

ORIGINAL

REQUEST TO ESTABLISH DOCKET

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Date: 1/12/2007 Docket No.: 070052-E1

1. Division Name/Staff Name: Gcl

2. OPR: ECR/MCNULTY AND HAFF *WPK MUA*

3. OCR: GCL/BENNETT *WPK JOB*

4. Suggested Docket Title: Petition by PEF to Recover Costs of Crystal River Unit 3 Uprate Through Fuel Clause

5. Suggested Docket Mailing List (attach separate sheet if necessary)
A. Provide NAMES OR ACRONYMS ONLY if a regulated company.
B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)
1. Parties and their representatives (if any):

Include PEF and all parties listed in DN 060642-EI and
Mike Twomey
AARP
P.O. Box 5256
Tallahassee, FL 32314

2. Interested persons and their representatives (if any):
Include Pef And All Parties Listed In Dn 060642-Ei

6. Check one:
[X] Documentation is attached.
[X] Documentation will be provided with recommendation.

DOCUMENT NUMBER - DATE

00456 JAN 16 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: PEF's Petition for Determination)
of Need for Expansion of an Electrical)
Power Plant, for Exemption from Rule)
25-22.082, F.A.C., and for Cost Recovery)
through the Fuel Clause)
_____)**

Docket No.: _____

Submitted for Filing: September 22, 2006

**PETITION FOR DETERMINATION OF NEED FOR EXPANSION OF AN
ELECTRICAL POWER PLANT, FOR EXEMPTION FROM RULE 25-22.082, F.A.C.,
AND FOR COST RECOVERY THROUGH THE FUEL CLAUSE**

Progress Energy Florida ("PEF" or the "Company") respectfully petitions the Florida Public Service Commission ("PSC" or the "Commission") for: (1) an affirmative determination of need for the projected power uprate to its Crystal River 3 ("CR3") nuclear power plant (hereinafter referred to as the "CR3 Uprate"), pursuant to Section 403.519, Fla. Stats. and Rules 25-22.080 and 25-22.081, F.A.C.; (2) for an exemption from Rule 25-22.082, F.A.C. (the "Bid Rule") pursuant to Rule 25-22.082(18), F.A.C.; and (3) for recovery of the project costs through the Fuel and Purchased Power Cost Recovery Clause ("Fuel Clause") pursuant to Commission precedent.

BACKGROUND

The CR3 Uprate will increase the power output at CR3 by approximately 180 megawatts ("MWs") from about 900 MW to 1,080 MW. The CR3 Uprate is an innovative, first-of-its-kind project at a Babcock & Wilcox ("B&W") designed nuclear plant that will take advantage of technological advancements and efficiencies and reduce customers' fuel costs over the extended life of the CR3 plant. PEF intends to complete the CR3 Uprate in two phases; the first during the planned 2009 refueling outage, which will also include the steam generator replacement for the CR3 license extension; and the second phase during the planned 2011 refueling outage. The

primary reason for the CR3 Uprate is the reduction of total fuel costs to PEF's customers over the extended life of CR3 by increasing power production from low cost nuclear fuel and replacing generation from higher cost fossil fuels and purchase power.

PEF expects to save more than \$2.6 billion in gross fuel costs through 2036, with a net present value to retail customers after costs of approximately \$327 million. In addition, fuel diversity for PEF and the State of Florida will be enhanced by increased generation from nuclear fuel, creating greater price and supply stability for PEF and the State. There is, however, a limited window of opportunity to take advantage of the CR3 Uprate project. To obtain the benefits of the CR3 Uprate, PEF must commence equipment orders now to perform the necessary work during the planned 2009 and 2011 refueling outages.

SUMMARY OF PETITION

The substantial economic benefits demonstrate the economic need for the CR3 Uprate. The additional base load generation from the lowest cost fuel available to PEF will provide customers adequate electricity at a reasonable cost. Because the CR3 Uprate will provide additional generation at a net savings – not a net cost --- to customers, the CR3 Uprate is, by definition, the most cost effective alternative available. Likewise, the CR3 Uprate will advance the goals of conservation measures in Florida, because it will reduce generation with higher cost fossil fuels and fossil fuel emissions at substantial fuel savings to customers from relatively clean nuclear generation, while avoiding the CR3 Uprate with conservation measures will increase reliance on fossil fuels, increase emissions, and increase costs to customers. For all these reasons, the Commission should grant PEF's request for a determination of need for the CR3

Uprate pursuant to Section 403.519, Fla. Stats. of the Florida Electrical Power Plant Siting Act (“PPSA”).

