

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO. 100437-EI
ORDER NO. PSC-11-0208-PCO-EI
ISSUED: April 26, 2011

ORDER DENYING PROGRESS ENERGY FLORIDA, INC.'S
MOTION TO BIFURCATE

Background

During the 2010 fuel adjustment proceedings, the Commission directed that a separate docket be established to review the extended outage at Progress Energy Florida, Inc.'s (PEF) Crystal River 3 nuclear plant (CR3).¹ As a result of the Commission's action this docket was opened. Florida Industrial Power Users Group (FIPUG); White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS), and the Office of Public Counsel (OPC) were granted leave to intervene in this docket.

On December 3, 2010, PEF filed a motion to establish a case scheduling order. In its motion, PEF requested that the Commission establish a case schedule contingent upon the date CR3 returned to service. On December 8, 2010, FIPUG filed its response urging the Commission to set a date-certain for this proceeding. FIPUG's stated purpose was to ensure that the Commission reached a decision in 2011 so the decision could be incorporated into the 2012 fuel factors.

On January 24, 2011, the Prehearing Officer conducted a status conference to determine whether to establish a case schedule. At the status conference, PEF provided the then-most current information on the anticipated return of service of the CR3. PEF asserted that it anticipated the CR3 would be returned to commercial service on or before March 31, 2011. Also, at the status conference, counsels for all the parties in the docket stated their positions regarding a case schedule.

As a result of the status conference an order was issued setting a case schedule for the filing of testimony in the event the CR3 returned to operation on or before March 31, 2011.² In the event the CR3 did not return to commercial service on or before March 31, 2011, PEF was required to file a detailed status update on the anticipated return to service and notify the Commission of any proposed adjustments to its hearing schedule. Intervenors were required to respond to PEF's proposed adjustments within 7 days of PEF's filing.

¹ Order No. PSC-10-0632-PCO-EI, issued October 25, 2010, in Docket No. 100001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

² Order No. PSC-11-0108-PCO-EI, issued February 8, 2011, in Docket No. 100437-EI

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PEF's Status Update and Motion to Bifurcate

On April 4, 2011, PEF filed its status update. According to PEF, it was in the process of completing the final stages of retensioning the CR3 containment building when PEF's surveillance and monitoring equipment alerted PEF to possible issues in the containment structure. PEF states that it immediately stopped work and launched an investigation. PEF asserts that the investigation determined that an additional separation of sections of concrete (delamination) of the containment wall took place in the bay adjacent to the bay in which the initial concrete delamination occurred. PEF states that it cannot reasonably estimate a return to service for the CR3 as of the filing of the status update. PEF contends that it will be in a position to provide more information to the Commission once an engineering analysis is completed.

PEF filed a Motion to Bifurcate the issues in this docket with its status update. In the motion, PEF requests that the Commission establish two phases of hearing with the first phase of issues to include the time from the inception of the steam generator replacement project execution, through the time that PEF discovered the second delamination event on March 14, 2011. The second phase of the docket would encompass the analysis of the second delamination event to its resolution. For the second phase of the hearing, PEF proposes that it follow the same procedure established in Order No. PSC-11-0108-PCO-EI, and file a status update on a date set by the Commission regarding the status of the second delamination and the anticipated return of CR3 to commercial service. PEF proposes that discovery on both phases can proceed in the docket regardless of the current indeterminate schedule for phase two issues.

PEF argues that bifurcation resolves all concerns previously raised by the parties to the case scheduling. PEF contends that if the hearing is not bifurcated, the hearing schedule will be open-ended, which the intervenors opposed. PEF asserts that it cannot reliably determine at this time when its investigation of the second delamination will be complete, what the results of that investigation will be, and when CR3 will return to service.

In support of its position PEF states that the Commission can proceed to a prudence determination of issues that can now be resolved in a timely manner while the evidence is not stale and the facts are available to all parties and to the Commission. PEF urges that the bifurcation is the most efficient use of the Commission's resources. According to PEF, bifurcation allows the Commission to focus on past issues that can be resolved while separating out issues that are still developing due to on-going events and circumstances for monitoring and resolution in a separate phase when those events and circumstances are over. PEF believes that the intervening parties will obtain the timely hearing on issues that can be resolved.

Intervenors' Responses

On April 11, 2011, OPC, FIPUG, and PCS, each filed an objection to PEF's motion to bifurcate. In its response, OPC states that PEF's motion is premature and should not be granted based on the limited information contained in the status report. According to OPC, the suggested March 15, 2011, demarcation for purposes of hearing appears to be premature and perhaps arbitrary. OPC states that it is concerned that there are not enough facts known at this time to support a definitive decision to fundamentally alter the nature of the docket.

Both FIPUG's and PCS's filings reflect the same concern that the motion to bifurcate is premature. FIPUG argues that PEF has not provided sufficient information for FIPUG to meaningfully respond to the motion to bifurcate. PCS, in opposing the bifurcation at this time, states that PEF did not provide sufficient information for a reasoned decision to be reached.

Moreover, PCS states that it is one of the parties that previously expressed concerns about waiting an indefinite period before a hearing was conducted in this docket. PCS states that its position was premised on PEF's previous projection that the CR3 would be returned to service in the first quarter of 2011. PCS states that PEF's proposed schedule for the case, the recommendations of other parties and the Commission staff, and the Prehearing Officer's decision were linked to PEF's stated expectation that the CR3 return to commercial service was reasonably imminent. PCS proposes instead that PEF update the Commission and parties on a regular basis and that discovery continue. PCS also encourages PEF and the active parties to employ informal exchanges and discussion to facilitate full and timely information disclosure. Likewise, OPC suggests that the Commission require the parties to have further discussion regarding the status of the containment building, repair activities, and witness availability. OPC urges the Commission to schedule at least one additional status conference.

Analysis and Ruling

Having reviewed the status update, PEF's motion, and the intervenors' responses, I find that it is premature to make a decision on bifurcation of this proceeding. A status conference will be held on May 23, 2011, at 1:30 p.m., in Room 148, Easley Building, 2540 Shumard Oak Blvd, Tallahassee, Florida. No later than May 19, 2011, PEF shall file an updated status report in this docket. The report shall include: a description of how far along PEF is in its engineering analysis of the second delamination event; a best estimate of the time it will take to complete the engineering analysis; a current best estimate of the time it will take to bring CR3 back into commercial service; and a discussion of PEF's ability to satisfy its projected loads using existing capacity resources.

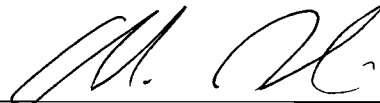
Based on the foregoing it is

ORDERED that Progress Energy Florida, Inc.'s Motion to Bifurcate is premature and is therefore denied. It is further,

ORDERED that Progress Energy Florida, Inc. shall file an updated status report as more specifically set forth in this Order. It is further

ORDERED that a Status Conference before the Prehearing Officer shall be held on May 23, 2011, in Room 148, at 1:30 p.m.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 26th day of April, 2011.



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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; 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.