



**Florida
Power**
CORPORATION

JAMES A. MCGEE
SENIOR COUNSEL

June 6, 1997

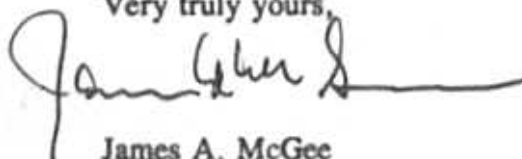
Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 970261-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of Prehearing Statement of Florida Power Corporation.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

- ACK ✓
- AFA 2
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG Base
- LEG 3
- LIN 5
- OPC _____
- RCH 2
- SEC 1
- WAS _____
- OTH _____

JAM/kp
Enclosures
cc: Parties of Record

RECEIVED & FILED
JUN 10 1997
EPSC-BUREAU OF RECORDS

GENERAL OFFICE

DOCUMENT NUMBER-DATE

05665 JUN-96

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE

Docket No. 970261-EI

I HEREBY CERTIFY that a true and correct copy of Prehearing Statement of Florida Power Corporation has been sent by regular U.S. mail to the following individuals on June 7, 1997:

John W. McWhirter, Jr.
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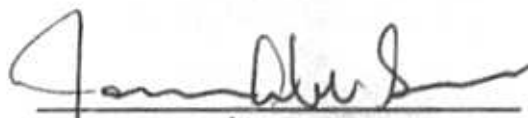
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Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of nuclear outage
at Florida Power Corporation's
Crystal River Unit No. 3.

Docket No. 970261-EI

Submitted for filing:
June 9, 1997

**PREHEARING STATEMENT OF
FLORIDA POWER CORPORATION**

Florida Power Corporation ("Florida Power"), pursuant to Rule 25-22.038, Florida Administrative Code, hereby submits its Prehearing Statement in this matter and states as follows:

A. APPEARANCES

JAMES A. MCGEE, Esquire, and R. ALEXANDER GLENN, Esquire,
Post Office Box 14042, St. Petersburg, FL 33733-4042;

GARY L. SASSO, Esquire, CARLTON FIELDS, Post Office Box 2861, St.
Petersburg, FL 33731-2861

On behalf of Florida Power Corporation

B. WITNESSES

Witness

Subject Matter

Ralph G. Bird

Expert opinions on prudence of management actions and decisions as they relate to the shutdown of the Crystal River Unit 3 nuclear unit ("CR-3") commencing September 2, 1996

Percy M. Beard

History and prudence of management actions and decisions relating to the shutdown

DOCUMENT NUMBER-DATE

05665 JUN-95

Gary R. Doughty	Expert opinions on prudence of management actions and processes relating to the shutdown
Paul F. McKee	History and prudence of management actions, processes, and decisions relating to the shutdown
James H. Sniezek	Expert opinions on inapplicability of NRC reports, processes, and standards, and compliance-related activity of nuclear operator, to issues of management prudence; and expert opinions on prudence of management processes and actions relating to the shutdown

C. EXHIBITS

See Attachment A hereto for a listing of exhibits to Florida Power's direct and rebuttal testimony. Florida Power reserves the right to introduce other documents, as appropriate, during its cross-examination of adverse witnesses, including interrogatory responses, production documents, and deposition transcripts and exhibits.

D. STATEMENT OF BASIC POSITION

Florida Power is entitled to recover alternative fuel costs incurred as a result of the current outage of CR-3. Those costs have been reasonably incurred. Neither the commencement nor the extension of the outage has been the result of management imprudence.

E. STATEMENT OF ISSUES AND POSITIONS

Issues of Fact

(FPC Proposed Issues)

1. **ISSUE:** Was Florida Power's decision to shut down CR 3 on September 2, 1996 prudent?

