

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 080009-EI
ORDER NO. PSC-08-0550-PCO-EI
ISSUED: August 19, 2008

ORDER GRANTING PROGRESS ENERGY FLORIDA INC.'S
PETITION TO AMEND ITS REQUEST FOR NUCLEAR COST RECOVERY,
AND DIRECTING THAT ALL DOCUMENTS, INTERESTED PERSONS AND
DISCOVERY IN DOCKET NO. 080149-EI BE MOVED TO DOCKET NO. 080009-EI

Background

On February 29, 2008, Progress Energy Florida, Inc. (PEF) filed a Petition to Recover Costs of the Crystal River Unit 3 Uprate as Provided in Section 366.93, Florida Statutes (F.S.), and Rule 25-6.0423, Florida Administrative Code (F.A.C.). PEF filed its petition in the Nuclear Cost Recovery Clause (NCRC) docket. This is the first year of this newly established roll-over docket, which is set for hearing September 11-12 and 17-18, 2008.

Discovery Docket

On March 11, 2008, PEF filed its Petition to Establish Discovery Docket Regarding the Actual and Projected Costs for the Levy Nuclear Project. Levy Units 1 and 2 were the subject of a need determination proceeding pending before the Commission.¹ Neither Section 366.93, F.S., nor Rule 25-6.0423, F.A.C., permit a utility to seek cost recovery through the NCRC until a determination of need has been made by the Commission.

According to PEF, the purpose of the discovery docket was to assist the Commission and Commission staff in reviewing costs which may be recoverable under Section 366.93, F.S., and Rule 25-6.0423, F.A.C., if PEF's petition for the need determination was approved by the Commission. PEF also stated that the discovery docket was to allow discovery and review by staff and intervenors in connection with the Levy Units 1 and 2 Nuclear Project. On March 11, 2008, Docket No. 080149-EI (the Discovery Docket) was established. It consists of testimony and documents filed by PEF, as well as notices of discovery conducted by staff and the Office of Public Counsel (OPC).

Petition to Amend

At its July 15, 2008, Agenda Conference, the Commission approved PEF's request for a determination of need for the Levy Units 1 and 2 Nuclear Project. On July 18, 2008, PEF filed a Petition to Recover Costs of the Levy Nuclear Project, to Move all Documents from Docket No. 080149-EI to Docket No. 080009-EI, to Close Docket No. 080149-EI, and to Amend its Current Petition to Recover Costs of the Crystal River Unit 3 Uprate to Include the Levy Nuclear Project Costs (Petition to Amend). In its Petition to Amend, PEF states that it is now in a position to

¹ Docket No. 080148-EI, In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

DOCUMENT NUMBER-DATE

07442 AUG 19 08

FPSC-COMMISSION CLERK

seek recovery of its actual and projected costs for the Levy Units 1 and 2 Nuclear Project through the NCRC. To facilitate the Commission's ability to consider the recovery of the costs for Levy Units 1 and 2 Nuclear Project in this year's NCRC, PEF has requested that it be permitted to amend its February 29, 2008, petition in Docket No. 080009-EI to include a request for cost recovery of Levy Units 1 and 2. PEF also requests that all documents filed and produced in the Discovery Docket be moved to Docket No. 080009-EI, and that the Discovery Docket be closed. No party filed opposition to PEF's petition, and the time for doing so has expired.²

Analysis and Ruling

Pursuant to Rule 28-106.211, 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." Further, Rule 28-106.202, F.A.C., states that subsequent to the designation of a presiding officer, a petitioner may amend its petition only upon order of the presiding officer. The NCRC docket was established this year as a continuing docket to consider utilities' requests for recovery under Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Accordingly, PEF's request to recover costs of Levy Units 1 and 2 under that statute and rule properly belongs in this proceeding. As stated previously, no party has opposed PEF's petition.

It appears that PEF's request to recover the costs of the Levy Units 1 and 2 Nuclear Project is appropriate for consideration by the Commission in the instant docket. In fact, consideration of PEF's cost recovery request for Levy Units 1 and 2 at the same time as the other requests for nuclear cost recovery will promote the just, speedy, and inexpensive determination of all aspects of this case. Accordingly, PEF may amend its February 29, 2008, petition to include its request for recovery of costs of Levy Units 1 and 2 in this proceeding. All documents filed or produced in Docket No. 080149-EI, including all discovery conducted pursuant to that docket, shall be moved to Docket No. 080009-EI. All interested persons in Docket No. 080149-EI shall become interested persons in Docket No. 080009-EI. As of the date of this Order, PEF shall comply with the Order Establishing Procedure, Order No. PSC-08-0211-PCO-EI, issued March 31, 2008, in this docket, as subsequently amended by Order No. PSC-08-0458-PCO-EI, issued July 16, 2008.

In its Petition to Amend, PEF also requested that the Commission make findings as to the inclusion of site selection costs for Levy Units 1 and 2 Nuclear Project and as to the recoverability of the site selection, pre-construction, and construction costs for Levy Units 1 and 2 Nuclear Project under the Nuclear Cost Recovery Rule and Statute. This Order addresses only the amendment of PEF's petition for cost recovery and does not address the specific issues of whether those costs are recoverable or whether site selection costs should be included in the NCRC. The issues of inclusion of specific types of costs and recoverability of costs will be determined in the course of this proceeding.

² Both PCS White Springs and OPC filed Petitions to Intervene in the Discovery Docket. While neither request for intervention was the subject of an order in the Discovery Docket, both were treated as parties by the Commission and PEF during the pendency of their motions. Both PCS White Springs and OPC have been granted intervention in the NCRC, along with AARP and the Florida Industrial Power Users Group.

Based on the foregoing, it is


ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that Progress Energy Florida, Inc. may amend its petition for cost recovery in Docket No. 080009-EI to include a request for recovery of costs associated with the Levy Units 1 and 2 Nuclear Project. It is further

ORDERED that the Commission Clerk is directed to move all documents and interested persons from Docket Number 080149-EI to Docket No. 080009-EI. It is further

ORDERED that all discovery conducted in Docket No. 080149-EI shall be considered discovery in Docket No. 080009-EI. It is further

ORDERED that Progress Energy Florida, Inc. shall, as of the date of this Order, comply with the Order Establishing Procedure, Order No. PSC-08-0211-PCO-EI, issued March 31, 2008, in this docket, as subsequently amended by Order No. PSC-08-0458-PCO-EI, issued July 16, 2008.

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 19th day of August, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

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 Office of Commission Clerk, 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.