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From: Elizabeth_Carrero@fpl.com
Sent: Tuesday, February 05, 2008 4:00 PM
To: Filings@psc.state.fl.us
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Subject: Electronic Filing - FPL's Petition for Declaratory Statement
Attachments: FPL Petition for Declaratory Statement 2.5.08.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No.

In re: Florida Power & Light Company's Petition for Declaratory Statement Regarding the Application of Rule 25-6.0423, F.A.C.

c. This document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages in the document, including attachments.

e. The document attached for electronic filing is Florida Power & Light Company's Petition for Declaratory Statement

(See attached file: FPL Petition for Declaratory Statement 2.5.08.doc)

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2/5/2008

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's)
Petition for Declaratory Statement)
Regarding the Application of)
Rule 25-6.0423, F.A.C.)

Docket No.

080083-E1

Dated: February 5, 2008

**FLORIDA POWER & LIGHT COMPANY'S
PETITION FOR DECLARATORY STATEMENT**

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Section 120.565, Fla. Stat., and Rule 28-105.002, Fla. Admin. Code, petitions this Commission for a declaratory statement regarding the application of Rule 25-6.0423, Fla. Admin. Code, to FPL's particular set of circumstances as described below. In support of this Petition, FPL states as follows:

1. Petitioner, FPL, is an investor-owned utility subject to the jurisdiction of the Commission under Chapter 366, Fla. Stat. FPL's name and address, and its telephone number and facsimile number for purposes of this Petition, are provided below.

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Tel.: (561) 691-7101
Fax: (561) 691-7135

2. All notices, pleadings, and other communications required to be served on Petitioner should be directed to:

R. Wade Litchfield
Vice President and Associate General Counsel
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3. The agency rule on which this declaratory statement is sought is Rule 25-6.0423, Fla. Admin. Code.

BACKGROUND AND INTRODUCTION

4. FPL requests that the Commission enter a declaratory statement concerning the application of Rule 25-6.0423, Fla. Admin. Code (the “Nuclear Plant Cost Recovery Rule” or the “Rule”). The Nuclear Plant Cost Recovery Rule provides for annual cost recovery of specified costs, after a final need determination order for a nuclear plant is entered. As explained in this Petition, FPL believes that the plain language of the Rule as well as the policy objectives of Section 366.93, Fla. Stat., with respect to nuclear plant cost recovery support entry of a declaratory statement by this Commission that advance payments associated with “long-lead procurement” items for FPL’s proposed Turkey Point 6 & 7 nuclear plant (“TP 6 & 7”) are “preconstruction costs” as that term is defined in Rule 25-6.0423(5)(e), to be recovered pursuant to the mechanism provided in Rule 25-6.0423, Fla. Admin. Code.

5. FPL sought inclusion of this issue for decision in connection with its Petition to Determine Need for TP 6 & 7 in Docket 070650-EI. At the prehearing conference in Docket 070650-EI held on January 14, 2008, the Prehearing Officer ruled that the issue should not be included as an issue for decision in that proceeding. Docket 070650-EI, January 14, 2008 Prehearing Conference, Tr. 101. Rather, the Prehearing Officer suggested that a declaratory statement proceeding could be an appropriate method for seeking a Commission ruling that advance payments associated with long-lead procurement items are recoverable as preconstruction costs pursuant to the Rule. Id.

Accordingly, FPL seeks such a declaratory statement by the Commission in this proceeding.

6. FPL acknowledges that the prudence of specific payments for preconstruction costs, including payments associated with long-lead procurement items, is not before the Commission with respect to this petition for declaratory statement. Specific information supporting recovery of costs would be available for Commission review in annual cost recovery proceedings pursuant to the Rule.

7. Entry of the declaratory statement is in the public interest. This is because providing the requested declaration will promote FPL's proposed investment in TP 6 & 7, consistent with the objectives stated in Section 366.93(2), Fla. Stat. and Rule 25-6.0423(1), Fla. Admin. Code.

**SUBSTANTIAL EFFECT ON FPL UNDER
THE PARTICULAR SET OF CIRCUMSTANCES**

8. Rule 28-105.002(5), Fla. Admin. Code, requires that a petition for a declaratory statement describe "how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances." *Id.* As explained below, the application of Rule 25-6.0423 is critically important to FPL's efforts to develop the proposed TP 6 & 7 nuclear units in a cost-effective and timely manner.

