

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-13-0256-PCO-EI
ISSUED: June 7, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER DENYING OFFICE OF PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

Docket No. 100437-EI, In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc., was opened at the request of Progress Energy Florida, Inc. (PEF) to address the extended outage at its nuclear plant Crystal River Unit 3 (CR3), and the resulting replacement fuel/power costs. On August 23, 2011, we issued Order No. PSC-11-0352-PCO-EI (Order Establishing Procedure) which divided this docket into three phases in order to aid us in evaluating the complex issues in this proceeding in a timely manner. In addition, the Order Establishing Procedure set a hearing date for Phase 1.

By Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI, we approved a global stipulation and settlement agreement that resolved outstanding issues in several dockets, including issues raised in this docket concerning the CR3 outage (2012 Settlement). Following the approval of the 2012 Settlement, Order No. PSC-12-0115-PCO-EI was issued on March 14, 2012, which approved PEF's motion to dismiss Phase 1 and to stay Phases 2 and 3. In 2012, PEF merged with Duke Energy, Inc. and on April 29, 2013, changed its name to Duke Energy Florida, Inc. (DEF).

On February 5, 2013, DEF announced that its parent company Duke Energy, Inc.'s Board of Directors made the decision to retire CR3. On February 8, 2013, DEF filed an unopposed Motion to Lift Stay on Phase 2 and to Establish Procedural Case Schedule. By Order No. PSC-13-0080-PCO-EI, issued on February 13, 2013, the Prehearing Officer lifted the stay. Additionally, on February 13, 2013, the Second Revised Order Establishing Procedure, Order

DOCUMENT NUMBER-DATE

03154 JUN-7 2013

FPSC-COMMISSION CLERK

No. PSC-13-0084-PCO-EI (Second Revised Order), was issued to establish the schedule by which we would resolve Phases 2 and 3. On April 5, 2013, by joint motion, DEF, the Office of Public Counsel (OPC), the Florida Retail Federation (FRF), the Florida Industrial Power Users Group (FIPUG), and PCS Phosphate (PCS), all signatories to the 2012 Settlement, filed a joint motion to resolve certain disputed issues.

On April 11, 2013, by Order No. PSC-13-0155-PCO-EI, the parties' joint motion was granted to allow the filing of initial briefs, and responsive briefs if necessary, and to set the joint motion for oral argument on April 30, 2013. Thereafter, on April 26, 2013, Order No. PSC-13-0175-PCO-EI (Third Revised Order) was issued which set Phases 2 and 3 for hearing on October 21-23, 2013. Pursuant to the requirements of Rule 25-22.0376, Florida Administrative Code (F.A.C.), and as set forth in the "Notice of Further Proceeding or Judicial Review" section of the Third Revised Order, any party adversely affected by this order was required to seek reconsideration within 10 days of the issuance thereof, or by May 6, 2013.

On May 6, 2013, OPC attempted to electronically file its Motion for Reconsideration of Order No. PSC-13-0175-PCO-EI (Motion for Reconsideration) as well as a Request for Oral Argument. The Motion for Reconsideration and Request for Oral Argument were received by our Clerk's Office on May 6, 2013, at 5:03 p.m. and were thus deemed to have been filed on May 7, 2013.¹ On May 8, 2013, OPC filed a Motion to Accept Public Counsel's Motion for Reconsideration and Request for Oral Argument as timely filed, or alternatively to enlarge the time to file. On May 9, 2013, DEF filed its Response in Opposition to the Office of Public Counsel's Motion for Reconsideration of Order No. PSC-13-0175-PCO-E (Response).

This Order addresses the timeliness of OPC's pleadings, the Request for Oral Argument, and the Motion for Reconsideration. We have jurisdiction over the matter pursuant to Sections 366.06(2) and (4), and 366.071, Florida Statutes (F.S.).

