

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of nuclear outage)
at Florida Power Corporation's)
Crystal River Unit 3.)

DOCKET NO. 970261-EI
Filed May 28, 1997

MOTION OF LAKE DORA HARBOUR HOMEOWNERS
ASSOCIATION, INC. FOR ESTABLISHMENT OF HEARING
SCHEDULE TO ALLOW REASONABLE DISCOVERY

The Lake Dora Harbour Homeowners Association, Inc., by and through its undersigned attorneys, moves the Florida Public Service Commission ("Commission") for the modification of the Time Schedule (CASR) in the above-styled proceeding in order to protect the substantive and procedural due process rights of all parties by allowing adequate time for discovery and the preparation of testimony and exhibits, and in support thereof states:

1. The Lake Dora Harbour Homeowners Association, Inc. is a non-profit corporation representing the interests of a group of homeowners, all of whom are provided their regulated electric service by Florida Power Corporation ("FPC"). The Lake Dora Harbour Homeowners Association, Inc. has sought intervention as a party in the above-styled docket by a petition to intervene filed May 27, 1997.

2. This docket is a "spin-off" from the fuel adjustment proceedings held in Docket No. 970001-EI. The docket's apparent purpose is to establish FPC's entitlement to recover from its customers certain replacement fuel costs resulting from the extended outage of the utility's Crystal River Unit No. 3 ("CR 3") nuclear generating unit. CR 3 went out of service on September 2, 1996 and is not expected to return to service, at the earliest, until some time in the Fourth Quarter of 1997. "Replacement fuel costs" necessitated by the generation or purchase of power to replace that lost from CR 3 are estimated at a minimum of \$10 million a month.

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Consequently, total replacement fuel costs for the entire outage of 16 months will be a minimum of some \$160 million.

3. The Commission has, effective April 1, 1997, already allowed FPC to begin collecting from all its customers an increased fuel adjustment charge, some \$2.22 per thousand kWh of consumption of which is specifically the result of the current CR 3 outage. This \$2.22 represents only the 12-month amortization of the underrecovery for the period September, 1996 through March, 1997 and is, thus, only returning one-half the underrecovery to FPC that it would normally receive in the current period. The remaining one-half of the initial underrecovery has merely been deferred for collection, not disallowed by the Commission or abandoned by the utility. Additionally, contrary to normal practice in the fuel adjustment proceedings, the underrecovery currently being incurred during the period of April through September, 1997 has not been recognized and is not being charged to customers, although it appears clear that FPC is taking the position that these underrecoveries are "prudent" and should eventually be recovered from its customers. Furthermore, the currently approved fuel adjustment charge does not include an amount to recover the replacement fuel costs that will result from the continuation of the outage expected during the last quarter of 1997.

4. As reflected on the Time Schedule (CASR) for Docket 970261, intervenor testimony was due April 28, 1997, just two months after the Order Establishing Procedure was published on February 28, 1997 and a mere 14 days after FPC's testimony was filed. Intervenor testimony is typically responsive to utility testimony (hence the order of filing) and the limitation of just two weeks to review the FPC testimony, prepare responsive testimony and have it filed, adversely limits the ability of customer intervenors to protect their interests. Furthermore, the intervenor testimony was due almost a full month prior to the customer service hearings recently held throughout the FPC service territory. It should be clear that customer awareness of the outage resulting from the customer service hearings and leading to a desire to actively participate

in the hearings is effectively rendered a nullity because the time for filing testimony has now passed. As an example, the recent intervention by the Attorney General of the State of Florida will be effectively rendered worthless unless he is given adequate time to review the extensive history of this case, review the FPC testimony and then develop meaningful testimony and other evidence to assist the Commission in arriving at its decision. Obviously, the Lake Dora Harbour Homeowners Association, Inc. is in the same limited position absent a reasonable expansion of the time allowed for preparation in this case.

5. While it is clear that the Commission must make an interim decision on whether FPC will be allowed to continue collecting replacement fuel charges due to this outage during the subsequent fuel adjustment period, a final decision on whether the utility's shareholders or its customers should bear the adverse economic consequences of this outage should not be rushed to either the detriment of any party's rights or the quality of the Commission's decision. The Commission is aware that the Florida Supreme Court's hurdle for finding utility "mismanagement" is difficult to clear and that care must be taken in approaching it. In this regard, while finding FPC liable for the circumstances leading to the extended outage of CR 3, Public Counsel's witness, William R. Jacobs, Jr., Ph.D., noted the time constraints on preparing his written testimony, stating:

I consider my investigation preliminary for several reasons. First, the outage is in progress. Neither the duration of the outage nor the outage critical path are known at this time. For this reason, any investigation and evaluation of the outage must be preliminary in nature. Secondly, the time frame allowed for my evaluation was exceedingly short. Due to the abbreviated time frame, less than one full round of discovery was possible before the filing date for my testimony. A complete investigation of a lengthy outage such as the current Crystal River outage can take six months to one year to complete and will typically involve many rounds of

discovery. For these reasons, I believe that my investigation and findings are preliminary. I would hope that time will permit a more complete investigation of the outage once it is completed and the unit has been returned to service.

Direct Testimony of William R. Jacobs, Jr., Ph.D., filed April 28, 1997, at page 3. (Emphasis supplied).

