

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-11-0352-PCO-EI
ISSUED: August 23, 2011

ORDER ESTABLISHING PROCEDURE

I. Background

In the fall of 2009, during Refueling Outage 16, Progress Energy Florida, Inc. (PEF) replaced the Crystal River Unit 3 (CR3) nuclear power plant's existing steam generator. On October 2, 2009, PEF discovered a delamination (cracking of the layers of concrete) of a portion of CR3's containment building. CR3 was not returned to service in the timeframe planned by PEF for Refueling Outage 16 and the outage was extended.

During the Commission's 2010 fuel and purchased power cost recovery docket, PEF filed a motion to create a separate docket to investigate the prudence and reasonableness of PEF's actions concerning the delamination and to review the prudence of PEF's resulting fuel and purchased power replacement costs associated with the extended outage. PEF's motion was granted and this docket was opened by the Commission. The Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS), and Southern Alliance for Clean Energy (SACE) have been granted intervention in this docket.

On January 24, 2011, the Prehearing Officer conducted the first of several status conferences regarding the establishment of a case schedule. By Order No. PSC-11-0108-PCO-EI, issued February 8, 2011, a case schedule was established based on PEF's March 31, 2011 anticipated return to service of CR3. Subsequently, in a status report and motion dated April 4, 2011, PEF notified the Commission that CR3 would not return to service on March 31, 2011, as anticipated. PEF explained that on March 14, 2011, 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 filed a detailed updated status report on June 27, 2011, indicating that during the March 14, 2011 retensioning, PEF discovered several additional delaminations to other bays of the containment structure. PEF reported that because of the March 14, 2011 delaminations, PEF estimated that CR3 would not return to service until 2014. PEF also reported that its initial analysis of the cost of repairs to the containment building were between \$900 million and \$1.4 billion.

On August 4, 2011, PEF filed a Second Motion to Establish Case Schedule. On August 5, 2011, OPC, FIPUG, and PCS filed objections to PEF's motion. At the August 8, 2011 status conference, the parties and Commission staff discussed the motion, objections, the scope of the docket, and possible hearing schedules.

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FPSC-COMMISSION CLERK

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. Case Schedule

Parties Arguments

In its Second Motion to Establish Case Schedule, PEF suggests that the Commission divide the hearing into three distinct phases. During the first phase the Commission would review the prudence of PEF's actions leading up to and including the March 14, 2011 delamination. For this first phase, PEF proposes that the Commission conduct a hearing within 180 days of the issuance of this Order Establishing Procedure. According to PEF, the second phase of the proceeding should include PEF's decision to repair rather than retire CR3. PEF believes that Phase 3 should include PEF's actions following the March 14, 2011 delamination through its return to service. PEF suggests that the Commission retain jurisdiction to schedule the second and third phases of this docket at the appropriate time when the issues are ripe for hearing. PEF argues that proceeding in this manner allows all parties and the Commission to proceed in a timely manner. PEF contends that this is the most efficient use of the Commission's resources as it allows the Commission to focus on issues that have occurred while separating out issues that are still developing due to ongoing events and circumstances. PEF asserts that intervening parties will obtain a timely hearing on issues that are ready to be resolved while full discovery remains open on all other issues.

OPC's primary objection to PEF's motion is the expedited hearing schedule. OPC stated that by Order No. PSC-11-0108-PCO-EI, a case schedule was established based on CR3 returning to service on or before March 31, 2011. OPC contends that due to the additional delamination discovered on March 14, 2011, the nature of this docket transformed from that initially considered at the first status conference. OPC also asserts that the decisions of PEF to repair or retire CR3 have not been fully formed and are still uncertain. OPC does state that it is ready to proceed with the hearing schedule established by Order No. PSC-11-0108-PCO-EI as long as there is continued cooperation from PEF as it relates to discovery and sufficient access to all of the information necessary for a complete and factual decision in the matter. OPC did assert both in its motion and in the discussion at the status conference that additional time may be necessary for surrebuttal testimony. While OPC expressed some concern over the division of the case into phases, it stated that it felt a portion of the docket would be ripe for hearing in 2012. OPC's concern over division of the docket into phases was that it may prematurely separate connected aspects of the case so that intervenors would be limited from advancing reasonable theories of the case.