DECISION

Timeliness of the Motion for Reconsideration and Request for Oral Argument

On May 6, 2013, at 4:59 p.m., OPC electronically submitted a Motion for Reconsideration of Commission Order No. PSC-13-0175-PCO-EI. At 5:01 p.m., OPC electronically submitted a Request for Oral Argument on the Motion for Reconsideration. However, the Commission Clerk did not receive these documents until 5:03 p.m. Accordingly, based upon our electronic filing requirements, the documents were not posted as received until May 7, 2013, at 8:00 a.m. Pursuant to Rule 25-22.0376, F.A.C., and the provisions of the Third Revised Order, a motion for reconsideration of the Third Revised Order must be filed within 10 days of its issuance. As stated by OPC, day 10 was May 6, 2013. The Motion and Request for Oral Argument were filed on May 7, 2013, which was day 11.

¹ Also on May 6, 2013, PCS Phosphate filed a statement in support of OPC's Motion for Reconsideration at 5:55 p.m. and thus, it was deemed by our Clerk's Office to have been filed on May 7, 2013.

On May 8, 2013, OPC filed an unopposed Motion to request that we consider its Motion for Reconsideration and Request for Oral Argument as timely filed, or alternatively to exercise our discretion and grant a one-day extension of time for filing the Motion for Reconsideration, or take whatever steps are necessary to consider its Motion and Request in the interest of fairness. In its Motion, OPC asserted that we should accept its Motion for Reconsideration as timely in the interest of fairness and to meet the ends of justice. OPC contends that despite its filings being deemed late in the most technical sense, its Motion and Request should nevertheless be considered timely filed given the totality of the facts and circumstance and the absence of an objection from DEF.

OPC asserted that we have granted relief in similar circumstance for cause.² OPC argued that case law and our decisional law indicate that the ability to enlarge the time for reconsideration or accept late-filed Motions for Reconsideration only apply to final decisions on the merits and not procedural orders such as the Third Revised Order. OPC asserted that the non-final nature of the Third Revised Order gives us broad discretion to grant the relief requested.³ OPC acknowledged that the leading case on the issue of jurisdictional nature of the deadline for filing Motions for Reconsideration is City of Hollywood v. Public Employees Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983). However, OPC asserted that this case is in contrast to the holding in City of Hollywood because the Third Revised Order is a procedural, scheduling, non-final order, whereas the City of Hollywood deals with an enlargement of time to file a Motion for Reconsideration of a final order on the merits. Thus, OPC asserted that our statements in the Southern Bell Repair Case indicate that we have broad discretion in non-final procedural matters that are not dispositive determinations on the merits disposing of the case. Moreover, there is nothing indicating that the Courts have extended the City of Hollywood holding to motions of reconsideration of merely procedural, scheduling or other non-final matters. Therefore, OPC requested that this Commission find that it has the discretion to grant the relief requested and accept its Motion for Reconsideration and Request for Oral Argument as timely filed.

² Order No. 24425, issued April 24, 1991, in Docket No. 860723-TP, In re: Petition for Review of Rates and Charges paid by PATS Provider to LECs (Motion to enlarge the time to file Motion for Reconsideration granted for a Motion for Reconsideration of a final order filed one day late); Order No. PSC-95-0047-FOF-WS, issued January 11, 1995, in Docket No. 930880-WS, In re: Southern States Utilities (Motion for Reconsideration filed one day out of time given consideration (but ultimately denied) due to amendatory language being added to the dissent); Docket No. 981834-TP In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory; Order No. PSC-04-0036-PCO-TP, issued January 13, 2004, in Docket No. 990321-TP, In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for Generic Investigation to Ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated Comply with Obligation to Provide Alternative Local Exchange Carriers with Flexible, Timely, and Cost-Efficient Physical Collocation (Motion for leave to file prehearing statement out-of time granted where the filing was made one day late).

