

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause

DOCKET NO. 170009-EI

Date: July 20, 2017

**THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
PREHEARING STATEMENT**

The Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, and pursuant to Order No. PSC-17-0057-PCO-EI, filed February 20, 2017, hereby files its Prehearing Statement.

1. Appearances

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2. Witnesses

SACE is not sponsoring any witnesses.

3. Statement of Basic Position

Florida Power and Light

SACE supports the development of low cost, low risk energy resources primarily through increased energy efficiency implementation and meaningful renewable energy development. The proposed Florida Power and Light ("FPL") nuclear reactor project, Turkey Point ("TP") units 6 & 7, is neither low cost, nor low risk. The risks to customers have been compounded this year with the bankruptcy of Westinghouse, the designer and the builder of the AP-1000 reactor, which is exiting the nuclear construction business. FPL is nine years into the project and will not commit to a price, or an in-service date for the reactors, and it now has no builder for the

reactors. Without a builder, the prospect of the completion of the proposed reactors has devolved from speculation to fantasy.

Yet, FPL uses this significant reactor industry uncertainty as support for providing even less transparency to the Commission and FPL customers by requesting suspension of filings required by statute and rule in the nuclear cost recovery process.¹ FPL has not included with this filing detailed actual/estimated 2017 Nuclear Filing Requirements (“NFRs”) or projected 2018 NFRs, nor has FPL included a feasibility analysis.² FPL is additionally requesting a finding of “reasonableness” from the Commission for continuing to pursue the reactor licenses so that it can defer recovery (later recover costs, including shareholder profit, from customers). While not pled in any detail in FPL’s petition or testimony in this docket, it purports to ask for the deferral under the agency’s general ratemaking authority pursuant to Chapter 366, not specifically Section 366.93 F.S., and Rule 25-6.0423 F.A.C.

FPL’s position begs a basic policy question: if FPL cannot produce a feasibility analysis showing that pursuing the reactors makes economic sense for customers, why would the Commission saddle customers with more risk and costs? Doing so would essentially create a predatory credit card scheme where FPL gets to run up their customers’ charges for as long as it wants, then and at some unknown future date, present its customers with a staggering bill for both project costs and profits. And ironically, customers will not have purchased anything since the fantasy reactors will likely never be built – so no electricity will ever be produced. While this would be a great deal for FPL shareholders, it would be patently unfair to FPL’s customers who

¹ Florida Power and Light, *FPL’s Petition for Recovery of 2018 Nuclear Power Cost Recovery Reflecting 2015 & 2016 True-ups and Approval to Defer Recovery of Costs Beginning in 2017*, Docket No. 20170009, p. 2, May 1, 2017

² *Id.* at 6. The City of Miami is the only party to address the economic feasibility of the reactors in this docket. Its conclusion is that, due to changing market and regulatory conditions since 2015, the reactors are not economically feasible. See Testimony of Eugene T. Meehan, Docket No. 20170009, June 20, 2017. Additionally, even by FPL’s own account, the reactors were economically feasible in only “8 of the 14 scenarios analyzed” in 2015. Testimony of Richard Brown, Docket No. 20150009, p. 28, May 1, 2015.

have already been charged more than \$300 million for the fantasy reactors.³ In the context of FPL's \$1.7 billion profit last year, its request to saddle customers with even more risk and costs is particularly egregious. The Commission should reject FPL's request on public policy grounds alone. Regardless, as a matter of law, the Commission cannot grant FPL's request.

FPL has not met the requirements for cost recovery under Section 366.93, Fla. Stat. and Rule 25-6.0423 F.A.C. The Legislature has granted the Commission general ratemaking authority over electric utilities in Chapter 366, Fla. Stat. The Legislature amended Chapter 366 in 2006 with Section 366.93, Fla. Stat. and amended the section again in 2013 in order to perfect a specific process for utilities to recover costs associated with new nuclear reactor construction. It tasked the Public Service Commission to establish rules to implement the law. The law provides that the utility may petition the Commission for cost recovery as permitted by Section 366.93 and Commission rules.

Within 6 months after the enactment of this act, the commission shall 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 . . . After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules. (emphasis added) Section 366.93(2), (3)(a), Fla. Stat.