6. The undersigned attorney, Michael B. Twomey, while previously serving as a staff attorney to this Commission, participated in numerous investigations into extended outages of nuclear generating units, several involving CR 3. In none of these investigations was the time allowed to the Commission staff, the intervenors and the utility so strictly limited as in the instant case. Rather, as suggested by Public Counsel witness Jacobs, a typical case schedule would allow from 6 months to a year. Support for Jacob's time line should be had by reference to prior, comparable cases at the Commission. Given the complexity of this case and the amount of money at issue, the Lake Dora Harbour Homeowners Association, Inc. believes the time allotted is completely inadequate to the task.

7. If not further extended in duration, this outage will result in replacement fuel costs in the amount of from \$160 to \$200 million. If approved by the Commission, the fuel increase is the effective equivalent of a 10 to 12 percent annual rate increase. If this request were handled as a rate case, the Commission would allow eight full months in the schedule and a minimum of five or six months for discovery. Virtually no civil contract or personal injury case, irrespective of the level of damages, would be pushed to trial in the limited time allowed by this case's current schedule. Of course, this case is no simple civil case but, rather, one involving a complex nuclear unit in operation for some 20 years and an allegation that the initiating events leading to this extended outage occurred as long as 10 years ago. It should be clear that customer examination of the "paper trail" resulting from FPC's various actions involving the unit's cooling system and backup generators requires additional time for proper preparation. In any event, customers

should be allowed more time to more closely put them on par with that already allowed to FPC.

8. The disparity between the time already allowed FPC and the representatives of customer interests is fairly pronounced. First, FPC is in control of CR 3's operation and should have been aware almost immediately in September, 1996 that it would have to begin preparing its testimony for a fuel adjustment case. By contrast, the customers were not formally informed of the unit's outage until the filing of FPC's testimony in Docket No. 970001-EI in early-1997. The CASR for this docket shows that FPC had over six full weeks from the date of the Order Establishing Procedure (Feb 28) to its testimony filing date (April 14). By contrast, customer intervenors had only 14 days to review the testimony of FPC's five witnesses and prepare and physically file intervenor testimony (April 28). The CASR apparently anticipated allowing FPC to have two weeks to examine the written testimony of Commission staff before being required to file its rebuttal testimony. Commission staff filed no testimony with the result that FPC had a full month to examine and rebut the testimony filed by the Public Counsel. FPC took full advantage of the additional time and, yesterday, filed the rebuttal testimony of four witnesses. While there has been inadequate time for any party to properly prepare, it should be reasonably clear that the utility has received substantially more time than its customers to prepare for this highly complex case.

9. The prior orders in this docket do not make entirely clear what issues are to be definitively decided as a result of the hearings now scheduled for June 26-27, 1997. It is obvious that the Commission cannot decide the issue of whether FPC completed the outage in an expeditious and prudent manner since the outage is far from over. It is the Lake Dora Harbour Homeowners Association, Inc.'s position that the Commission has not allowed adequate preparation time to the parties to decide the initial issue of whether the beginning of the outage was prudent or not. Stated differently, the customers have simply not been allowed sufficient time to try to make a case of utility mismanagement. Consequently the Lake Dora Harbour

Homeowners Association, Inc. moves the Commission to reschedule this case so that all parties have adequate time to conduct full discovery, consult with experts and prepare comprehensive testimony addressing the very complex issues in this case.

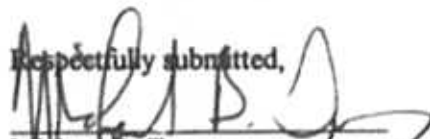
10. The Lake Dora Harbour Homeowners Association, Inc. takes the position, as do apparently all customer representatives, that FPC should not have been allowed to begin charging customers for the CR 3 replacement fuel costs prior to a Commission finding that the costs were reasonable and necessary to the service being provided and prudently incurred. The Commission has made no such finding, but, rather, approved the recovery of the increased costs consistent with a long-standing fuel adjustment procedure that is more appropriately geared to reflecting moderate pricing differentials in fuels than in determining the propriety of \$160 + million rate increases. The Commission should consider using the time allowed by the June 26-27, 1997 hearing dates to reconsider the propriety of continuing to pass the increased replacement fuel costs to customers pending a final determination on the utility's prudence.

11. The Lake Dora Harbour Homeowners Association, Inc. requests that the Commission continue the June 26-27 hearings at least to the extent that those hearings purport to decide the ultimate prudence of FPC's actions leading to the extended outage. Secondly, the Commission should reschedule this case and enlarge the period for discovery to allow all parties to conduct complete and full discovery and then to prepare written prefiled testimony. The Commission should, consistent with its prior practice in other highly complex cases, allow a minimum of five to six additional months before the testimony of customers is to be filed. The Commission, in rescheduling this case, should consider holding a conference of the parties to inquire of them how much time is reasonably necessary to prepare their cases.

WHEREFORE, the Lake Dora Harbour Homeowners Association, Inc. requests that the Florida Public Service Commission reschedule this case to allow all parties a minimum of an additional five to six months in which to conduct discovery and prepare their written

testimony. Consistent with this rescheduling, the Lake Dora Harbour Homeowners Association, Inc. requests that the Commission make clear that it will not make any permanent determination as to Florida Power Corporation's entitlement to recover CR 3 replacement fuel costs from its customers until after the customers have had additional and adequate time to prepare their cases arguing that it is the utility and its shareholders who must be held liable for the adverse economic consequences of this lengthy outage.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by
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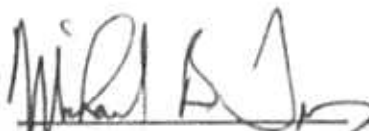
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