³ Order No. PSC-92-0339-FOF-TL, issued May 13, 1992, in Docket No. 910163-TL, In re: Petition of the Citizens of the State of Florida to Initiate Investigation Into Integrity of Southern Bell Telephone and Telegraph Company's Repair Service Activities and Reports (Southern Bell Repair Case) ("The Commission's designation of and the delegation of authority over procedural matters to the Prehearing Officer are unquestionably within the Commission's discretion. It is equally within the Commission's discretion to establish the standard by which it will review a Prehearing Officer's decisions").

Based upon our review of OPC's Motion, the analysis of the applicable case law, and the our decisions on the timely filing of motions, we find that OPC's Motion for Reconsideration and Request of Oral Argument are timely and shall be adjudicated on their respective merits. As stated previously, OPC electronically submitted the Motion for Reconsideration at 4:59 p.m., before the 5:00 p.m. filing deadline on the due date. Thus, we find that the Motion for Reconsideration and the Request for Oral Argument were timely filed.

Request for Oral Argument

Rule 25-22.0021(1), F.A.C., provides for oral argument before this Commission as follows:

Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than ten (10) days after exceptions to a recommended order are filed. Failure to timely file a request for oral argument shall constitute waiver thereof. Failure to timely file a response to the request for oral argument waives the opportunity to object to oral argument. The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.

OPC properly filed its Request for Oral Argument concurrently with its Motion for Reconsideration. In its request for oral argument, OPC asserted that oral argument would aid us in understanding why the controlling dates set forth in the Third Revised Order would not facilitate us having a complete and thorough record for its review. In addition, OPC asserted that oral argument would assist the Commission in understanding the mistake of fact which OPC asserts led to the unreasonable schedule contained in the Third Revised Order. OPC further requests a minimum of thirty minutes for oral argument for each party in this docket to argue their position.

In DEF's Response, the utility stated that OPC's Motion for Reconsideration of the Third Revised Order is insufficient on its face, as a matter of well-accepted legal principles applicable to reconsideration motions, and, therefore, oral argument would not be helpful to the Commission and is not necessary. Accordingly, OPC's Request for Oral Argument for its Motion for Reconsideration of the Third Revised Order should be denied.

In the instant case, we found that oral argument would further assist us in understanding and evaluating the Motion for Reconsideration. Thus, OPC's request for oral argument was approved and the parties were allowed to present oral argument at our May 14, 2013, Agenda Conference.

Motion for Reconsideration

OPC'S Argument Regarding the Standard of Review

In its Motion for Reconsideration, OPC argued that the standard of review of an order establishing hearing dates should be *de novo* in that the establishment of the hearing schedule has traditionally been the prerogative of the Chairman. OPC asserted that this has been the practice as understood by the movant and is consistent with the requirements contained within Section 350.01(5), F.S. To the extent that the establishment of controlling dates is driven by hearing dates set by the Chairman, OPC seeks formal review and a *de novo* determination by us.

To the extent that the Prehearing Officer was delegated authority to establish controlling dates in this proceeding, OPC requested reconsideration based on the standard utilized by us regarding a mistake of fact or law.

Summary of OPC's Argument

OPC asserted that statements made by the Prehearing Officer at the April 30, 2013, oral argument indicate that the quarterly meeting process established in the 2012 Settlement provided a mechanism which should have streamlined the adjudicative process and shortened the need for hearing. OPC argued that the meeting process created by paragraph 10 of the 2012 Settlement was intended to provide updates to the Intervenors relating to the repair cost estimates and thus were not intended to provide a forum for resolving the potential dispute that is now before us. OPC asserted that the assumption that the hearing process could be held in an expedited time frame as set forth the Third Revised Order, based on the quarterly meetings, is thus, an error of fact that requires us to reconsider and revise the entire schedule.

