

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause

DOCKET No.: 20170009 – EI
Filed: July 20, 2017

**THE CITY OF MIAMI'S
PREHEARING STATEMENT**

NOW BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION, through undersigned counsel, comes the CITY OF MIAMI (“City”), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-17-0057-PCO-EI, issued on February 20, 2017, hereby files its Prehearing Statement.

1. APPEARANCES

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Kerri L. McNulty, Assistant City Attorney
Xavier E. Albán, Assistant City Attorney
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Attorneys for the City of Miami

2. WITNESSES

In identifying witnesses, including identifying the subject matter of each witnesses’ testimony and the corresponding issue numbers, the City of Miami reserves the right to identify and call such other witnesses as may be identified in the course of discovery, preparation for the final hearing, and any ongoing developments.

Witness	Subject	Issues
Eugene T. Meehan	Reviewed the pleadings, prefiled testimony and exhibits, deposition testimony, and discovery responses with respect to FPL’s annual petition. Finding that a full feasibility analysis is required because absent a feasibility study the key assumptions for previous feasibility studies will become stale during the anticipated three to four year pause, and that absent a feasibility study there is no reasonable basis upon which to conclude that continued investment in Turkey Point Units 6 and 7 is justified. Further finding that without a quantitative feasibility study, it is not possible to determine the prudence and reasonableness of expenditures despite any “qualitative” benefits and current and ongoing developments in this project and the nuclear industry, such as natural gas prices, environmental regulatory uncertainty, and Westinghouse filing for bankruptcy.	1, 2, 8,9,10

3. EXHIBITS

In identifying exhibits, the City of Miami reserves the right to introduce other exhibits as may be identified or developed in the course of discovery, by another party, in preparation for the final hearing, and any ongoing developments.

Exhibit	Witness	Sponsor	Description
ETM-1	Eugene T. Meehan	Miami	CV of Eugene T. Meehan
ETM-2	Eugene T. Meehan	Miami	Deposition of Steven D. Scroggs
ETM-3	Eugene T. Meehan	Miami	Ten Year Site Plan 2015-2024
ETM-4	Eugene T. Meehan	Miami	Ten Year Site Plan 2017-2026
ETM-5	Eugene T. Meehan	Miami	2015 Testimony & Exhibits of Richard O. Brown
ETM-6	Eugene T. Meehan	Miami	Second Quarter 2017 Survey of Professional Forecasters
ETM-7	Eugene T. Meehan	Miami	2015 Testimony & Exhibits of Eugene T. Meehan

4. STATEMENT OF BASIC POSITION

As an initial matter, FPL has not complied with Florida Public Service Commission (“FPSC”) Order No. PSC-16-0266-PCO-EI. FPL chose to not file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 despite assurances to the contrary in its Motion to Defer¹ and statements made by FPL’s counsel to the FPSC at the Commission Conference held on July 7, 2016.² FPL has blatantly disregarded the FPSC’s order and at a minimum all issues deferred from the 2016 docket should not be considered by the FPSC and/or FPL’s 2017 petition should be denied.

Alternatively, if it is determined by the FPSC that FPL complied with Order No. PSC-16-0266-PCO-EI, the FPSC cannot make any reasonableness or prudence determinations because

¹ Florida Power & Light Company’s Motion to Defer Consideration of Issues and Cost Recovery, Docket No. 20160009-EI, Document No. 03821-16 (June 17, 2016) (“Upon approval of this motion, FPL will withdraw its Petition for Waiver and will plan to file a feasibility analysis in the ordinary course of the 2017 NCR cycle.”).

² In re Nuclear Cost Recovery Clause, Commission Conference Agenda Item No. 3, Document No. 05084-16 (July 7, 2016).

