

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through fuel clause, by Progress Energy Florida, Inc.

DOCKET NO. 060642-EI
ORDER NO. PSC-07-0046-PHO-EI
ISSUED: January 16, 2007

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on January 8, 2007, in Tallahassee, Florida, before Commissioner Matthew M. Carter II, as Prehearing Officer.

APPEARANCES:

R. ALEXANDER GLENN, ESQUIRE, Progress Energy Service Company, LLC, 100 Central Avenue, Suite 1D, St. Petersburg, Florida 33701, and JAMES MICHAEL WALLS, and DIANNE M. TRIPLETT, ESQUIRES, Carlton Fields, P. A., Post Office Box 3239, Tampa, Florida 33601-3239
On behalf of Progress Energy Florida, Inc. (PEF).

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter, Reeves & Davidson, P. A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350
On behalf on the Florida Industrial Power Users Group (FIPUG).

ROBERT SCHEFFEL WRIGHT and JOHN R. LAVIA, III, ESQUIRES, Young van Assenderp, P. A., 225 South Adams Street, Suite 200, Tallahassee, Florida 32301
On behalf of the Florida Retail Federation (FRF).

PATRICIA A. CHRISTENSEN, and JOSEPH A. MCGLOTHLIN, ESQUIRES, OFFICE of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

LISA C. BENNETT, and LORENA A. HOLLEY, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

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PREHEARING ORDER

I. CASE BACKGROUND

On September 22, 2006, Progress Energy Florida, Inc. (PEF) filed a Petition for Determination of Need for Expansion of its Crystal River 3 Nuclear Power Plant (Petition). Included in its Petition was a request for exemption from Rule 25-22.082, Florida Administrative Code, and a request that PEF be permitted to recover the costs of the expansion through the fuel clause. On December 22, 2006, in Order No. PSC-06-1059-PCO-EI, the Prehearing Officer bifurcated the cost recovery issue from the need determination. A formal administrative hearing on PEF's Petition has been scheduled for January 18, 2007 to hear the issues related to the need determination and the requested exemption from Rule 25-22.082, Florida Administrative Code. Intervention was granted to the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), and AARP. AARP has subsequently been excused from this portion of the proceedings.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Section 403.519, Florida Statutes. This hearing will be governed by that statute, Chapter 120, Florida Statutes, and Rules 25-22.080 and 28-106, Florida Administrative Code, as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, Florida Statutes. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida

Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), Florida Administrative Code, if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

As a result of discussions at the prehearing conference, each witness whose name is followed by an asterisk (*) may be excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified as to whether any such witness shall be required to be present at hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony, as shown in Section IX of this Prehearing Order, shall be identified and admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
*Javier Portuondo	PEF	1, 2, 3, 4, 6, 7
*Daniel L. Roderick	PEF	1, 2, 3, 4, 6, 7
*Samuel S. Waters	PEF	1, 2, 3, 4, 5, 6, 7

VII. BASIC POSITIONS

PEF: PEF seeks an affirmative determination of need for the CR3 Uprate to reduce fuel costs to PEF's customers over the extended life of CR3 by increasing power production from low cost nuclear fuel and replacing generation from higher cost fossil fuels and purchase power. The CR3 Uprate will result in increased fuel diversity, substantial fuel cost savings, a reduction in fossil fuel-based generation, and a reduced reliance on out-of-state energy suppliers.

The CR3 Uprate is expected to generate approximately \$2.6 billion in gross fuel savings over the extended life of CR3, at an estimated cost of \$381.8 million. The substantial economic benefits demonstrate the economic need for the CR3 Uprate. The additional base load generation from the lowest cost fuel available to PEF will provide customers adequate electricity at a reasonable cost. Because the CR3 Uprate will provide additional generation at a net savings – not a net cost --- to customers, the CR3 Uprate is, by definition, the most cost effective alternative available.

Likewise, the CR3 Uprate will advance the goals of conservation measures in Florida, because it will reduce generation with higher cost fossil fuels and fossil fuel emissions at substantial fuel savings to customers from relatively clean

nuclear generation, while avoiding the CR3 Uprate with conservation measures will increase reliance on fossil fuels, increase emissions, and increase costs to customers. For all these reasons, the Commission should grant PEF's request for a determination of need for the CR3 Uprate pursuant to Section 403.519, Fla. Stats. of the Florida Electrical Power Plant Siting Act ("PPSA").

The net fuel savings to customers from the CR3 Uprate necessarily means the CR3 Uprate is a lower cost supply of reliable electricity that serves the public welfare and, thus, is exempt from all Bid Rule requirements under Rule 25-22.082(18), F.A.C. Further, compliance with the Bid Rule request for proposal requirements will delay the CR3 Uprate beyond the current planned fuel outages with the loss of fuel savings to customers. PEF's request for an exemption from all Bid Rule requirements should be granted.