OPC further argued that at the April 30, 2013, oral argument the Prehearing Officer stated as a basis for an expedited hearing schedule that the 2012 Settlement resolved certain issues and therefore "there is not much left" to litigate in this proceeding. OPC asserted that this statement indicates the existence of a mistake of fact in that the issues remaining to be litigated in this proceeding are factually complex and novel. Moreover, the relatively small number of issues does not support the shortened hearing and testimony schedule set forth in the Third Revised Order. In support of this assertion, OPC specified that the disputed issues in this proceeding only arose in February of 2013 following DEF's announcement of its decision to retire CR3. OPC contends that this decision to retire spawned an entirely new case which requires extensive discovery and analysis. By setting the schedule in the Third Revised Order to allow only 84 days to secure an expert(s) who can respond to DEF's case, conduct meaningful discovery, and prepare expert testimony on a case of first impression before the agency, we are precluding OPC from providing DEF's customers with effective representation.

In addition, OPC argued that the hearing schedule set forth in the Third Revised Order does not adequately take into consideration the time necessary to resolve the impending privilege-based discovery dispute. OPC asserted that DEF is currently in possession of the vast

majority of relevant evidence in this proceeding and that this information has been identified by DEF as protected information as set forth in the privilege logs. OPC asserted that it intends to seek *in camera* inspections of previously identified privileged information through Motion(s) to Compel which will be filed with us shortly. OPC argued that the current schedule does not afford the parties or us with ample time to resolve these discovery disputes thereby ensuring access to information available to us through the adversarial process.

OPC further took umbrage to the Prehearing Officer's statement at the April 30, 2013, oral argument that "the continued uncertainty related to the issues addressed in this agreement adversely affects the utility and the customers . . . These issues are ripe for hearing. The customers and investors cannot afford for this uncertainty any more than it has." OPC asserted that the customers desperately need additional time to secure the appropriate expertise once DEF has filed testimony. OPC further asserted that we should not give weight to investor expectations as it does not have a duty to investors to manage their expectations at the expense of customers. Furthermore, OPC argued that there is no compelling reason to expedite the date for hearing in this matter since there is no statutory time frame for resolution of this docket and rates cannot change due to the amortization of the CR3 asset until January 1, 2017.

At the April 30, 2013, oral argument the Prehearing Officer stressed the need to move forward with this proceeding in order to preserve evidence by mitigating the impact of the personnel changes that have occurred as a result of the Duke/Progress merger and other events. OPC asserted that although the preservation of evidence is important, none of the facts that were cited as a basis for expediting the hearing occurred after the announcement of the CR3 retirement and the settlement reached between NEIL and DEF. Thus, OPC asserted that the reasons cited by the Prehearing Officer are within Duke's control and should not be the basis for penalizing OPC and the other Intervenors with an "unrealistic and rushed hearing."

For the reasons cited above, OPC urged us to reconsider the controlling dates set out in the Third Revised Order and establish a minimum of 150 days between DEF's direct testimony and the Intervenors' responsive direct testimony. Additionally, OPC specified that the time between the filing of Duke's rebuttal testimony and the discovery cut off date (allowing for 13 days) must be revised to a "reasonable time" (e.g. 60 days) given the novelty and complexity of the issues and the likelihood that significant testimony will be filed on Rebuttal.

DEF'S Response

In its Response, DEF asserted that OPC's arguments contained within its Motion for Reconsideration are fundamentally based on the erroneous assertion that the Intervenors' due process rights will be impermissibly impaired if the schedule is not reconsidered and revised to an open-ended schedule that meets with OPC's approval. DEF further asserted that the OPC's Motion for Reconsideration is, at best, premature because OPC cannot demonstrate that its due process rights are violated two months into an eight-month hearing schedule. DEF noted that six months remain in the Third Revised Order schedule for OPC to take discovery, retain experts, and prepare testimony. DEF further argued that OPC has not shown that it has been denied any discovery that it is entitled to obtain, that it cannot retain any expert that it needs, or that it cannot file testimony four months from now in accordance with the Third Revised Order. In support of

this assertion, DEF noted that since the inception of discovery in February 2013 with respect to the remaining issues in this proceeding, DEF has already responded to 129 intervenor interrogatories, including subparts. Moreover, OPC has requested twenty-two depositions, and contrary to OPC's assertion, the Company has not objected to producing any Company witness for deposition.

