year's capacity cost recovery factor in the Fuel and Purchased Power Cost Recovery Clause. The utility must file all necessary revisions to the fuel and purchased power cost recovery filings no later than eight business days after the Commission's vote ~~October 15 of the current year.~~

5. ~~By May 1 of each year,~~ 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 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.

~~(7)(6)~~ Failure to Enter Commercial Service. Following the Commission's issuance of a final order granting a determination of need for the power plant, in the event the utility elects not to complete or is precluded from completing construction of the power plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction costs, and construction costs.

(a) No change.

(b) The amount recovered under this subsection will be the remaining unrecovered Construction Work in Progress (CWIP) balance at the time of abandonment and future payment of all outstanding costs and any other

prudent and reasonable exit costs. The unrecovered balance during the recovery period will accrue interest at the utility's overall pretax weighted average midpoint cost of capital on a Commission adjusted basis as reported by the utility in its Earnings Surveillance Report filed in December of the prior year, utilizing the midpoint of return on equity (ROE) range or ROE approved for other regulatory purposes, as applicable.

(8)(7) Commercial Service. As operating units or systems associated with the power plant and the power plant itself are placed in commercial service:

(a) through (b) No change.

(c) At such time as the power plant is included in base rates, recovery through the Capacity Cost Recovery Clause will cease, except for the difference between actual and projected construction costs as provided in subparagraph (6)(5)(c)4. above.

(d) The rate of return on capital investments shall be calculated using the utility's most recent actual Commission adjusted basis overall weighted average rate of return as reported by the utility in its most recent Earnings Surveillance Report prior to the filing of a petition as provided in paragraph (8)(7)(a). The return on equity cost rate used shall be the midpoint of the last Commission approved range for return on equity or the last Commission approved return on equity cost rate established for use for all other regulatory purposes, as appropriate.

(e) No change.

(9)(8) A utility shall, contemporaneously with the filings required by paragraph (6)(5)(c) above, file a detailed statement of project costs sufficient to support a Commission determination of prudence, including, but not limited to, the information required in paragraphs (9)(8)(b) – (9)(8)(e), below.

(a) Subject to suitable confidentiality agreements or, to the extent necessary, protective orders issued by the Commission, a utility will ensure reasonably contemporaneous access, which may include access by electronic means, for review by parties of all documents relied on by utility management to approve expenditures for which cost recovery is sought. Access to any information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10 C.F.R. 73.21, incorporated by reference into this Rule, shall only be in accordance with applicable Nuclear Regulatory Commission requirements. 42 U.S.C. §2167 (2012) may be accessed at <http://www.flrules.org>[hyperlink address]. 10 C.F.R. §73.21 (2013) may be accessed at <http://www.flrules.org>[hyperlink address].

(b) through (f) No change.

Rulemaking Specific Authority 350.127(2), 366.05(1), 366.93(2) FS. Law Implemented 366.93 FS. History—New 4-8-07, Amended 2-3-08, _____.

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NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Public Service Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 3, 2013

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