FPC: Yes. Florida Power shut down the plant initially on September 2, 1996 to repair a ruptured lube oil pipe. The problem with the pipe

could not be definitively identified, and the pipe could not be repaired, while the plant was operating. No party or intervenor has challenged the reasonableness of Florida Power's actions in taking the plant out of service to make this repair. (Bird, Beard, Doughty, McKee, Sniezek)

2. **ISSUE:** Was Florida Power's decision to extend the outage prudent?

FPC: Yes. While CR-3 was out of service, CR-3 engineers identified the fact, based on ongoing analysis of the plant's Engineered Safeguards system, that in remote, hypothetical circumstances, Florida Power could not be assured that the Emergency Feedwater pumps would be operational. Florida Power is required to provide such assurance to the NRC at all times in order to maintain compliance with conditions of the plant's operating license.

Upon the discovery of this condition, Florida Power was required to remedy the problem within 72 hours or to keep the plant shutdown. Over the years, Florida Power had made various plant modifications that the company believed fully met applicable requirements. Upon concluding in late September and early October 1996 that further assurance was required, the Company was forced to embark on more extensive modifications. Because the Emergency Feedwater system is integrally tied to other features of the plant, including the Emergency Diesel Generators, these modifications involve more than just the Emergency Feedwater system itself.

The Company had exhausted all lesser alternatives and so was forced to keep the plant out of service for an extended period of time to investigate and address the problem. (Bird, Beard, Doughty, McKee, Sniezek)

3. **ISSUE:** Did the outage, or the extension thereof, result from management imprudence?

FPC: No. The modifications that are now being performed are part of an ongoing effort to retrofit CR-3 to meet regulatory requirements initiated after the accident at Three Mile Island in 1979. That event changed the way the industry and the NRC looks at strategies to cope with hypothetical accidents at nuclear power plants. Because CR-3 and other plants like it were designed from a different perspective, and because no two plants are designed exactly alike (to avoid multiplying

the effect of some unknown design defect), the industry has struggled to find ways to make adjustments to existing plants to meet evolving knowledge, experience, and concerns.

Florida Power has always drawn upon credible resources in the industry, including the designer of CR-3, manufacturers of its safety equipment, architect-engineers who service not only CR-3 but other plants, and the Company's own engineers to develop engineering solutions to problems and issues as they are identified. The Company identified and implemented credible solutions at all relevant times.

It is only because of its ongoing commitment to using the best available current analytical tools and technology, and its ongoing programs for monitoring and analyzing its safety systems, did the Company identify recently the need to make further improvements. This progress is not proof of any imprudence on management's part in the past, but proof of the prudence of management's systems and processes on an ongoing basis.

Finally, it has been conceded by the Office of Public Counsel's expert that, even if CR-3 were receiving straight "A's" on its regulatory report card, the Company still would have had to taken CR-3 out of service to make the modifications now being performed. This is confirmation that the outage stems from the reasons identified above, not from any regulatory criticism. (Bird, Beard, Doughty, McKee, Sniezek)

(Staff Proposed Issues)

1. **ISSUE:** Was Florida Power Corporation's decision to shut-down Crystal River Unit No. 3 on September 2, 1996 prudent?

FPC: This issue is Identical to FPC proposed Issue 1.

2. **ISSUE:** Did Florida Power Corporation's efforts to reduce costs, including downsizing and reduced reliance on contracted Crystal River Unit 3 engineering support, inappropriately reduce its attention to safety?

FPC: This proposed issue is inappropriate because it is unrelated to cause or duration of the current extended outage of CR-3.

3. **ISSUE:** Was Florida Power Corporation prudent in its approach of using engineering interim solutions through modifications to the Emergency Diesel Generator loading instead of implementing more permanent solutions?

FPC: This proposed issue is inappropriate because it assumes, contrary to FPC's testimony, that FPC regarded its solutions to the Emergency Diesel Generator loading problem as "interim," and because the issue is unrelated to the cause or duration of the outage.