DEF acknowledged that it has objected to producing privileged information and documents but asserted that this is based on their contention that OPC has no legal right to obtain this information which it has characterized as privileged. Regardless, DEF asserted that the transcript of the April 30, 2013 oral argument clearly indicates that the Prehearing Officer is aware of the impending privilege claims and the potential for motions to compel as he inquired with the parties about them at the oral argument. Thus, DEF argued that the Prehearing Officer clearly did not overlook or fail to consider this issue.

DEF further asserted that the remaining issue regarding the prudence of the Company's settlement with NEIL is not as complex as OPC makes it out to be in its Motion. DEF specified that at the oral argument on April 30, 2013, OPC agreed that the remaining issues did not require OPC to challenge the "specific stand alone actions" by DEF that led to insurance with NEIL under the NEIL policies and the CR3 insurance claim; instead, OPC admitted that OPC was "after the big picture." Rather, DEF asserted that the parties are "relatively close together" about what this case is about on a going forward basis if the Prehearing Officer accepts DEF's representation and limits the proceeding on the threshold issue to "the big picture," instead of decades- or years-old decisions to insure with NEIL in the first place and to insure CR3 under the terms and conditions of the NEIL policies. DEF further argued that ultimately, this proceeding is focused on the big picture of the prudence of the Company's settlement with NEIL, and there is no reason this issue cannot be resolved under the Third Revised Order schedule.

DEF further argued that the Intervenors are well positioned to address this remaining insurance issue on the Third Revised Order schedule despite OPC's protests to the contrary in OPC's Motion. In support of this contention, DEF noted that Intervenors have investigated its actions with respect to NEIL for over three years. During that time, DEF has responded to hundreds of intervenor interrogatories and document requests, and DEF has produced millions of pages of documents over three years regarding the SGR project, the delaminations, and the delamination repairs that admittedly are the basis for the Company's NEIL insurance claim. DEF noted that it produced its insurance policies with NEIL years ago. Thus, DEF argued that the Intervenors did not enter this docket in February 2013 wholly uninformed about the CR3 costs, the NEIL policies, or the reasons for the NEIL insurance claim.

Finally, DEF asserted that OPC cites no authority that an eight-month schedule for the remaining issues in this Docket is, in OPC's words, "per se" inadequate and a violation of the Intervenors' due process rights. DEF argued that despite OPC's objections and at times baseless or erroneous accusations in its Motion for Reconsideration, there are no real grounds to believe at this time that the Intervenors' due process rights are violated by the schedule contained in the Third Revised Order and thus, OPC's Motion for Reconsideration should accordingly be denied.

Analysis

The appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering a Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

As noted above, OPC requested the application of a *de novo* standard of review inasmuch as the setting of hearing dates have historically been under the purview of the Chairman in accordance with Section 350.01(5), F.S. In support of this assertion, OPC merely cites to a tradition which is not codified in any rule or order. In the instant case, we find that the mistake of fact or law standard provided above is the appropriate standard since the Chairman's Office approved the hearing dates set forth in the Third Revised Order. Moreover, the Prehearing Officer has been delegated the authority to address procedural matters in Commission cases via Rule 28-106.211, F.A.C.

