

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO. 100437-EI
ORDER NO. PSC-13-0155-PCO-EI
ISSUED: April 11, 2013

ORDER GRANTING IN PART AND DENYING IN PART
JOINT MOTION OF THE PARTIES TO RESOLVE CERTAIN
DISPUTED CASE ISSUES AND REQUEST FOR ORAL ARGUMENT

Joint Motion

On April 5, 2013, Progress Energy Florida, Inc. (PEF), the Office of Public Counsel (OPC), the Florida Retail Federation (FRF), the Florida Industrial Power Users Group (FIPUG), and PCS Phosphate (PCS), collectively referred to as the "Parties," jointly moved the Commission to resolve certain disputed issues in Docket No. 100437-EI. The Parties contend that over the last several months, they have diligently worked with Commission staff to develop a list of issues that remain to be resolved in this docket. They acknowledge that staff has conducted three separate issue identification meetings with the parties, and have made substantial progress in developing an agreed-to list of issues to submit to the Commission for consideration. However, despite the progress that has been made in this process, the Parties contend that they have identified a threshold question that they have been unable to agree upon that prevents them from being able to agree to a final list of proposed issues to be resolved in this matter. The Parties specifically contend that they have been unable to agree on the answer to the following question:

What issues, if any, does the Settlement Agreement, approved by Commission vote on February 22, 2012 and in Order No. PSC-12-0104-FOF-EI, preclude the Commission from determining in this docket?

The Parties assert that the resolution of this question by the Commission will promote judicial efficiency and will allow them to continue and finalize their efforts to prepare a proposed list of remaining issues to be resolved in this matter and will prevent discovery disputes and objections related to these issues. They request that the Commission consider and rule on the disputed threshold question utilizing the following schedule:

April 19, 2013: Parties file briefs providing positions on the disputed question.
April 26, 2013: Parties file reply briefs.
To Be Determined: The Commission receives oral argument from the parties.
To Be Determined: Staff recommendation, if any, and ruling from Commission.

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Also, by filing this joint motion, the Parties contend that they do not waive any rights to seek appellate review of the Commission's decision concerning the scope of the issues to be determined by the administrative hearing to be held pursuant to Chapters 120 and 366, Florida Statutes (F.S.). The Parties state that the motion is a vehicle of convenience agreed to by the Parties for purposes of administrative efficiency.

Analysis

Having reviewed the joint motion, I find that it is appropriate to grant the joint motion in part and deny it in part. I grant the joint motion with respect the parties' ability to file briefs, responsive briefs if necessary, and their ability to present oral argument on the disputed threshold question as stated above. However, I deny their request that the full Commission consider and rule on the disputed threshold question. Pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.), "the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding."¹ One of the duties of the Prehearing Officer, as the presiding officer, is to rule upon the inclusion, exclusion, or modification of issues during the prehearing process that will be resolved at the formal 120.57, F.S., administrative hearing. I find that the disputed question does not present a unique or extraordinary circumstance that compels the full Commission to make a determination on said question. Prehearing Officers have routinely determined the subject matter and scope of hearings, including the inclusion, exclusion, or modification of issues.² Here, the question presented by the Parties concerns the scope of the hearing and the issues to be included or excluded in said hearing, all of which falls within the responsibilities of the Prehearing Officer. Therefore, I will consider and rule on the disputed threshold question utilizing following schedule:

- April 19, 2013: Parties file briefs providing positions on the disputed question.
- April 26, 2013: Parties file optional reply briefs.
- April 30, 2013: The Prehearing Officer receives oral argument from the parties.

Please note that oral argument will be 2 hours in duration. PEF and OPC shall have 30 minutes each for oral argument, PCS Phosphate, FRF, and FIPUG shall have 20 minutes each for oral argument. There shall be no sharing of minutes.

¹ Order No. PSC-08-0550-PCO-EI, issued August 19, 2008, in Docket No. 080009-EI, In re: Nuclear cost recovery clause; and Order No. PSC-12-0487-PCO-EI, issued September 21, 2012, in Docket No. 120015-EI, In re: Petition for increase in rates by Florida Power & Light Company.

² Order No. PSC-08-0581-PHO-EI, issued September 8, 2008, in Docket No. 080009-EI, In re: Nuclear cost recovery clause; Order No. PSC-96-1191-PCO-EU, issued September 23, 1996, in Docket No. 930885-EU, In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc., by Gulf Power Company; and Order No. PSC-96-1549-PCO-TL, issued December 19, 1996, in Docket No. 950699-TL, In re: Resolution by City Commission of Haines City Requesting Extended Area Service (EAS) from Haines City Exchange to All Exchanges within Polk County.

Based on the foregoing, it is

ORDERED by the Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Joint Motion of the Parties to Resolve Certain Disputed Case Issues and Request Oral Argument is granted in part and denied in part as set forth in the body of this Order.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 11th day of April, 2013.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review

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of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.