4. **ISSUE:** Did Florida Power Corporation respond prudently to information affecting the operation of Crystal River Unit No. 3 including, but not limited to, employee concerns, modifications at other Babcock & Wilcox plants, Nuclear Regulatory Commission requirements and the results of the company's own problem corrections?

FPC: This proposed issue is inappropriate because it is unrelated to cause or duration of the current extended outage of CR-3.

5. **ISSUE:** Should the modifications being performed during the current extended outage have been accomplished during previous planned outages?

FPC: No. FPC's management pursued a prudent course of action regarding modifications, that management could not have been reasonably expected to identify the need for the current modifications sooner, and that if the company had known sooner what it knows now it would have had to make the modifications immediately rather than waiting for a planned outage.

6. **ISSUE:** Did Florida Power Corporation display a pattern of management decisions at Crystal River Unit No. 3 that resulted in the current extended outage?

FPC: This proposed issue is inappropriate because it is unrelated to prudence of management decisions. Nonetheless, FPC asserts the outage was fundamentally occasioned by the need to retrofit the plant, not because of Florida Power's management decisions and that, in any

event, Florida Power's management has displayed a pattern of prudent management decisions.

7. **ISSUE:** Based on the resolution of the previous issues, what amount of estimated replacement fuel costs, if any should be disallowed for recovery by Florida Power Corporation?

FPC: This issue is premature because the Commission cannot make a final decision after this hearing on the amount, if any, of estimated replacement fuel costs that should be disallowed, without benefit of evidence at the conclusion of the outage concerning how ratepayers may have been benefited by the totality of the work done during this outage.

Questions of Law

FPC's Proposed Issues

1. **ISSUE:** May the Commission rely on NRC reports, documents, or other regulatory communications or actions in determining the prudence of Florida Power's management actions relating to the outage?

FPC: No. The Florida Supreme Court has definitively determined that the Commission may not rely on such materials, but must base its decision only on facts or information that were known or reasonably available to the utility's management at the time its challenged decisions were made. The Court has recognized that the NRC employs a standard in doing its work that is different from, and more restrictive than, the prudence standard applicable to this proceeding.

2. **ISSUE:** May the Commission rely on Florida Power hindsight documents developed to ensure or report compliance with NRC requirements or to improve plant practices, policies, procedures, or performance?

FPC: No. As noted above, the Florida Supreme Court has forbidden the Commission to use hindsight information in judging the prudence of management actions or decisions. These actions and decisions must

be judged based on information available to management at the time it acted. The Court has forbidden the Commission to rely on hindsight company evaluations that are generated to deal with compliance with NRC requirements for the additional reason that NRC standards are inapplicable to a prudency determination. Further, the Court has disallowed the use of self-critical evaluations or observations made in the context of efforts to promote improvements at the plant. Using these materials would, *inter alia*, violate the strong state policy against relying on evidence such as subsequent remedial measures, thus discouraging such steps from being taken by plant operators.

3. **ISSUE:** In determining whether actions or decisions of management were prudent, must the Commission limit its consideration to information that was known or reasonably available to management at the time those actions or decisions were made, without benefit of hindsight?

FPC: Yes, for the reasons given above.

4. **ISSUE:** May the Commission appropriately deny cost recovery based on a finding that management erred or was imprudent in some respect that did not cause the outage?

FPC: No. The Commission is charged with the duty of determining whether costs were reasonably incurred. If a utility has made some error or committed imprudence that did not cause those costs to be incurred, such error or imprudence is not material to the Commission's determination.

5. **ISSUE:** May the Commission appropriately deny cost recovery if the outage, or a similar outage at some other time, would have been required regardless of the management actions that are subject to challenge?

FPC: No, for the reasons identified in legal Issue 4. If the Company still would have been required to take the plant out of service, perhaps at some other date, even if the Company had acted prudently in all respects then, again, any proven error would not have been the actual cause of the costs that the Company seeks to recover.

F. STATEMENT OF ISSUES STIPULATED BY THE PARTIES

None at this time.