OPC has failed to cite to any point of fact or law which was overlooked by the Prehearing Officer in rendering his decision setting forth the procedural schedule in the Third Revised Order. We find that OPC's arguments are based upon the flawed contention that the Prehearing Officer's statements made at the oral argument on Tuesday, April 30, 2013, regarding the procedural schedule for this case somehow retroactively undermined the determinations contained within the Third Revised Order which was issued on Friday, April 26, 2013, four days before. As specified in Order No. PSC-13-0155-PCO-EI, Granting in Part and Denying in Part Joint Motion of the Parties to Resolve Certain Disputed Case Issues and Request for Oral Argument, the purpose of the oral argument on April 30, 2013, was to afford the parties with an opportunity to present their arguments on the disputed threshold question regarding the scope of the proceeding.⁴ Following the oral argument on the disputed question, the Prehearing Officer, heard comments from the parties regarding the schedule set forth in the Third Revised Order.⁵ It is clear from both the Third Revised Order as well as the Prehearing Officer's statements made at the oral argument on April 30, 2013, that the schedule of the proceedings contained in the Third Revised Order were in no way based upon or impacted by the substance of the parties comments made at the end of the oral argument. Thus, we find that none of the statements of the Prehearing Officer undertaken at the oral argument on April 30, 2013, constitute a mistake of

⁴ Order No. PSC-13-0155-PCO-EI, Granting in Part and Denying in Part Joint Motion of the Parties to Resolve Certain Disputed Case Issues and Request for Oral Argument, issued on April 11, 2013 in Docket 100437-EI, In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

⁵ We note that OPC included as Attachment A to its Motion for Reconsideration only a small portion of the transcript from the oral argument conducted on April 30, 2013. In particular, Attachment A includes pages 1-3, and thereafter jumps to page 62 of the transcript. We note that the entire transcript of the oral argument indicates that the vast majority of the meeting was dedicated to addressing the resolution of the threshold question on the scope of the proceedings and only a brief portion of the proceeding was allotted for comments regarding the schedule set forth in the Third Revised Order.

fact or law which the Prehearing Officer overlooked or failed to consider in rendering an opinion which was issued four days before the oral argument even commenced.

Even overlooking the temporal scope issues contained within OPC's Motion for Reconsideration noted above, OPC's underlying arguments do not identify a point of fact or law which was overlooked or which the Prehearing Officer failed to consider in rendering his Third Revised Order. In particular, OPC asserted that the very recognition of the existence of the quarterly meetings undertaken by the parties, and discussed by the Prehearing Officer at the oral argument on April 30, 2013, constitutes a mistake of fact. As noted above, the status conferences engaged in by the parties in this proceeding were undertaken pursuant to the requirements of paragraph 10.b. of the 2012 Settlement Agreement formed by the parties. Thus, the assertion that the Prehearing Officer's statement that the status conferences were designed to facilitate the communication and free flow of information during the interim period between February 22, 2012, and the DEF resolution of the decision to repair or retire CR3, is an accurate representation of the requirements of the provisions of the 2012 Settlement as agreed by the parties, and thus cannot be the basis for an alleged mistake of fact.

OPC further asserted that the schedule set forth in the Third Revised Order constituted a mistake of fact because it does not afford the parties with enough time to conduct discovery and retain witnesses on the NEIL insurance issue. Even accepting that OPC's assertion that DEF's February 2013 announcement regarding its decision to retire the CR3 unit did substantially impact the issues to be litigated in this proceeding going forward, the Intervenor under the schedule contained in the Third Revised Order will have six months to take discovery, retain experts, and prepare testimony. Moreover, as noted by DEF in its Response, OPC has not shown that it has been denied any discovery that it is entitled to obtain, that it cannot retain any expert that it needs, or that it cannot file testimony months from now in accordance with the Third Revised Order. We note that since the inception of discovery in February 2013 with respect to the remaining issues in this proceeding, OPC has proactively participated in the discovery process propounding more than 100 interrogatories to DEF. Thus, we find that OPC's argument is not merited, that the schedule set forth in the Third Revised Order will impermissibly impair the Intervenor's due process rights and thereby constitute a mistake of fact which was overlooked by the Prehearing Officer.