The net fuel savings to customers from the CR3 Uprate necessarily means the CR3 Uprate is a lower cost supply of reliable electricity that serves the public welfare and, thus, is exempt from all Bid Rule requirements under Rule 25-22.082(18), F.A.C. Further, compliance with the Bid Rule request for proposal requirements will delay the CR3 Uprate beyond the current planned fuel outages with the loss of fuel savings to customers.

Cost recovery for the CR3 Uprate, including a return on average investment at our current weighted average cost of capital as well as applicable taxes, is warranted through the Fuel Clause. None of the cost related to the CR3 Uprate is included in the Company’s base rates. Commission precedent encouraging innovative projects that reduce costs and benefit customers - - here, over \$2.6 billion in gross fuel savings -- supports the recovery of the costs of the power uprate, cost of transmission changes to handle the additional power output, and any changes needed to address Point of Discharge (“POD”) thermal permit limit issues due to the increased heat from the power uprate through the Fuel Clause.

In sum, the CR3 Uprate will result in increased fuel diversity, substantial fuel cost savings, a reduction in fossil fuel-based generation, and a reduced reliance on out-of-state energy suppliers. These significant benefits to the Company, its customers, and the State require approval of PEF’s Petition.

I. Preliminary Information.

1. The Petitioner’s name and address are:

Progress Energy Florida, Inc.
100 Central Avenue
St. Petersburg, Florida 33701

2. Any pleading, motion, notice, order, or other document required to be served upon PEF or filed by any party to this proceeding should be served upon the following individuals:

R. Alexander Glenn
alex.glenn@pgnmail.com
Progress Energy Service Company, LLC
100 Central Avenue, Suite 1D (zip 33701)
P.O. Box 14042
St. Petersburg, FL 33733
(727) 820-5587
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4221 W. Boy Scout Boulevard
P.O. Box 3239
Tampa, Florida 33607-5736
(813) 223-7000
(813) 229-4133 (fax)

II. Primarily Affected Utility.

3. PEF is the utility primarily affected by the proposed power plant expansion need determination, Bid Rule exemption, and request for cost recovery. PEF is an investor-owned electric utility, regulated by the Commission pursuant to Chapter 366, Fla. Stats., and is a wholly owned subsidiary of Progress Energy, Inc. The Company's principal place of business is located at 100 Central Avenue, St. Petersburg, Florida 33701.

4. PEF serves approximately 1.6 million retail customers in Florida. Its service area comprises approximately 20,000 square miles in 35 of the state's 67 counties, encompassing the densely populated areas of Pinellas and western Pasco Counties and the greater Orlando area in Orange, Osceola, and Seminole Counties. PEF supplies electricity at

retail to approximately 350 communities and at wholesale to about 21 Florida municipalities, utilities, and power agencies in the State of Florida.

III. THE PROPOSED ELECTRICAL POWER PLANT EXPANSION AT CR3 SATISFIES THE REQUIREMENTS OF SECTION 403.519 OF THE PPSA.

5. CR3 is a B&W pressurized water nuclear reactor located at the Crystal River Energy Complex in Citrus County, Florida. The fuel source for CR3 is enriched uranium. CR3 is a base load unit that currently produces about 900 MW. CR3 is currently being operated under a license from the Nuclear Regulatory Commission (“NRC”) and necessary federal and state permits.

6. The CR3 Uprate involves modifications to the existing nuclear facility in two phases during the planned fuel 2009 and 2011 refueling outages. The first phase will be completed during a scheduled steam generator replacement in the 2009 refueling outage and will include modifications to the turbine line components to take advantage of greater steam efficiencies. PEF expects to obtain an additional 40 MW of power following the work during the 2009 outage. Subsequently, during the 2011 planned refueling outage, PEF expects to obtain an additional 140 MW of power, or thermal MWs, by making changes that will allow for use of more highly enriched uranium in the reactor core. An additional 140 MW is expected following the work during the 2011 outage. The estimated cost of the power uprate itself is approximately \$250 million.

7. The PPSA provides that “[n]o construction of any new electrical power plant or expansion in steam generation capacity as measured by an increase in the maximum electrical generator rating of any existing electrical power plant may be undertaken after October 1, 1973 without first obtaining certification” under the PPSA. §403.506(1), Fla. Stats., (2006).

An “electrical power plant” includes “any steam or solar electrical generating facility using any process or fuel, including nuclear materials” but excludes “any steam or solar electrical generating facility of less than 75 megawatts in capacity.” §403.503(13), Fla. Stats., (2006). As a result, the PPSA applies to the CR3 Uprate because it is an expansion of an existing electrical power plant using nuclear material as fuel that will generate more than 75MW of additional power.