9. FPL proposes in-service dates between 2018 and 2020 for TP 6 & 7, respectively. While those in-service dates are more than a decade away, they are, in fact, an aggressive and ambitious target in view of the massive undertaking that designing, licensing and building new nuclear units will entail. FPL proposes to pursue an aggressive schedule for TP 6 & 7 in order to position itself to deliver the economic,

environmental and other benefits of new nuclear units to its customers as soon as is reasonably possible.

10. One of the potential bottlenecks that could impede FPL's efforts to bring TP 6 & 7 into service in the 2018-2020 timeframe is the availability of "long-lead procurement items," which include but are not necessarily limited to heavy forgings like the reactor pressure vessel, steam generator shell, etc. Because there are only a very limited number of facilities in the world capable of supplying these long-lead procurement items and there is considerable worldwide interest in developing new nuclear units, FPL anticipates that lengthy queues may form for their procurement. Therefore, assuming that the Commission grants an affirmative determination of need for TP 6 & 7, and in order to retain the potential for 2018-2020 in-service dates, FPL expects that it will have to make substantial advance payments associated with long-lead procurement items beginning soon, perhaps as early as summer 2008.

11. Section 366.93, Fla. Stat., directed that the Commission establish by rule a mechanism that, among other things, provides for "[r]ecover through the capacity cost recovery clause of any preconstruction costs." Section 366.93(2) (emphasis added). Section 366.93(1)(f) defines "preconstruction" as "that period of time after a site has been selected through and including the date the utility completes site clearing work." Id.

12. Consistent with the statutory direction with respect to preconstruction costs provided in Section 366.93, the Commission adopted Rule 25-6.0423. Specifically, Rule 25-6.0423(5)(a) provides that a utility may recover, through the Capacity Cost Recovery Clause, its actual and projected "preconstruction costs" for a nuclear power plant that has received an affirmative determination of need. Consistent with Section

366.93, Rule 25-6.0423(2)(e) defines “preconstruction costs” as those “costs that are expended after a site has been selected in preparation for the construction of a nuclear power plant, incurred up to and including the date the utility completes site clearing work.”

13. Assuming a favorable need determination is issued and other project requirements are met, FPL plans to complete site clearing work in 2011. Advance payments associated with long-lead procurement items are likely to be required before the completion of site clearing work for TP 6 & 7. Such payments if made prior to completion of site clearing work should clearly constitute “preconstruction costs” pursuant to Section 366.93 and the Rule and should thus be eligible for annual recovery.

14. Rule 25-6.0423 does not directly address the concept of long-lead procurement items that require advance payments before the completion of site clearing work. FPL believes that they are properly characterized and recoverable as “preconstruction costs.” If, however, FPL were to proceed to incur such costs, and the Commission were to interpret Rule 25-6.0423 as not permitting the advance payments to be collected as preconstruction costs, the method of cost recovery would be substantially different, i.e., FPL would only be entitled to collect carrying costs until TP 6 & 7 are placed into rate base as plant in service. FPL, therefore, will be substantially affected by the Commission’s determination of whether advance payments associated with long-lead procurement items that are made before the completion of site clearing work qualify as “preconstruction costs.”

15. Rule 25-6.0423 provides a schedule for annual proceedings to determine the cost recovery of expenditures for new nuclear plants. That schedule contemplates filings by the utility in March and May, with a decision on cost recovery to be made by October 1 of each year. If the Commission grants an affirmative determination of need for TP 6 & 7 in spring 2008, the first Rule 25-6.0423 cost recovery proceeding would likely culminate in a Commission decision no earlier than September 2008. Because FPL may need to begin making advance payments associated with long-lead procurement items before then, the annual cost recovery proceeding will not provide a viable mechanism for FPL to receive a timely declaration by the Commission of its interpretation of “preconstruction costs.”

PROPOSED QUESTION TO BE ANSWERED BY THE COMMISSION

16. In light of the foregoing paragraphs of this Petition, the proposed question to be answered by the Commission in this Petition for a Declaratory Statement is:

If the Commission grants Florida Power & Light Company’s petition to determine the need for the proposed Turkey Point Units 6 and 7, are advance payments made prior to the completion of site clearing work properly characterized as “preconstruction costs,” to be recovered pursuant to the mechanism provided in Rule 25-6.0423, F.A.C.?

WHEREFORE, FPL respectfully requests that the Commission answer the proposed question by declaring that advance payments made prior to the completion of the Turkey Point 6 & 7 site clearing work are “preconstruction costs,” as defined in Rule 25-6.0423(2)(e), Fla. Admin. Code, to be recovered pursuant to the mechanism provided

in Rule 25-6.0423, Fla. Admin. Code.

Respectfully submitted this 5th day of February, 2008.

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