FPL's petition is incomplete and has not shown good cause for the incomplete application. The purpose of Section 366.93, F.S., is to promote investment in nuclear or integrated gasification combined cycle power plants, provide certainty, and to allow the utility recover all prudently incurred costs. *See* § 366.93(2), Fla. Stat. In furtherance of that purpose, section 366.96 authorizes the FPSC 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." *Id.* In accordance with the statute, the FPSC promulgated Rule 25-6.0423 outlining the requirements for petitioning the FPSC to recover the costs incurred by the utility in the prior year and the required filings so that FPSC can make a reasonableness and prudence finding. "[P]ursuant 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 filings" (1) a true-up of actual expenditures for the previous year, (2) a true-up and projection of expenditures for the current year, and (3) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project ("feasibility study"). *See* Rule 25-6.0423(c), F.A.C. (emphasis added).

The requirement for a long-term feasibility helps provide certainty and ensure that costs have been prudently incurred by the utility. The rule does this by ensuring that a utility has "committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical." Rule 25-6.0423(6)(c)5., F.A.C. It is important to consider the feasibility of the investment when determining whether the costs were prudently incurred. Assuming *arguendo* that costs are being incurred pursuant to a "step-wise approach" and using disciplined cost, business, and process controls, if a project is no longer feasible or

practical, then the costs incurred are not prudent. Investment into a project that no longer is economically feasible or is no longer practical to complete would make any investment into the project imprudent.

FPL has not filed a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project. As such, FPL has not submitted a required filing for the 2017 docket. Furthermore, FPL has not petitioned for a waiver of the rule requirements pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C. As such, the requirement for FPL to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project is still in place and FPL's failure to file the feasibility study will not allow the FPSC review and approve a required filing in accordance with Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Therefore, the FPSC cannot make any reasonableness or prudence determinations in the deliberate absence of a required detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

5. STATEMENT OF ISSUES AND POSITIONS

The City of Miami reserves its right to change its position on any of the issues based on the Commission's rulings on any matters in the current docket and any ongoing developments.

Florida Power & Light Company

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?**

Miami: No. FPL's failure to file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 constitutes an incomplete petition and therefore FPL is not entitled to relief under Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Additionally, FPL violated Order No. PSC-16-0266-PCO-EI when it failed to file a feasibility study in the 2017 docket. FPL made specific representations in its Motion to Defer and to the FPSC that it would file a feasibility study. Failure to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project invalidates Order No. PSC-16-

0266-PCO-EI since the FPSC granted the deferral based on FPL's representations that it would file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 in the 2017 docket. As such, project management, contracting, accounting and cost oversight controls for the Turkey Point Units 6 & 7 Project may not be considered by the FPSC because FPL failed to file its annual petition for consideration by the FPSC in Docket No. 20160009-EI.

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?

Miami: None. FPL's failure to file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 constitutes an incomplete application and therefore FPL is not entitled to relief under Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Additionally, FPL violated Order No. PSC-16-0266-PCO-EI when it failed to file a feasibility study in the 2017 docket. FPL made specific representations in its Motion to Defer and to the FPSC that it would file a feasibility study. Failure to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project invalidates Order No. PSC-16-0266-PCO-EI since the FPSC granted the deferral based on FPL's representations that it would file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 in the 2017 docket. As such, FPL's actual 2015 and 2016 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 Project may not be considered by the FPSC because FPL failed to file its annual petition for consideration by the FPSC in Docket No. 20160009-EI.

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?

Miami: No. Section 366.93, F.S., or Rule 25-6.0423, F.A.C., requires FPL to annually petition the FPSC to recover reasonable and prudently incurred costs. If FPL wishes to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, it must petition the FPSC to defer recovery of any costs or not seek to recover costs under Section 366.93, F.S., or Rule 25-6.0423, F.A.C.

If the FPSC approves the FPL's request to defer recovery of costs for the Turkey Point Units 6 & 7 project, FPL should annually file a (1) true-up of actual expenditures for the previous year and (2) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

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.?