8. The additional power generated by the CR3 Uprate is also expected to have an impact on the current transmission system. Upon completion of the CR3 Uprate, CR3 will be the largest generator on PEF’s system, producing 1,080 MW. Changes may be necessary to the transmission system to accommodate the additional power generated by CR3. The Company’s current cost estimates are preliminary, based on the conditions of the existing transmission system and known generation and transmission projects; however, labor, material, and land costs have increased dramatically in the last five years, and if these costs continue to increase, these estimates will change for this reason as well. The Company continues to study the expected impact to its transmission system and will complete the study as the CR3 Uprate work draws closer in time. The Company’s current estimate is \$89 million for transmission system changes and improvements to accommodate the additional power from the CR3 Uprate.

9. The additional power generated by the CR3 Uprate is also expected to have an impact on the current cooling water discharge capacity. With the additional power generated at CR3 comes additional heat that is expected to increase the temperature of the discharged cooling water. These increases could cause PEF to exceed the POD permit thermal limits under existing environmental laws and regulations. This impact is still being studied and an

optimal solution to the POD issue has not yet been identified. A preliminary estimate of \$43 million has been assumed for changes needed to address the POD impact due to the uprate. PEF will continue to refine this cost estimate as PEF refines its study of the POD issue and the optimal remedy to address it.

10. The estimated total cost for the CR3 Uprate project is about \$381.8 million, including both the costs for the anticipated transmission changes and POD issue. Even with this preliminary total cost estimate, the CR3 Uprate will displace generation from higher cost fossil fuels and purchase power producing substantial fuel savings at a net present value benefit to customers. Total estimated gross fuel savings exceed \$2.6 billion and the net present value of the savings after costs to retail customers is estimated at \$327 million. Net fuel savings may even be greater upon approval of PEF's petition as the Company works to more precisely define the impacts of the power uprate on, and refine the cost estimates for, changes to the transmission system and modifications for the POD issue. At this point, however, to obtain the maximum fuel savings benefits for PEF's customers, PEF must proceed with the CR3 Uprate to ensure that the work can be performed during the 2009 and 2011 CR3 refueling outages.

A. PEF's Need for the CR3 Uprate.

11. There is an economic need for the CR3 Uprate. The CR3 Uprate will displace higher cost fossil fuel and purchase power generation with low cost nuclear generation, resulting in substantial fuel savings that provide a net benefit to customers. Adding additional nuclear generation further enhances fuel diversity and reduces the risk of fuel supply interruptions, also to the economic benefit of customers. The CR3 Uprate's substantial economic benefits satisfy the PPSA need requirement under Commission precedent.

12. The Commission has consistently recognized that the PPSA need requirement is broader than an absolute reliability need for generating capacity. The Commission's own rule implementing the PPSA provides for the demonstration of the costs and benefits of need "sought on some basis in addition to or in lieu of capacity needs." Rule 25-22.081(3), F.A.C. Consistent with its rule, the Commission has held that the determination of need for power under the PPSA can be demonstrated by an economic or socio-economic need for the additional generation.

13. For example, the Commission concluded that the "need for power" under the PPSA encompassed various aspects of need, including an economic need for the generation and the socio-economic need to reduce reliance on fossil fuels to provide generation, in granting need determinations when the proposed generation projects reduced the consumption of imported oil in the State of Florida. In Re: JEA/FPL's Application of Need for St. John's River Power Park Units 1 and 2 and Related Facilities, Order No. 10108, Docket No. 810045-EU, 1981 Fla. PUC Lexis 381, *3 (June 26, 1981). See also In Re: Petition of Orlando Utilities Commission for Determination of Need for Stanton Unit 1, Order No. 10320, Docket No. 810180-EU, 1981 Fla. PUC Lexis 165 *7 (Oct. 2, 1981) (Commission approved new power plant even though its capacity was not needed for reliability purposes because of the "economic benefits for peninsular Florida in terms of supplying an alternative to oil-fired capacity generation"); In Re: Application for Certification of Tampa Electric Company's Proposed Megawatt Net Coal-Fired Big Bend Unit No. 4, Order No. 9749, Docket No. 800595-EU, 1981 Fla. PUC Lexis 737, *10 (Jan. 16, 1981) (Commission granted need determination petition because of the socio-economic benefits from reducing the dependence on oil).