For all these reasons, as more fully developed in PEF's pre-filed testimony and exhibits, PEF respectfully requests that the PSC grant a favorable determination of need for the CR3 Uprate.

FIPUG: FIPUG supports the construction of a cost effective Nuclear Plant uprate and exemption from the bid rule because of the unique circumstances of the uprate. FIPUG will take a position in opposition to the proposed cost recovery request that will be separated into a separate docket

FRF: The FRF supports the construction of additional cost-effective generating capacity, including the CR3 Uprate Project, provided that appropriate protections are put in place to ensure that PEF's customers receive the benefits projected by PEF, and further provided that PEF's customers are not forced to bear the risks of cost overruns. The FRF also supports exemption from the mandatory RFP provision of the Bid Rule because of the unique circumstances of this particular project, but the FRF opposes any decision or action by the Commission that would excuse PEF from the specific provisions of the Bid Rule, Rule 25-22.082(15), F.A.C., that limit the utility's recovery of costs to "those identified in the need determination proceeding . . . unless the utility can demonstrate that such costs were prudently incurred and due to extraordinary circumstance."

OPC: None.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

STIPULATED AS TO PEF, STAFF, AND FRF. FIPUG AND OPC TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 1: Should PEF's request for exemption from the requirements of Rule 25-22.082, Florida Administrative Code, be granted?

POSITION: Yes. The CR3 Uprate satisfies all criteria for exemption from the Bid Rule, pursuant to Rule 25-22.082(18) F.A.C. PEF has shown that the CR3 Uprate will likely result in a lower cost supply of electricity to its general body of ratepayers and will also serve the public welfare. Because the CR3 Uprate provides customers additional generation at a net savings, not a net cost, from a more environmentally beneficial source that enhances fuel diversity, no RFP is needed. No generation alternative can supply 180 MW of additional power at a net savings to customers comparable to the economic, environmental, and fuel diversity benefits provided by the CR3 Uprate. Other available supply-side generation alternatives will likely have higher fuel costs and, therefore, increase the net cost to customers.

In making its decision whether to grant a determination of need, the Commission necessarily relies on the representations of the proposed power plant's cost effectiveness made by the utility. This reliance is especially critical where, as in PEF's Petition before the Commission in this case, there are no RFP results or other market-based checks on the utility's representations. Accordingly, while the Commission will grant PEF's requested exemption, PEF is on notice that the Commission will closely scrutinize the reasonableness and prudence of any capital cost greater than those represented by PEF through its testimony and exhibits.

STIPULATED AS TO PEF, STAFF, AND FRF. FIPUG AND OPC TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 2: Is there a need for the proposed Crystal River Unit 3 Uprate, taking into account the need for electric system reliability and integrity, as the criterion is used in Section 403.519(3), Florida Statutes?

POSITION: In determining the need for the CR3 Uprate, the Commission has taken into account the need for electric system reliability and integrity. The need for the CR3 Uprate is an economic need, not reliability need. The CR3 Uprate will displace higher cost fossil fuel and purchase power generation with low cost nuclear generation, resulting in substantial fuel savings that provide a net benefit to customers. The CR3 Uprate's substantial economic benefits satisfy the

statutory need requirements under Commission precedent and Rule 25-22.081(3), F.A.C. recognizing an economic or socio-economic need for new generation.

STIPULATED AS TO PEF AND STAFF. FIPUG, FRF AND OPC TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 3: Is there a need for the proposed Crystal River Unit 3 Uprate, taking into account the need for adequate electricity at a reasonable cost, as the criterion is used in Section 403.519(3), Florida Statutes?

POSITION: Yes. The CR3 Uprate will displace higher cost fossil fuel and purchased power generation with low cost nuclear generation, resulting in substantial fuel savings that provide a net benefit to customers. Nuclear energy is the lowest cost energy available on PEF's system. Producing additional nuclear energy from the CR3 Uprate, therefore, will produce energy at the lowest possible generation fuel cost.

STIPULATED AS TO PEF AND STAFF. WHILE FRF AGREES THERE IS A NEED FOR DIVERSITY AND RELIABILITY, FRF TAKES NO POSITION AND DOES NOT OBJECT TO THE STIPULATION. FIPUG AND OPC TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 4: Is there a need for the proposed Crystal River Unit 3 Uprate, taking into account the need for fuel diversity and supply reliability, as the criterion is used in Section 403.519(3), Florida Statutes?