Miami: No. Section 366.93, F.S., or Rule 25-6.0423, F.A.C. requires FPL to *annually* petition the FPSC to recover reasonable and prudently incurred costs. A complete petition consists of (1) a true-up of actual expenditures for the previous year, (2) a true-up and projection of expenditures for the current year, and (3) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project. FPL has not filed a feasibility study in two (2) years and as such neither the FPSC nor the parties of record can make a determination whether the project is still feasible and that the costs incurred by FPL are reasonable and prudent during the approximately four (4) year pause FPL intends to take and concurrently defer the recovery of costs. A detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project cannot retroactively be applied beyond a year to costs incurred and expenditures made by FPL. As a matter of policy, allowing a utility company to retroactively apply a detailed analysis of the long-term feasibility of completing a project would allow utility company to expend funds during a period when the project is not feasible and then ultimately recover a majority of, if not all, costs incurred by the utility during a period of time when the project is quantifiably feasible. Therefore, any costs deferred by FPL are not recoverable in a future time period.

Issue 5: (CONTESTED)

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

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

Miami: The City takes no position on the issue until the Contention is resolved by the Prehearing Officer.

Issue 6A: (CONTESTED)

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)

Miami: The City takes no position on the issue until the Contention is resolved by the Prehearing Officer.

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?

Miami: Yes. Rule 25-6.0423(6)(c)5., F.A.C. requires that FPL *annually* file, along with its true-up of actual expenditures for the previous year and true-up and projection of expenditures for the current year, a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project. FPL is excused from the rule requirements only if the FPSC grants a waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C. FPL has not filed a Petition for a Waiver, there is no Order from the FPSC granting a waiver, and FPL has failed to demonstrate that it is not required to file an annual feasibility study. Further, pursuant to Order No. PSC-16-0266-PCO-EI, FPL represented it would file a detailed feasibility study and despite that representation it did not file a detailed feasibility study. As such, FPL has not complied with the requirements set forth in Rule 25-6.0423(6)(c)5., F.A.C.

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

Miami: No. FPL represented in its Motion to Defer and during the July 7, 2016 Commission Conference for Docket No. 20160009-EI that if the FPSC granted its Motion to Defer, that it would, *inter alia*, file a feasibility study in the 2017 docket. FPL has not filed a feasibility in blatant disregard of its representations to the FPSC and Order No. PSC-16-0266-PCO-EI. As a result of this non-compliance, the FPSC should deny FPL's Petition for Approval of Nuclear Power Plant Cost Recovery True-Up for the Years 2015 and 2016 and require it to reimburse any and all costs recovered in 2015 and 2016. Additionally, FPL should be precluded from petitioning the FPSC for any advanced cost recovery until the FPSC approves FPL's petition to begin the construction phase of the Turkey Point Units 6 & 7 project pursuant to Section 366.93(3)(e), F.S.

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

Miami: None. This determination should not be made until FPL files a complete petition which consists of (1) a true-up of actual expenditures for the previous year, (2) a true-up and projection of expenditures for the current year, *and* (3) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

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?

Miami: FPL's failure to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project does not allow the City to take a position on the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project.

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

Miami: FPL has not updated its project schedule and FPL's failure to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project does not allow the City to take a position on the planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility.

Duke Energy Florida

Issues 11-15: The City takes no position on the issues identified for Duke Energy Florida.

6. STIPULATED ISSUES

None at this time.

7. PENDING MOTIONS OR OTHER MATTERS THE CITY OF MIAMI SEEKS ACTION UPON

None at this time.

8. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

9. OBJECTIONS TO QUALIFICATIONS OF WITNESS AS AN EXPERT

None at this time.

10. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE

Presently, the City is not aware of any requirements in the Order Establishing Procedure, Order No. PSC-17-0057-PCO-EI, with which it cannot comply.

Respectfully submitted this 20th day of July, 2017.

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By: /s/ XavierE. Albán
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2017, I served the foregoing document on all parties listed in the attached Service List by e-mail.

By: /s/ Xavier E. Albán
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Assistant City Attorney
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