14. More recently, in 2004, the Commission granted Florida Power & Light ("FPL") and New Hope's petition for determination of need for the expansion of an existing electrical

cogeneration plant. See In re Florida Power & Light Company, Order No. PSC-04-1105A-FOF-EI, Docket No. 040766-EI, 2004 WL 2671831 (Nov. 18, 2004). Even though there was no reliability need from a planning perspective, because the FPL-New Hope contract was only for as-available energy, the Commission recognized both the economic need for the plant because the contract was at a discount to FPL's as-available rate and the socio-economic need for the plant because it enhanced FPL's fuel and geographic diversity. See also In re: Petition for determination of need for Hines Unit 2 Power Plant by Florida Power Corporation, Order No. PSC-01-0029-FOF-EI, Docket No. 001064-EI, 2001 Fla. PUC Lexis 34, *8 (Jan. 5, 2001) (recognizing the decision to construct Hines 2 in the time frame sought was driven primarily by economics in finding a demonstrated need for the Hines 2 plant).

15. The Commission's rule and precedent implementing the PPSA are consistent with recent legislation in Florida. This legislation, which took effect July 1, 2006, is clearly intended to generally promote power generation with nuclear fuel. The legislature specifically amended Section 403.519, Fla. Stats., to require the consideration of fuel diversity in need determination proceedings. The PPSA was also amended to include expedited procedures for the consideration of applications for nuclear facilities, including the exemption of such facilities from compliance with the Commission's Bid Rule. The Florida legislature recognized that economic and socio-economic benefits can provide the necessary need for new generation under the PPSA.

16. The CR3 Uprate is consistent with Commission and legislative precedent. The CR3 Uprate will provide PEF's customers substantial fuel savings that exceed the estimated cost of the CR3 Uprate. Fuel savings exist because additional nuclear capacity at CR3 from the CR3 Uprate will displace higher cost generation from fossil fuel plants and purchased power

arrangements. The total fuel savings from the CR3 Uprate is estimated to exceed \$2.6 billion with an estimated net present value benefit after costs to PEF's retail customers of \$327 million.

17. The CR3 Uprate further provides a stable source of additional base load power. Nuclear generation is not subject to the same supply interruptions or changes and price volatility that can affect generation with fossil fuels. Rather, the supply of nuclear fuel is relatively plentiful and stable in price. The Company, its customers, and the State, thus, will benefit from increased price stability, enhanced fuel diversity, and decreased reliance on foreign fuel sources resulting from the addition of nuclear capacity to the Company's system.

18. For all of these reasons, based on Commission rules and precedent implementing the PPSA and the recent legislation amending the PPSA, there is a demonstrated need for the CR3 Uprate.

B. The CR3 Uprate Provides Adequate Electricity at a Reasonable Cost.

19. Nuclear energy is the lowest cost energy available on PEF's system. Producing additional nuclear energy from the CR3 Uprate, therefore, will produce energy at the lowest possible generation fuel cost. By definition, the lowest cost energy is a reasonable cost.

C. The CR3 Uprate is the Most Cost-Effective Option Available.

20. The CR3 Uprate, because of the total and net fuel cost savings it will generate, is the most cost-effective option. The CR3 Uprate will displace higher cost generation on PEF's system, yielding substantial fuel savings to the net benefit of PEF's customers. PEF's customers will receive additional generation at a net savings, not a cost, to them. As a result, the CR3 Uprate is the most cost-effective option for the Company and its customers.

21. PEF has not issued a request for proposals (“RFP”) for alternative generation to the CR3 Uprate, nor is one needed or required. The CR3 Uprate, as explained further below, is exempt from all requirements of the Bid Rule under subsection (18) of the Bid Rule. Because the CR3 Uprate provides customers additional energy generation at a net savings, not a net cost, no RFP was needed. No generation alternative can supply 180MW of additional power at a net savings to customers comparable to that provided by the CR3 Uprate. All other supply-side generation alternatives will most likely provide additional power at a net cost to customers. The CR3 Uprate is, as a result of its net fuel savings benefits, the most cost-effective generation option for PEF and its customers.

D. No Reasonably Available Conservation Measures Mitigate the Need for the CR3 Uprate.

22. The Commission is required, pursuant to Section 403.519, to consider conservation measures taken by or reasonably available to the utility that may mitigate the need for the additional power generation. PEF has demand-side programs in place. The Company’s DSM Plan and conservation goals were approved in the DSM Plan Docket, Order No. PSC-04-0769-PAA-EG. Based on the approved goals, these programs are currently providing the maximum conservation benefit available under the Company's existing DSM plan.