The statute clearly requires compliance with Commission rules for cost recovery of the reactor construction costs, including costs associated with the licensing of nuclear reactors. When construing the meaning of a statute, we must first look at its plain language. *Montgomery*

³ Similar AP-1000 reactor, Georgia Power's Vogtle reactors and SCANA's Summer reactors are years behind schedule and significantly over budget, and with the Westinghouse bankruptcy, are facing a very uncertain future. In terms of Plant Vogtle's expansion, it is 8 years into the project construction, but only 32% complete, productivity is still a problem, workers are spending more time on "non-work activities" than actual "work-related activities" and there is neither a reliable cost estimate nor schedule for completion. The original \$14.1 billion cost may have doubled. See 16VCM, docket 29849, Testimony of panel of Philip Hayet and Lane Kollen on behalf of the GA PSC, June 8, 2017, at <http://www.psc.state.ga.us/factsv2/Document.aspx?documentNumber=168569>

v. State, 897 So. 2d 1282, 1285 (Fla. 2005). Furthermore, "when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Id.* (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). Additionally, it is well-settled law that to ascertain the meaning of a specific statutory section, beyond looking at the plain meaning of the statute, the section should be read in the context of its surrounding sections. *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000) (stating that "statutes must be read together to ascertain their meaning"); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992). When the Legislature passed Section 366.93, Fla. Stat. it provided the Commission direction, beyond its general ratemaking authority, on how a utility must recover costs related to new nuclear construction. When read in context of Chapter 366, Section 366.93, Fla. Stat. plainly provides a mandated cost recovery process for nuclear reactor construction, like the TP 6 & 7 reactors at issue in this docket.

The Commission subsequently promulgated a rule, with specific filing requirements, to implement the law. The two bedrock provisions of the rule since its inception have been the filing of a detailed analysis of the feasibility⁴ of completing the reactors and a review and approval for reasonableness of projected preconstruction expenditures for the subsequent year.

A utility shall submit, for Commission review and approval, its projected pre-construction expenditures for the subsequent year . . . [t]he Commission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures. . . [a]long 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. (emphasis added). Rule 25-6.0423(6)c., F.A.C.

⁴ Since 2008, the Commission's Orders have expressly stated that FPL "shall" provide an annual feasibility analysis as part of its annual cost recovery process. The Commission stated that "[p]roviding this information on an annual basis will allow us to monitor the feasibility regarding the continued construction of Turkey Point 6 and 7." *See*, Order No. PSC-08-0237-FOF-EI, Docket No. 070650-EI, p. 29, April 11, 2008.

In this docket FPL has not filed a required feasibility analysis for the proposed TP 6 & 7 reactor project.⁵ FPL did not file a feasibility analysis in the 2016 docket either – but FPL was granted a reprieve, a deferment, by the Commission with the understanding that FPL must meet its burden in this docket to prove the reactors remain feasible.⁶ Moreover, FPL has not submitted specific projected preconstruction expenditures for a reasonableness determination for the subsequent year, but rather it is requesting a reasonableness determination for the underlying actions (pursuing licenses) rather than the expenditures related to the actions – the total expenditure amount is yet-to-be-determined and deferred for a yet-unknown future date. The rule does not contemplate a reasonableness determination for actions, but rather specific projected expenditures. FPL argues that at some point in the future, at FPL’s choosing and based on market conditions, it will return to the Commission for cost recovery. This contorted request is simply not consistent with the Commission’s rule. To be clear, while the statute and rule permissively allow recovery by a utility for nuclear-related construction costs, it does not naturally follow that the statute and rule provide an option for a utility to recover those costs outside of the framework established by the Legislature and the Commission.

Yet, FPL argues that the Commission can provide a reasonableness determination for the pursuance of licenses and defer cost recovery from customers. As support, it cites last year’s Commission order in this docket granting FPL’s motion to defer issues and costs. But in a display of bad faith, it fails to acknowledge that last year’s deferral was predicated on the understanding that FPL would file a feasibility analysis this year. That order resolved a dispute between FPL and a number of parties regarding FPL’s request for a waiver from filing a

⁵ Florida Power and Light, *FPL’s Petition for Recovery of 2018 Nuclear Power Cost Recovery Reflecting 2015 & 2016 True-ups and Approval to Defer Recovery of Costs Beginning in 2017*, Docket No. 20170009, p. 2, May 1, 2017.