G. STATEMENT OF PENDING MOTIONS

Florida Power's Motion to Strike Testimony of William R. Jacobs, Jr.

Motion of Lake Dora Harbour Homeowners Association, Inc. For Establishment of Hearing Schedule to Allow Reasonable Discovery

Florida Power intends to renew its motion to bar the use of the Preliminary Report, supporting materials (submitted in a two volume appendix), and transcript of the Staff Workshop of March 26, 1997, in the Commission's deliberations of this matter.

Florida Power also intends to move to limit the use of evidence submitted during the Public Service Hearings conducted in this matter to the extent such evidence contravenes the restrictions established by the Florida Supreme Court on the use of hindsight and/or NRC-related evidence and the requirements established by the Court on the quality and nature of evidence that may be considered in a prudency determination.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

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EXHIBITS

<u>Exhibit Number</u>	<u>Witness</u>	<u>Description</u>
<u> </u> (RGB-1)	Bird	Resume
<u> </u> (GRD-1)	Doughty	CR-3 Nuclear Managers' Log, September 2, 1996
<u> </u> (GRD-2)	Doughty	CR-3 Nuclear Shift Managers' Log, August 30, 1996 to September 1, 1996
<u> </u> (GRD-3)	Doughty	CR-3 Nuclear Supervisors' Log, September 2, 1996
<u> </u> (GRD-4)	Doughty	CR-3 Nuclear Shift Managers' Log, September 2, 1996 to September 4, 1996
<u> </u> (GRD-5)	Doughty	Component Failure Analysis: Lot-2 Pipe Rupture, Report No. 96-LOT-2-01, dated January 17, 1997
<u> </u> (GRD-6)	Doughty	Maintenance Activity Control System, Work Document NUO333831, March 9, 1996
<u> </u> (GRD-7)	Doughty	CR-3 Nuclear Shift Managers' Log, September 4, 1996 to September 14, 1996
<u> </u> (GRD-8)	Doughty	Problem Report 96-369 of September 10, 1996
<u> </u> (GRD-9)	Doughty	EFW Upgrade Description Submitted to NRC on December 19, 1980
<u> </u> (GRD-10)	Doughty	FPC Letter No. 3F0988-11, dated September 15, 1988
<u> </u> (GRD-11)	Doughty	FPC Letter No. 3F0489-20, dated April 27, 1989
<u> </u> (GRD-12)	Doughty	FPC Letter No. 3F0788-18, dated July 22, 1988

<u> </u> (GRD-13)	Doughty	Coltec Letters to FPC, dated April 17 & 25, 1996
<u> </u> (GRD-14)	Doughty	FPC Letter to NRC re: Configuration Management, dated September 21, 1989
<u> </u> (PFM-1)	McKee	Basic Schematic Diagram of CR-3
<u> </u> (PFM-2)	McKee	MAR Documentation for 1987 Modification
<u> </u> (PFM-3)	McKee	MAR Documentation for 1990 Modification
<u> </u> (PFM-4)	McKee	Duke Power Correspondence
<u> </u> (PFM-5)	McKee	Coltec Correspondence
<u> </u> (PFM-6)	McKee	MAR Documentation for 1996 Modification
<u> </u> (PFM-7)	McKee	Technical Specifications Limiting Conditions
<u> </u> (PFM-8)	McKee	Mechanical Engineering Calculation No. EFC-0428-5503-022-002, Rev. 2
<u> </u> (PFM-9)	McKee	CR-3 CREFI Program EFIC Failure Analysis No. 51-1132681-00 and 541-1132682-00
<u> </u> (PFM-10)	McKee	CR-3 Calculations Doc. No. I87-0008, System Tuning of EFW Control Valves
<u> </u> (PFM-11)	McKee	CR-3 LOCA Loop & B Buss Failure Scenario Simulator Run
<u> </u> (JHS-1)	Sniezek	U.S. NRC Organizational Chart