23. Expanding conservation programs cannot displace the CR3 Uprate. Avoiding the CR3 Uprate using conservation measures would increase reliance on fossil fuels, increase emissions, and increase costs to customers. Conversely, the CR3 Uprate replaces fossil fuel generation and emissions with relatively cleaner nuclear fuel generation at a net savings to customers. There simply are no conservation measures that PEF can implement to mitigate the need, then, because there is an economic, not a reliability, need for the CR3 Uprate. See In re: Petition to Determine Need for Existing Tiger Bay Electrical Power Plant and Nominal Electrical

Capacity Increase to that Plant by Florida Power Corp., Order No. PSC-97-1091-PCO-EI, Docket No. 971059-EI, 1997 WL 614367 (Sept. 19, 1997) (Commission ruled that no conservation measure existed to offset expansion of Tiger Bay Facility because expansion was achieved at no cost to the customer).

E. Adverse Consequence of Delay.

24. The benefits of the CR3 Uprate -- the substantial fuel savings -- will be adversely impacted if the CR3 Uprate is delayed. The fuel savings benefits are premised on completion of the CR3 Uprate during the 2009 and 2011 scheduled fuel outages. Delay in the approval of PEF's Petition will delay the order of the necessary equipment and material to meet this timetable, potentially extending the scheduled outages or requiring another CR3 outage to complete the CR3 Uprate. Either result will significantly reduce the fuel savings from the CR3 Uprate because the Company will have to substitute higher cost generation for CR3 during any extended or additional CR3 outage. A delay resulting in an extended or additional outage will also mean that construction is delayed with the corresponding increase in construction costs over the time period of the delay, and the potential need to buy additional replacement power during any additional or extended outage. This additional cost will also reduce the fuel savings benefits of the CR3 Uprate. Finally, delaying the CR3 Uprate means that the fuel savings benefits from the CR3 Uprate will be delayed as well, and customers will not receive the savings as soon as they otherwise would have received them. To obtain the full benefit of the substantial fuel savings the CR3 Uprate will generate, PEF's Petition must be timely approved to enable PEF to meet the schedule for completion of the CR3 Uprate during the scheduled CR3 refueling outages in 2009 and 2011.

IV. THE CR3 UPRATE IS EXEMPT FROM THE COMMISSION'S BID RULE.

25. PEF requests a determination by the Commission that the CR3 Uprate is exempt from the requirements of Rule 25-22.082, F.A.C. because the CR3 Uprate is exempt under the Bid Rule's own exemption provision. Rule 25-22.082(18) exempts a utility from compliance with any part or all of the Bid Rule if the utility demonstrates that its proposal "will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or otherwise will serve the public welfare." Rule 25-22.082(18), F.A.C. The CR3 Uprate satisfies all three elements of the Bid Rule's exemption provision.

26. PEF's proposed CR3 Uprate will result in significant fuel savings from additional nuclear power at a net benefit to customers. This unique characteristic of the CR3 Uprate means that no entity offering a supply-side generation alternative can likely propose a lower cost alternative for the same amount of power, and certainly not from relatively clean nuclear power. Issuing an RFP, therefore, is a meaningless exercise. The CR3 Uprate, by definition of the net fuel savings benefits driving the project, is the lowest cost supply of electricity for PEF's customers. Further, the CR3 Uprate will increase the reliable supply of base load power with the lowest cost fuel source available to the Company. The public welfare will also be served by adding additional, low cost nuclear fuel generation at a net savings to customers. Increased use of nuclear fuel for power generation from the CR3 Uprate reduces the reliance on out-of-state fossil fuel resources. All elements of the Bid Rule exemption provision, therefore, are satisfied by the CR3 Uprate.

27. It bears emphasis too that any RFP process will delay the CR3 Uprate to the detriment of customers without any chance of a realistic lower-cost alternative. The delay, as

explained above, will increase the CR3 Uprate costs and reduce the fuel savings benefits customers will receive. Requiring an RFP for the CR3 Uprate, when it is so clear that an RFP will not achieve the purpose for which the RFP process was designed, creates a disincentive for PEF to move forward with the CR3 Uprate. For this reason as well, it is in the public welfare to move forward with the CR3 Uprate without the delay of an RFP.¹

28. In sum, the CR3 Uprate is exempt from the requirements of the Bid Rule under the Bid Rule itself. The risk of losing significant fuel savings benefits if the CR3 Uprate is delayed for an RFP process far outweighs any benefit from rote compliance with the Bid Rule with no hope of another alternative that provides additional generation at a net savings to customers and the added environmental and fuel diversity benefits the CR3 Uprate provides. No purpose, therefore, is served from conducting an RFP for the CR3 Uprate. PEF requests that the Commission exempt the CR3 Uprate from compliance with all requirements of the Bid Rule.