⁶ Order No. PSC-16-0266-PCO-EI, July 12, 2016.

feasibility analysis requirement in 2016, and provides in part that “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.”⁷ That order granting FPL’s motion for deferral is easily distinguishable from FPL’s current request. If FPL believes that strict application of any provision of the Commission’s rules lead to unreasonable, unfair, and unintended results in this docket, it could have requested a waiver pursuant to Section 120.542, Fla. Stat. – as it did last year. In the current case, FPL has failed to pursue that remedy. An agency cannot selectively apply its own rules because the regulated entity, in this case, FPL, wishes them to do so. FPL has failed to provide a required feasibility analysis. FPL has failed to provide specific projected preconstruction expenditures for recovery in the subsequent year. FPL has failed to comply with the Commission’s 2016 order. As such, FPL has not provided the Commission with the facts necessary for the Commission to render the required factual determinations it must make pursuant to its rules. The Commission, therefore, as a matter of law, cannot provide FPL’s requested relief. FPL’s request for a reasonableness determination and deferral of costs beginning in 2017 and beyond must be rejected.

Lastly, SACE maintains that FPL did not meet the requirement of Rule 25-6.0423(5)(c)5, F.A.C., in 2015. FPL failed to complete and properly analyze a realistic feasibility analysis and did not meet its burden of proving that the project is economically feasible. Additionally, the Company’s resource planning process, which forms the foundation for its economic feasibility analysis, does not place demand-side resources, such as energy efficiency, on a “level playing field” with supply-side resources in its analysis - thereby skewing the results of that analysis towards approval of the proposed TP reactors

Duke Energy Florida

⁷ *Id.*

SACE supported the cancellation of the Duke Energy Florida (“DEF”) Levy Nuclear Project (“LNP”) in Docket No. 20130009. SACE’s position continues to be that costs related to the wind-down of both the LNP cancellation and the Crystal River Unit 3 (“CR3”) retirement be closely scrutinized to ensure that the recovery of costs protects the interests of DEF customers.

4. SACE’s Position on the Issues

FPL 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?

POSITION: No position at this time.

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?

POSITION: None. SACE maintains that FPL did not complete and properly analyze a realistic feasibility analysis in 2015. As such, requested cost recovery flowing from that deficient feasibility analysis, is not reasonable, nor prudently incurred, and should be denied.

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?

POSITION: No. FPL has not filed the required long-term feasibility analysis, or 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 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.

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.?

POSITION: No. FPL has not filed the required long-term feasibility analysis, or 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.

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

POSITION: No. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors. FPL has not filed the required long-term feasibility analysis, or 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 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.

ISSUE 5(B): Is FPL's decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.? (OPC)

POSITION: No. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors. FPL has not filed the required long-term feasibility analysis, or 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 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.

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

POSITION: No. FPL has not filed the required long-term feasibility analysis, nor has it filed a rule waiver request. 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.

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?

POSITION: Yes, FPL is required to file an annual long-term detailed feasibility analysis. Yet, FPL has not filed the required long-term feasibility analysis, or 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 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.

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

POSITION: No. The Order was predicated on the understanding that FPL would file the required feasibility analysis in this year's docket. In a display of bad faith, FPL has not filed the required long-term feasibility analysis, or specific projected preconstruction expenditures for the subsequent year, 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.

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

POSITION: The Commission cannot determine the 2018 Cost Recovery factor because FPL has not complied with the applicable statute and rule. FPL did not file the required long-term feasibility analysis, or 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 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.

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?

POSITION: 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 reactors will significantly exceed current estimates.

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

POSITION: The reactors will likely never come into service. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors. FPL will not provide a long-term feasibility analysis for the reactors. Similar AP-1000 reactor projects in Georgia and South Carolina face an uncertain future and could be cancelled.

DEF ISSUES

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

POSITION: No position.

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

POSITION: No position

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

POSITION: No position.

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

POSITION: No position

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

POSITION: No position

5. Stipulated Issues

DEF Issues 11 to 15 as No Position.

6. Pending Motions

SACE has no pending motions at this time.

7. Pending Confidentiality Claims or Requests

SACE has no pending confidentiality claims or requests.

8. Objections to Witness Qualifications as an Expert

SACE has no objections to any witness's qualifications as an expert.

9. Compliance with Order No.

SACE has complied with all requirements of the Order Establishing Procedure entered in this docket.

Dated: July 20, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 20th day of July 2017, to the following:

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