

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. | DOCKET NO. 070001-EI
| ORDER NO. PSC-07-0842-PCO-EI
| ISSUED: October 17, 2007

ORDER GRANTING MOTION TO SPIN-OFF 2006 AND 2007
COAL PURCHASE ISSUE AND DENYING REQUEST TO LIMIT
PARAMETERS OF SPIN-OFF DOCKET AND DENYING MOTION TO STAY

By Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, In re: Petition on Behalf of Citizens of the State of Florida to require Progress Energy Florida to refund customer's \$143 million, we directed PEF to "supplement its 2006 Final True-Up Testimony in Docket No. 070001-EI to address whether Progress Energy Florida was prudent in its 2006 and 2007 coal purchases for CR4 and CR5." On October 4, 2007, Progress Energy Florida (PEF) filed a Motion to Establish a Separate "Spin-Off" Docket and Stay the Separate Docket Pending Outcome of Motion for Reconsideration. On October 11, 2007, the Office of Public Counsel, filed its response to the Motion.

PEF asserts that the fuel proceeding is scheduled for a hearing on November 6, 2007 to consider the utility's petition for fuel clause cost recovery amounts for the period January 2007 through December 2007, as well as approval of its cost recovery factor. PEF also states that the testimony for the 2007 true-up amounts was due on August 3, 2007.

PEF acknowledges that at issue in the fuel proceeding is PEF's prudence in its coal purchases for its Crystal River Units 4 and 5 for the years 2006 and 2007. At the time PEF filed its motion, the final order in Docket No. 060658-EI had not been issued, and PEF asserted in its motion that it is unclear whether the final order would require PEF to file testimony in Docket No. 070001-EI. PEF states that consequently it has not yet filed any direct testimony regarding its 2006 and 2007 coal purchases for CR4 and CR5. PEF asserts that, despite no direct testimony having been filed, OPC has filed testimony regarding the issue. According to PEF, this testimony of OPC witness Robert Sansom is 31 pages in length and highlights the complex nature of the issues regarding these coal purchases.

PEF asserts that the schedule in Docket No. 070001-EI does not afford the company an adequate opportunity to develop relevant facts and, if warranted, prepare testimony. PEF concludes that because the final order had not yet been issued and the hearing in Docket No. 070001-EI is scheduled in just over a month, PEF will not have an adequate opportunity to develop this issue before the November hearing.

In response, OPC asserts that the Commission's decision in Docket No. 060658-EI contemplated that the Commission would examine the costs that PEF incurred to fuel Crystal River Units 4 and 5 for 2006 and 2007. OPC further states that the fuel proceedings of Docket

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No. 070001-EI consider among other things, the final true-up of PEF's fuel costs for calendar year 2006. OPC states it filed the testimony of its witness, Robert Sansom, to address the issue of PEF's coal procurement. According to OPC, witness Sansom addresses the prudence of coal procurement of PEF for the year 2006. OPC concludes it is feasible for PEF to file any testimony directed to Mr. Sansom's testimony in the utility's rebuttal testimony due on October 22, 2007.

OPC asserts that, while the issue of 2006 costs of fueling Crystal River Units 4 and 5 can be addressed in the November 2007 hearing scheduled in Docket No. 070001-EI, the costs for 2007 could not be finally reviewed until the 2008 fuel cost recovery proceeding, when the 2007 final true-up for PEF's coal costs are considered. Accordingly, OPC states it would not object to the creation of a separate docket designed to provide a consolidated opportunity for parties to address the question of whether the imprudence determined in Docket No. 060658-EI caused ratepayers to bear unreasonably high coal costs for calendar years 2006 and 2007.

Upon consideration of the arguments of the parties, I find that the issue of the prudence of PEF's coal procurement for 2006 and 2007 would more appropriately be addressed in a separate spin-off docket. As PEF asserted, the Commission has on numerous occasions recognized the limited ability of the fuel cost recovery docket to accommodate, within its compressed schedule, issues that require significant fact-finding and analysis. In those instances, the Commission has opened separate dockets to address the issues. As OPC acknowledges, a consolidated docket in 2008 would provide the Commission an efficient forum in which to consider both the 2006 and 2007 coal procurement activities of PEF.

OPC has requested that the spin-off docket be limited to the parameters of the decision in Docket No. 060658-EI. PEF has requested that the spin-off docket be stayed pending a decision of the Commission on a possible Motion for Reconsideration to be filed by OPC. Both of these issues are premature for a decision in this docket. The parameters of a proceeding of the spin-off docket will be determined by the prehearing officer assigned to that separate docket. Moreover, whether the proceeding should be stayed pending Commission action on any motion for reconsideration that may be filed is also a matter for the prehearing officer in the spin-off docket. Thus, OPC's request to limit the parameters of the decision in Docket No. 060658-EI and PEF's Motion to Stay are denied. However, the denial is without prejudice to raise these matters at a later time in the appropriate docket.

Based on the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that Progress Energy Florida's Motion for Creation of Spin-Off Docket to consider the prudence of its coal procurement for Crystal River Units 4 and 5 for the years 2006 and 2007 is granted. It is further

ORDERED that Office of Public Counsel's request to limit the parameters of the spin-off docket and Progress Energy Florida's Motion to Stay are denied as set forth in the body of this order.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 17th
day of October, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

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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 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 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.