V. PEF REQUESTS COST RECOVERY FOR THE CR3 UPDATE THROUGH THE FUEL CLAUSE.

29. The CR3 Uprate is an innovative measure that can be pursued during the 2009 steam generator replacement and refueling outage and 2011 refueling outage. It takes

¹ For these reasons, the standards set forth in Section 120.542, Fla. Stats., for the waiver of administrative rules by agencies are also satisfied. To obtain a waiver the petitioner must show that: (1) the purpose of the rule will otherwise be satisfied even though the rule is waived and (2) substantial hardship (technical, economic, legal, or other type of hardship) will result from compliance with the rule. The purpose of the Bid Rule is to assist the Commission and utility in determining that the most cost-effective generation alternative is selected. No more cost effective generation likely exists than the CR3 Uprate, which generates net fuel savings for customers, thus the purpose of the Bid Rule is met. Further, both PEF's customers and the State face a substantial economic hardship from complying with a fruitless RFP process that will delay the CR3 Uprate, causing PEF to miss the window of opportunity to complete the CR3 Uprate during the planned CR3 refueling outages, thereby reducing and delaying the substantial fuel savings and fuel diversity benefits of the project.

advantage of and enhances the low cost generation of power through nuclear fuel resources for the benefit of PEF's customers. The CR3 Uprate was not and is not part of the Company's plan to add generation capacity to meet future reliability needs and, therefore, the uprate project cannot be found in the Company's Ten Year Site Plans. Similarly, the CR3 Uprate was not and is not included in the Company's base rates. Recovery of the costs of the CR3 Uprate, in order to obtain the substantial fuel savings benefits for customers however, is warranted under the Fuel Clause.

30. PEF proposes to recover the costs of the power uprate itself, any necessary transmission changes, and any POD modifications required by the additional power on PEF's system through the Fuel Clause. Existing Commission precedent support the Company's request for this cost recovery.

31. The power uprate costs, transmission-related costs, and POD-related costs for the CR3 Uprate should be recovered under the Fuel Clause because (1) the costs are not recognized or anticipated in base rates; (2) the costs will be recovered only to the extent they are expected to result in fuel savings to customers; and (3) the CR3 Uprate benefits customers by reducing costs and providing substantial fuel savings. Under long-standing Commission precedent, the costs of the power uprate and transmission-related cost impacts are recoverable through the Fuel Clause.

32. A fundamental principle underlying cost recovery through the Fuel Clause since 1981 is the encouragement of innovative actions to reduce costs and benefit customers through the incentive of immediate cost recovery for the utility. The Commission readily approved the recovery of capacity purchase costs not previously addressed in base rates through the Fuel Clause when the costs had the effect of replacing expensive, oil-fired generation with cheaper

“coal-by-wire” generation. Order No. 9957, Docket No. 810001-EU, 1981 Fla. PUC Lexis 531 (April 20, 1981). The Commission pointed out that its decision awarding cost recovery through the Fuel Clause in this instance was just an example of the type of innovative “ideas and programs” that the Commission intended to encourage utilities to pursue in an effort to lower customer costs. Id. The “underlying principle” of the Commission’s decision, that utilities must be encouraged with incentives to pursue innovative actions designed to benefit customers by lowering costs, was intended to have broad “application elsewhere.” Id.

33. The Commission has consistently followed this principle, providing for recovery of costs not currently being recovered through base rates when the costs, if expended, will result in fuel savings to customers. See Order 14546, Docket Number 850001-EI-B, 1985 Fla. PUC Lexis 531 (July 8, 1985). Other examples abound in Commission orders. Re Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-98-0412-FOF-EI, Docket No. 980001-EI, 1998 WL 173332 (Mar. 20, 1998); Re Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI, 1997 WL 199376 (Mar. 31, 1997); Re Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-96-0353-FOF-EI, Docket No. 960001-EI, 1996 WL 189999 (Mar. 13, 1996); Re Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-95-0450-FOF-EI, Docket No. 950001-EI, 1995 WL 220901 (Apr. 6, 1995); and In Re: Petition for approval to recover Orimulsion project costs through an oil-backout cost recovery factor by Florida Power and Light Company, Order No. PSC-94-1106-FOF-EI, Docket No. 940391-EI, 1994 Fla. PUC Lexis 1126 (Sept. 7, 1994).

