

ORIGINAL
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IN THE SUPREME COURT OF FLORIDA

CHARLIE CRIST, JR.,

CASE NUMBER:

Petitioner,

vs.

JULIA L. JOHNSON, CHAIRMAN,
and SUSAN F. CLARK, J. TERRY
DEASON, JOE GARCIA, and DIANE
K. KIESLING, COMMISSIONERS,
as constituting the FLORIDA
PUBLIC SERVICE COMMISSION,

970001-EI

and

FLORIDA POWER CORPORATION,

Respondents.

PETITION FOR REVIEW OF PUBLIC SERVICE
COMMISSION ORDER NUMBER PSC-97-0359-POF-EI

Petitioner, CHARLIE CRIST, JR., pursuant to S. 3(b)(2), ART V
of the State Constitution and S. 350.128, Florida Statutes,
petitions this Honorable Court to review the Florida Public Service
Commission Order Number PSC-97-0359-POF-EI and as grounds thereof
would allege:

1. This Court has jurisdiction of this Petition pursuant to
S. 3(b)(2), ART V of the State Constitution; Section 350.128,
Florida Statutes (1995); and Florida Rule of Appellate Procedure
9.030(a)(1)(A)(ii).

2. FLORIDA POWER CORPORATION (hereinafter "FPC") is an
investor-owned electric generation and distribution utility
organized under the laws of the State of Florida. Its general
offices are located at 3201 34th Street South, Post Office Box
14042, St. Petersburg, Pinellas County, Florida 33733-4042.

3. FPC is a "public utility" as defined in Section 366.02,

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Florida Statutes (1995). Regulation of a Public Utilities is performed in the public interest as an exercise of the police power of the State pursuant to Section 366.01, Florida Statutes (1995).

4. FPC is subject to comprehensive regulation by the Florida Public Service Commission (hereinafter "PSC") with respect to rates, charges and services provided to retail customers pursuant to Chapter 366, Florida Statutes (Supp. 1996). FPC cannot impose any charges on its retail customers which have not been approved by the PSC. FPC is authorized to discontinue service to customers who do not pay the rates and charges approved by the PSC.

5. Petitioner is a customer of FPC receiving electric utility service from FPC in Pinellas County. Petitioner is billed by FPC each month for electrical service pursuant to tariffs approved by, and on file with, the PSC.

6. The PSC is an administrative agency subject to the Administrative Procedure Act, Chapter 120, Florida Statutes (Supp. 1996). The PSC may lawfully act only through rules or orders. Pursuant to Section 120.80 (13)(a), Florida Statutes (Supp. 1996), the PSC's procedures for setting Fuel Cost Recovery Factors for electric utilities under its jurisdiction are exempt from the rule making requirements of Section 120.54(1)(a), Florida Statutes (Supp. 1996).

7. Every six months, in February and August, the PSC holds formal hearings pursuant to Sections 120.569 and 120.57(1), Florida Statutes (Supp. 1996). At these hearings the PSC establishes Fuel Cost Recovery Factors for electric utilities under its jurisdiction. The Fuel Cost Recovery Factor allows an electric

utility to recover from its customers the cost of fuel burned to generate electricity as well as the cost of electric power purchased from other utilities and qualifying facilities. The approved Fuel Cost Recovery Factors are multiplied by each customer's monthly kilowatt-hour electric usage to determine the fuel adjustment charge on the customer's monthly bill.

8. The February hearings establish Fuel Cost Recovery Factors which may be imposed during the period April through September, and the August hearings establish Fuel Cost Recovery Factors which may be imposed during the months of October through March. The factors are affected by the projected cost of fuel for generation for the succeeding six months as well as any under-or-over recoveries which a utility may have experienced when prior period projections were compared with actual results.

9. On February 19, 1997, after hearings noticed pursuant to Section 120.57(1), Florida Statutes (Supp. 1996), the PSC voted to allow FPC to begin charging a higher Fuel Cost Recovery Factor to its customers beginning April 1, 1997, for the period April through September, 1997. A copy of the Order published by the PSC is attached hereto as Exhibit "1."