POSITION: Yes. The proposed CR3 Uprate will displace fossil fuel and purchased power generation with nuclear generation, resulting in increased fuel diversity and supply reliability. The CR3 Uprate provides a stable source of additional base load power. Nuclear generation is not subject to the same supply interruptions or changes and price volatility that can affect generation with fossil fuels. Rather, the supply of nuclear fuel is relatively plentiful and stable in price. PEF's customers, and the State, thus, will benefit from increased price stability, enhanced fuel diversity, and decreased reliance on foreign fuel sources resulting from the addition of nuclear capacity to the Company's system.

STIPULATED AS TO PEF AND STAFF. FIPUG, OPC AND FRF TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 5: Are there any conservation measures taken by or reasonably available to PEF which might mitigate the need for the proposed Crystal River Unit 3 Uprate?

POSITION: No. Expanding conservation programs cannot displace the CR3 Uprate. PEF is currently exceeding its Commission-approved numeric conservation goals. Further, PEF has recently expanded its DSM program offerings, resulting in a projected additional 388 MW of summer demand savings. The CR3 Uprate will produce more incremental energy into the system than an equivalent amount of conservation can save. If the comparison were to be done on equivalent energy alone, it would take more MW of conservation to save an amount of energy equivalent to the energy produced by the CR3 upgrade, which would result in higher costs to customers.

STIPULATED AS TO PEF AND STAFF. FIPUG, OPC AND FRF TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 6: Is the proposed Crystal River Unit 3 Uprate the most cost-effective alternative available, as this criterion is used in Section 403.519(3), Florida Statutes?

POSITION: Yes. The CR3 Uprate displaces higher cost generation on PEF's system, yielding substantial fuel savings to the net benefit of PEF's customers. PEF's customers will receive additional generation at a net savings of approximately \$327 million on a cumulative net present value basis. This means that no entity offering a supply-side generation alternative can likely propose a lower cost alternative for the same amount of power, and certainly not from relatively clean nuclear power. The CR3 Uprate, because of the net fuel savings benefits driving the project, is the lowest cost supply of electricity for PEF's customers.

STIPULATED AS TO PEF AND STAFF. FIPUG, FRF AND OPC TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 7: Based on the resolution of the foregoing issues, should the Commission grant PEF's petition to determine the need for proposed Crystal River Unit 3 Uprate?

POSITION: Yes, the Commission should grant PEF's petition for a determination of need for the proposed CR3 Uprate.

STIPULATED AS TO PEF, FRF AND STAFF. FIPUG AND OPC TAKE NO POSITION AND DO NOT OBJECT TO THE STIPULATION.

ISSUE 8: Should this docket be closed?

POSITION: Yes.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Javier Portuondo	PEF	<u>JP-1</u>	Excerpt of Schedule B-13 of Minimum Filing Requirement submitted in Docket No. 050078-EI.
Javier Portuondo	PEF	<u>JP-2</u>	Excerpt of Schedule B-2 of Minimum Filing Requirement submitted in Docket No. 050078-EI.
Javier Portuondo	PEF	<u>JP-3</u>	Excerpt of Schedule B-1 of Minimum Filing Requirement submitted in Docket No. 050078-EI.
Daniel L. Roderick	PEF	<u>DLR-1</u>	Aerial view of Crystal River Complex, including CR3.
Daniel L. Roderick	PEF	<u>DLR-2</u>	Photo of primary plant configuration for pressurized water reactor nuclear plant at CR3 that shows major components of nuclear reactor and primary coolant system.
Daniel L. Roderick	PEF	<u>DLR-3</u>	Schematic of major components in primary system and balance of nuclear plant that shows major components in secondary systems, including main turbine and main generator.
Samuel S. Waters	PEF	<u>SSW-1</u>	Summary of Annual Fuel Savings of Proposed Power Upgrade to CR3.
Samuel S. Waters	PEF	<u>SSW-2</u>	Summary of Overall Cost Effectiveness of the Proposed Power Upgrade to CR3 to the retail customer.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Issues 1-8, as listed above, are proposed for stipulation.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

A. Opening statements, if any, shall not exceed ten minutes per party.

B. AARP has requested to be excused from the need determination proceedings in this docket. In its Motion to Intervene, AARP indicated that its dispute regarding PEF's petition was with the proposed cost recovery of the Crystal River 3 uprate. The cost recovery portion of PEF's petition was bifurcated and will be heard during a separate proceeding. In subsequent correspondence, AARP's attorney asked that AARP be listed as not participating in the need determination aspect of the case. Upon consideration, AARP is excused from participating in the need determination proceedings.

C. John McWhirter's request to be excused from the Prehearing Conference is granted.

It is therefore,

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 16th day of January, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(SEAL)

LCB

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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or

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intermediate ruling or order is available if review 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.