34. Indeed, the Commission recently reaffirmed this principle in 2001, by providing that “the appropriate regulatory treatment for capital projects with an in-service date on or after January 1, 2002, that are expected to reduce long-term fuel costs is the treatment

prescribed by this Commission in Order No. 14546.” See In re Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor, Order No. PSC-01-2516-FOF-EI, Docket No. 010001-EI, 2001 WL 1677492 (Dec. 26, 2001). The treatment prescribed by Order No. 14546 is recovery of the costs through the Fuel Clause.

35. In fact, the Commission previously approved for cost recovery through the Fuel Clause the costs associated with FPL’s power uprate at its Turkey Point nuclear units. The Commission, relying on Order No. 14546, pointed out that the costs were not previously addressed in determining current base rates and the fuel savings “are due to the difference between low cost nuclear fuel replacing higher cost fossil fuel.” Re Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-96-1172-FOF-EI, Docket No. 960001-EI, 1996 WL 554613, *3 (Sept. 19, 1996). The Commission granted cost recovery through the Fuel Clause for estimated costs of \$10 million for a 31 MW increase in the nuclear capacity with resulting estimated fuel savings of \$198 million or a net present value of \$97 million to FPL’s customers. Id.

36. The CR3 Uprate satisfies the underlying principle of the Commission’s prior orders granting cost recovery through the Fuel Clause for costs that were not addressed in determining current base rates that result in lower costs to customers. The CR3 Uprate is an innovative project that will replace higher cost fossil fuel and purchase power generation with the lowest fuel cost generation available to the Company. While the costs of the CR3 Uprate are not insignificant, the fuel savings benefits to customers are substantial, exceeding \$2.6 billion in total with a net present value of \$327 million to the retail customer. The CR3 Uprate, therefore, is the type of innovative “ideas and programs” that the Commission

intended to encourage utilities to undertake for the benefit of customers by providing the incentive of cost recovery through the Fuel Clause.

37. Because PEF has met the Commission's requirements for cost recovery of the power uprate and related transmission and POD impact costs through the Fuel Clause under long standing Commission precedent and principles, the Commission should grant PEF's petition for cost recovery through the Fuel Clause.

VI. Disputed Issues of Material Fact.

38. PEF is not aware at this time that there will be any disputed issues of material fact in this proceeding. Through its testimony and exhibits, PEF expects to demonstrate that the proposed nuclear facility expansion satisfies the statutory criteria set forth in Section 403.519, Fla. Stats. PEF also expects to demonstrate that it is entitled to a Bid Rule exemption. Finally, PEF expects to demonstrate why cost recovery through the Fuel Clause is appropriate and warranted.

VII. Conclusion.

39. PEF seeks an affirmative determination of need and an exemption from all requirements of the Bid Rule for the CR3 Uprate. There is an economic need for the substantial fuel savings that will be realized by customers over the remaining life of CR3 from the power uprate. The project is the most cost-effective option available to the Company. It presents a unique opportunity to take advantage of a small window of time during which the CR3 plant is already scheduled to be offline to employ an innovative, two-phase power uprate to provide

customers fuel savings and increase the diversity of fuel supply on the Company's system. It will provide adequate electricity at a reasonable cost, or in this case a net savings, through additional nuclear power. No other generation can provide additional power at a net savings to customers with the additional environmental and fuel diversity benefits of the CR3 Uprate, therefore, any effort to solicit alternatives will only be futile and delay and reduce the substantial fuel savings benefits of the project. An affirmative determination of need and an exemption from the bid rule is therefore warranted for the CR3 Uprate.

40. PEF seeks an affirmative determination that cost recovery through the Fuel Clause is also warranted for the CR3 Uprate costs. The significant fuel savings from the innovative CR3 Uprate demonstrate that the costs of the power uprate itself and any necessary transmission and POD changes are properly recoverable through the Fuel Clause. Future filings in the Fuel and Purchase Power Cost Recovery Docket will allow for Commission review of projected costs as well as the prudence of costs already expended.

41. For all the reasons provided in this Petition, as developed more fully in PEF's pre-filed testimony and exhibits, PEF respectfully requests that the PSC grant an exemption from the requirements of the Bid Rule, grant a favorable determination of need for the CR3 Uprate, and determine that the costs of the CR3 Uprate are eligible for recovery under the Fuel Clause.

42. Pursuant to Rule 25-22.080(2), F.A.C., PEF respectfully requests that, within seven days, the Commission set a date for commencement of a hearing on this Petition; that the Commission give notice of the commencement of the proceeding as required by Rule 25-22.080(3), F.A.C.; and that the Commission determine that there is a need for the proposed nuclear electrical power plant expansion described in this Petition, and file its order making such

determination with the Florida Department of Environmental Protection pursuant to Section 403.507(2)(a)2, Fla. Stats.

