

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

JUNE 5, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO) *89P JOJ*

FROM: DIVISION OF LEGAL SERVICES (ELIAS, PAUGH, V. JOHNSON) *RUE*  
DIVISION OF ELECTRIC & GAS (BASS, BALLINGER, BOHRMANN, BREMAN) *WJF*  
DIVISION OF RESEARCH & REGULATORY REVIEW (HARVEY, VINSON) *WJF*

RE: DOCKET NO. ~~970261~~-BI - REVIEW OF NUCLEAR OUTAGE AT FLORIDA POWER CORPORATION'S CRYSTAL RIVER UNIT 3

AGENDA: 06/10/97 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970261MC.RCM

CASE BACKGROUND

This docket is a "spin-off" from the fuel adjustment proceedings held on February 19, 1997, in Docket 970001-EI. Pursuant to the Order Establishing Procedure, Order No. PSC-97-02466-PCO-EI, issued February 28, 1997, this docket has been set for a hearing on June 26 and 27, 1997, to investigate the outage of Florida Power Corporation's (FPC) Crystal River 3 nuclear generating unit. At the February 19, 1997, fuel adjustment hearing, the Commission approved, subject to refund, a portion of the replacement fuel costs associated with the loss of Crystal River 3. These costs represent \$2.22 per 1,000 Kilowatt hours for the average residential bill.

The following intervenors have been granted leave to intervene in this docket: Florida Industrial Power Users Group (Order No. PSC-97-0252-PCO-EI, issued March 26, 1997); Florida Consumer Advocates Network (Order No. 97-0638-PCO-EI, issued June 3, 1997), Attorney General Robert A. Butterworth (Order No. PSC-97-0639-PCO-EI, issued June 3, 1997); and the Lake Dora Harbour Homeowners Association, Inc. (Order No. PSC-0639-PCO-EI, issued June 3, 1997). In addition, the Commission acknowledged the Office of Public Counsel's intervention in this matter by Order No. PSC-97-0344-PCO-EI, issued March 25, 1997.

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FPSC-RECORDS/REPORTING

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On May 28, 1997, one day after filing its petition to intervene, the Lake Dora Harbour Homeowners Association, Inc. (Association) filed a Motion for Establishment of Reasonable Hearing Schedule to Allow Reasonable Discovery. This recommendation addresses that motion. Because the Association filed its motion prior to a decision on its petition to intervene, there are two views as to when a party must file its response to the motion. The first argument is that the response due date is June 9, which is calculated from the date the motion was filed. The alternative argument is that the response due is June 15, which is based on the date the Association was granted party status. However, because the presiding officer deferred the decision on this motion to the full Commission and the scheduled hearing dates are approaching, staff is filing its recommendation for consideration at the June 10, agenda conference. Counsel for FIPUG has represented that FIPUG is opposed to any continuance of the June hearing. All parties were contacted and advised that they may present their arguments on the motion, if any, to the Commission at the agenda conference.

DISCUSSION OF ISSUES

Issue 1: Should the Lake Dora Harbour Homeowners Association, Inc.'s motion for establishment of a hearing schedule to allow reasonable discovery be granted?

Recommendation: No. However, if a continuance is granted, staff recommends that FPC be allowed to continue interim recovery of the costs associated with the outage, discovery should be suspended and the investigation and hearing delayed until sometime in 1998 after the unit is again operational.

Staff Analysis: In its motion for establishment of hearing schedule to allow reasonable discovery, the Association has requested that the Commission continue the June 26-27 hearing and reschedule this case for a minimum of five to six months to allow all parties to conduct complete and full discovery and to prepare written prefiled testimony. The Association alleges that because intervenor testimony was due two weeks after FPC filed its testimony and one month before customer service hearings were held, the current schedule adversely limits the customer intervenor's ability to protect its interests and to effectively participate in the hearings. The Association further alleges that given the complexity of this case and the amount of money at issue, the time allotted to this investigation is inadequate.

It is well settled that "an intervenor is bound by the record made at the time he intervenes and must take the suit as he finds it . . . . He cannot challenge the sufficiency of the pleadings or the propriety of the procedure, nor can he move to dismiss or delay the cause without permission." Florida Gas Co. V. American Employers' Insurance Co., 218 So. 2d 197 (Fla. 3d DCA 1969) citing Krouse v. Palmer 179 So. 762 (Fla. 1938); Rule 25-22.039, Florida Administrative Code

There is no legal basis which mandates that the hearing be delayed. The general rule that an intervenor must "take the case as you find it" was intended to prevent a latecomer from entering a case and disrupting the schedule of events upon which the parties have anticipated.

In determining whether a motion for continuance should be granted, it is appropriate to consider the circumstances alleged by the moving party. Staff believes that the Association has not shown good cause for its motion or that the hearing schedule is unreasonable. Staff agrees that the issues relating to the management of Crystal River 3 or any nuclear plant are complex. As such, the events and management decisions that may have led to the

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outage can be continually investigated and debated. Nonetheless, it is staff's view that the complexities of this case should be balanced against the factors that led the Commission to order an expeditious review and hearing. During the February, 1997, fuel adjustment hearing, the Commission recognized that delaying recovery of the replacement fuel costs until after the outage was over and a review conducted could cause rate shock. (See Order No. PSC-97-0359-FOF-EI, issued March 31, 1997) This schedule is required to ensure that customers will not be burdened by very large increases if FPC were found to have acted prudently. Retaining the June 26-27 hearing dates will also permit the Commission to resolve FPC's fuel cost recovery level which will be set at the August 14, 1997, fuel adjustment hearing. There has been no change in circumstances since February when the hearing schedule in this docket was set.

The Association argues that the hearing should have been scheduled to allow more time for discovery. Section 120.57(1)(b)(2), Florida Administrative Code, requires only 14 days notice for a hearing. The Order Establishing Procedure in this docket was issued on February 28, 1997, approximately four months before the hearing date. This schedule has not hampered the abilities of the parties and staff in preparing for the hearing. Since this docket was opened, staff and the parties have expended considerable effort in obtaining and reviewing discovery responses, and conducting depositions. Despite the schedule, the Office of Public Counsel, on behalf of all the citizens of Florida, has sponsored a witness who performed an evaluation and has filed testimony which includes the findings of his evaluation. Neither Public Counsel, nor any other intervenor have asked for a continuance.

Staff believes that given good cause, it would be appropriate for the Commission in its discretion to delay the hearing. The Association, however, has not shown good cause for a delay or any legal infirmity in retaining the June 26-27 hearing which has been scheduled since February 28, 1997. Therefore, staff recommends that the Association's motion for the establishment of a hearing schedule to allow reasonable discovery should be denied.

If the Commission exercises its discretion and a continuance is granted, staff recommends that FPC be allowed to continue interim recovery of the costs associated with the outage, discovery should be suspended and the investigation and hearing delayed until sometime in 1998 after the unit is again operational. This is consistent with past Commission practice. See Order No. 18690, issued January 13, 1988, in Docket No. 860001-EI-B.

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Issue 2: Should this docket be closed?

Recommendation: No.

Staff Analysis: This docket should remain open pending the June 26 - 27, 1997, hearing.