

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
ORDER NO. PSC-97-0729-PCO-EI
ISSUED: June 23, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER DENYING MOTION FOR ESTABLISHMENT OF HEARING SCHEDULE
TO ALLOW REASONABLE DISCOVERY

BY THE COMMISSION:

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-97-0246-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 Action Network (Order No. PSC-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-97-0639-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.

DOCUMENT NUMBER-DATE

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TRIP REPORT REPORTING

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. On June 9, 1997, FPC filed its response in opposition to the motion. The presiding officer deferred the decision on this motion to the full Commission and the scheduled hearing dates are approaching; therefore, the motion was considered by the Commission at its June 10, 1997, Agenda Conference. At the Agenda Conference, counsel FPC, OPC and FIPUG argued that they were opposed to the motion and counsel representing the Attorney General took no position on the motion. Upon review of the pleadings and oral argument by the parties, we deny the Association's Motion for Establishment of Hearing Schedule to Allow Reasonable Discovery. The reasons for our decision are set forth below.

DECISION

In its motion, 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. We find that the Association has not shown good cause for its motion or that the hearing schedule is unreasonable. We agree 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 outage can be continually investigated and debated. Nonetheless, we believe that the complexities of this case should be balanced against the factors that led us to order an expeditious review and hearing. During the February, 1997, fuel adjustment hearing, we 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. This point was also argued by OPC and FIPUG. 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 our staff in preparing for the hearing. Since this docket was opened, our 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

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evaluation and has filed testimony which includes the findings of his evaluation. Neither Public Counsel, nor any other intervenor have asked for a continuance.

In addition, counsel for OPC and FIPUG stated the issues relating to the prudence of FPC's actions as to the initiating cause of the outage and the decision to extend the outage were ripe for our resolution at this time. Thus, they urged us to retain the June hearing dates so that we could resolve these issues prior to the August, 1997, fuel adjustment hearing.


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, we deny the Association's motion for the establishment of a hearing schedule to allow reasonable discovery.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Dora Harbour Homeowners Association, Inc.'s Motion for Establishment of Hearing Schedule to allow Reasonable Discovery is denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 23rd day of June, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

VDJ

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of Records and Reporting, 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.