Respectfully submitted this 22nd day of September, 2006.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through fuel clause, by Progress Energy Florida, Inc.

DOCKET NO. 060642-EI
ORDER NO. PSC-06-1059-PCO-EI
ISSUED: December 22, 2006

ORDER BIFURCATING THE PROCEEDING

On September 22, 2006, Progress Energy Florida, Inc. (PEF) filed a Petition for Determination of Need for Expansion of its Crystal River Unit 3 Nuclear Power Plant (Petition). Included in its Petition was a request for exemption from Rule 25-22.082, Florida Administrative Code (F.A.C.). Also included in its Petition was a request that PEF be permitted to recover the costs of the expansion through the fuel clause. On November 20, 2006, the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), Florida Retail Federation (FRF) and AARP¹ filed a Joint Motion to Sever and Abate the issue on cost recovery from the need determination proceeding (Motion to Sever and Abate). On December 11, 2006, PEF filed its response to the Motion to Sever and Abate. In its response, PEF states it is not opposed to severing the cost recovery portion, but not for the reasons raised in the motion. PEF states that the grounds asserted in the Motion to Sever and Abate are wholly unsupported and inconsistent with established Commission precedent.

The Prehearing Officer has authority pursuant to Rule 28-106.211 F.A.C. to issue orders necessary, among other things, to prevent delay and promote the just, speedy and inexpensive determination of all aspects of the case, including bifurcating the proceeding.

PEF's Petition invokes Commission jurisdiction under Section 403.519, Florida Statutes (F.S.), to determine the need for the expansion of the existing nuclear power plant and asks the Commission to exempt PEF from Rule 25-22.082, F.A.C. (the Bid Rule). The bid rule is integrally intertwined with a need determination proceeding. The need determination is required by the Florida Electrical Power Plant Siting Act, and as such, serves as the Commission's report to the Department of Environmental Protection as required by Section 403.507(4), F.S. Need determinations made pursuant to Section 403.519, F.S. are limited in scope by the statute and are expedited proceedings.

By requesting cost recovery through the fuel clause, PEF also invokes the Commission's ratemaking jurisdiction pursuant to Chapter 366, F.S. The fuel cost recovery docket is an ongoing proceeding with an annual hearing held every November. Each investor-owned utility presents its historical, actual, and projected fuel costs for the Commission to establish an annual cost recovery factor to be charged to ratepayers. The fuel cost recovery docket is not an expedited proceeding, but rather one of continuing and longterm duration. PEF's Petition does

¹ FRF, FIPUG and AARP each filed a Petition to Intervene on November 20, 2006 which had not been granted at the filing of the Motion to Sever and Abate. The Parties' Petitions were granted on December 19, 2006.

not ask that its proposed cost recovery for the Crystal River Unit 3 expansion be heard in the normal course of the fuel proceeding, but rather in the expedited proceeding for the need determination.

The need determination is an expedited proceeding in which the Commission must make specific findings in a timely manner. Further, cost recovery is a continuous and longterm proceeding involving audits, review of costs, and extensive discovery, all of which may delay the determination of need.

Upon consideration of the relevant pleadings filed in this docket, I find that bifurcating the proceeding will prevent delay of the need determination portion and promote the just, speedy and inexpensive determination of all aspects of the case. The issues of the need for the expansion of Crystal River Unit 3 and the request to exempt PEF from the bid rule will be heard at the January 18, 2007 evidentiary proceeding. The issue of cost recovery of the expansion will be heard by the Commission at a later date.

Based on the foregoing, it is

ORDERED by Matthew M. Carter II, as Prehearing Officer, that the issue of cost recovery of the expansion of Progress Energy Florida Inc.'s Crystal River Unit 3 nuclear power plant will not be reviewed in the instant docket. It is further

ORDERED that Progress Energy Florida Inc.'s Petition for Determination of Need for Expansion of its Crystal River Unit 3 Nuclear Power Plant and for Exemption of Rule 25-22.082, Florida Administrative Code, will be heard, as scheduled on January 18, 2007. It is further

ORDERED that the issue of cost recovery will be set for a later date.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 22nd day of December, 2006.

/s/ Matthew M. Carter II
MATTHEW M. CARTER II
Commissioner and Prehearing Officer

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

LCB

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; or (2) 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 the Commission Clerk and Administrative Services, 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.