10. One factor purportedly causing the increase in FPC's Fuel Cost Recovery Factor was the extended outage at the company's Crystal River #3 nuclear generating unit. The unit was taken out of service on September 2, 1996, and is expected to remain out of service for much of 1997.

11. Nuclear fuel is the lowest cost fuel for generation on FPC's system. Loss of the nuclear unit requires FPC to replace

lost generation out of Crystal River #3 with more expensive coal, gas, or oil-fired generation from its other units.

12. As the petitioning party seeking approval from the PSC for a Fuel Cost Recovery Factor to be imposed on customer bills, FPC was the party seeking affirmative relief at the February 19, 1997, PSC hearing. FPC was required to establish its Fuel Cost Recovery Factor by a preponderance of the evidence. The PSC's finding that FPC could increase its Fuel and Cost Recovery Factor must be based exclusively upon evidence of record and upon matters officially recognized pursuant to Section 120.57(1)(f), Florida Statutes (Supp. 1996).

13. The Office of Public Counsel, the State's consumer advocate for utility matters, Section 350.061, at seq., Florida Statutes (1995), raised the following issue in its Preliminary List of Issues and Positions filed in the PSC docket on January 22, 1997, and again in its Prehearing Statement, filed January 27, 1997:

Should Florida Power Corporation be permitted to recover the replacement fuel costs associated with the extended outage at its Crystal River #3 nuclear unit?

This issue appeared as Issue 14D in the PSC's prehearing order, Order Number PSC-97-0180-PHO-EI, issued February 18, 1997, one day before the February 19, 1997 hearing.

14. At the hearing, FPC did not offer evidence to establish the reasonableness or prudence of replacement fuel costs caused by the outage at the nuclear unit. Commissioners, before they voted, acknowledged that FPC had not offered an evidentiary basis to

justify increasing its Fuel Cost Recovery Factor.¹ In spite of the absence of evidence to support their conclusion, the Commissioners voted to allow FPC to increase its Fuel Cost Recovery Factor beginning April 1, 1997, to recover the costs of replacement fuel necessitated by the Crystal River #3 outage. (A copy of the hearing transcripts are attached as Exhibit "2.")

15. Petitioner and other customers of FPC will be irreparably harmed if they are required to pay FPC higher fuel adjustment charges pursuant to a decision of the PSC made without complying with the Administrative Procedure Act, Chapter 120, Florida Statutes (Supp. 1996).

16. The PSC cannot issue a lawful order, or otherwise lawfully authorize FPC to do any act in the admitted absence of record evidence. In the absence of a lawful action of the PSC, FPC may not lawfully change its rates.

WHEREFORE, the Petitioner, CHARLIE CRIST, JR., petitions this Honorable Court to reverse the PSC Order Number PSC-97-0359-FOF-EI and enjoined FLORIDA POWER CORPORATION from increasing its rates in any respect whatsoever until such time as a Florida Public Service Commission receives competent and substantial evidence explaining why FPC's nuclear power plant Crystal River #3 has failed, and upon further finding as to whether the replacement fuel costs were

¹ Chairman Julia Johnson noted that "...there's nothing in the record either way." (Official transcript, P 321) a copy of which is attached as an exhibit to this petition.

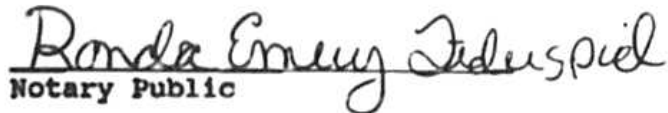
prudently incurred in the provision of electric utility services to the public.

Respectfully Submitted,



Charlie Crist, Jr.
One Beach Drive
Suite 1409
St. Petersburg, Florida 33701

SWORN TO AND SUBSCRIBED before me this 10 day of April, 1997.



Notary Public