Moreover, as stated in both the Third Revised Order and at the oral argument on April 30, 2013, the Prehearing Officer did consider the time requirements of the parties to fully adjudicate this matter and comported the schedule accordingly.⁶ On page two of the Third Revised Order, the Prehearing Officer expressly stated that he considered the parties' concerns regarding the time for adjudication of the remaining issues in creating the schedule in this case and in fact enlarged the amount of time originally afforded. In particular, he stated:

There were concerns raised during this process by several parties regarding sufficient time to conduct discovery and file testimony and exhibits under the current case schedule set forth in the Second Revised OEP. It is to the Commission's benefit to have a complete and thorough record, so that the

⁶ Third Revised Order, p.2.

Commission has before it all relevant aspects of the case. . . . Therefore, I find that a rescheduling of the hearing and controlling dates is necessary to facilitate the Commission having a complete and thorough record for its review and to give staff and the Parties additional time in their preparation for hearing.

At the oral argument on April 30, 2013, the Prehearing Officer reiterated his belief that the six month time frame set forth in the Third Revised Order would afford all parties with the time needed to prepare and will allow us to make an informed decision. We find that the record clearly reflects that the Prehearing Officer did not overlook the time necessary for a thorough review of this matter in setting the schedule contained in the Third Revised Order. Thus, we find that OPC has failed to identify a point of fact or law which was overlooked or which the Prehearing Officer failed to consider when the Third Revised Order was issued.

In addition, OPC's contention that the Prehearing Officer's statements at the oral argument that the 2012 Settlement Agreement resolved many of the issues in this proceeding and, as such, there are few issues remaining to be litigated, similarly fails to identify a mistake of fact. In fact, the 2012 Settlement Agreement did resolve many of the issues in contention. By the terms of the 2012 Settlement Agreement the parties themselves acknowledged that "the issues addressed by this Agreement resolve in a comprehensive manner an unprecedented combination of circumstances." As noted by DEF in its brief, the parties themselves acknowledged that the remaining issues to be litigated in this proceeding primarily pertain to the prudence of the Company's settlement with the NEIL which is not as complex as OPC makes it out to be in its Motion. Therefore, we do not find that the statements made by the Prehearing Officer form the basis for a mistake of fact in this proceeding. Thus, OPC's Motion does not meet the standard upon which a Motion for Reconsideration should be granted.

Similarly, OPC's argument that the Prehearing Officer's statement at the oral argument on April 30, 2013, regarding the need to conduct a speedy resolution of this matter to abate the uncertainty affecting the utility and the customers, is also unpersuasive as it was a direct quote from the 2012 Settlement Agreement itself. In particular, on page 5 of the 2012 Settlement Agreement it provides that "the Parties further recognize that continued uncertainty related to the issues addressed in the Agreement adversely affects the Company and its customers, and this Agreement will mitigate those uncertainties."⁷ We do not find that the paraphrasing by the Prehearing Officer of a provision of the 2012 Settlement Agreement constitutes a mistake of fact or law which was overlooked or which the Prehearing Officer failed to consider when he issued the Third Revised Order.

Therefore, based upon the analysis stated above, we deny OPC's Motion for Reconsideration because it does not identify a point of fact or law which was overlooked or which the Prehearing Officer failed to consider when he issued the Third Revised Order.

Based on the foregoing, it is

⁷ Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI, p. 5.

ORDERED by the Florida Public Service Commission that Office of Public Counsel's Motion for Reconsideration and Request of Oral Argument are timely and shall be adjudicated on their respective merits. It is further

ORDERED that Office of Public Counsel's request for oral argument is granted. It is further

ORDERED that Office of Public Counsel's Motion for Reconsideration is hereby denied for the reasons stated above. It is further

ORDERED that this docket shall remain open pending the resolution of the underlying issues in this proceeding.

By ORDER of the Florida Public Service Commission this 7th day of June, 2013.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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

KY

NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.