FIPUG opposes any division of this docket. FIPUG states that breaking the case into more than one phase would be more expensive for FIPUG and other consumer interests. FIPUG states that it is a group of industrial customers with limited resources to litigate with PEF. FIPUG also states that Rule 28-106.108, F.A.C. is helpful and supportive of FIPUG's position in

that if separate matters involve similar issues or facts or parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings. FIPUG argues that the issues related to CR3, while complicated, can be tried together, and that splitting the issues would overly complicate the administration of justice. FIPUG concedes that following its approach, the hearing would not occur until 2014 or 2015.

PCS objects to the relief PEF requests in PEF's Second Motion to Establish Case Schedule. PCS contends that the prolonged outage of CR3 has serious, immediate, and long-term rate implications for consumers and financial implications for PEF's investors, but that multiple litigation tracks will be costly and inefficient. PCS argues that the additional delamination and the evolving issues make it clear that the docket is not yet ripe for hearing. PCS does believe PEF's decision to repair or retire CR3 may be ripe for a Commission decision. PCS suggests that rather than schedule a hearing, the parties be directed to meet and develop issues for the scope of hearing. PCS contends that once the issues are developed, a hearing schedule may be established.

Commission staff recommends that the docket be divided into three phases. One phase would consist of the events and decisions of PEF leading up to the October 2, 2009 delamination event at CR3. Another phase of the docket would consist of PEF's decision to repair the unit rather than retire it. A third phase would consist of the events and decisions of PEF after the October 2, 2009 delamination event occurred until CR3 returns to service. Staff recommends that the first and second phases are ripe and could be heard in 2012.

Analysis and Ruling

This docket involves a thorough review by the Commission and by the intervening parties of the prudence of PEF's conduct in replacing the steam generator at CR3. It is a complex docket involving events and decisions that have occurred in the past. It also includes events and decisions that are yet to occur. To the extent that actions and decisions have occurred in the past, it is appropriate for the Commission to timely review those decisions. This prevents regulatory lag and gives regulatory certainty to both ratepayers and to the utility regarding costs associated with PEF's prior decisions and actions.

By holding timely hearings to review events and decisions that have already occurred, it prevents the information to be presented from becoming stale. By waiting until 2014 to review facts associated with a 2009 event, much of the testimony, exhibits and information is likely to become stale or even unavailable. For instance, as acknowledged by both OPC and PEF, one of PEF's witnesses has already retired. If the hearing were to be delayed until 2014, that witness and others may become unavailable.

Delaying a hearing and decision in this docket may delay decisions in other dockets pending before us. While this docket addresses the prudence of PEF's decisions regarding the steam generator replacement at CR3, it has elements of and effects on other proceedings before us. In the fuel and purchased power cost recovery docket, PEF has been permitted to collect the costs associated with replacement power from ratepayers, subject to refund, until a prudence

decision has been made in this docket (See, Order No. PSC-10-0734-FOF-EI, issued December 20, 2010, in Docket No. 100001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor). In the Nuclear Cost Recovery docket, decisions regarding the feasibility of continuing with the planned uprate of CR3 have been postponed until 2012. (See, Docket No. 110009-EI, In re: Nuclear Cost Recovery Clause). PEF has filed a decommissioning cost study that is currently before the Commission in another docket (See, Docket No. 100461-EI, In re: Petition for approval of nuclear decommissioning cost study by Progress Energy Florida, Inc.). Decisions in this docket may also affect decisions in the decommissioning docket. And finally, any rate proceeding that PEF or a party brings to us between now and 2014 may be affected by our decisions in this docket.

Based on the foregoing, I find that dividing the docket into phases will aid the Commission in evaluating the issues in a timely manner. Decisions and evidence in one phase may be included and moved into the record in later phases, thus allowing us to build on our decision if necessary. Accordingly, the scope of this docket, which is to investigate the extended outage and replacement costs of PEF's CR3, shall be divided into three phases. Those phases will be considered in different hearing tracks.

Phase 1

All of PEF's decisions and activities leading up to the October 2, 2009 delamination event have already occurred and are ripe for hearing. Therefore, the first phase of this docket shall include a prudence review of the events and decisions of PEF leading up to the October 2, 2009 delamination event. Phase 1 is set for hearing June 11-15, 2012. The parties shall follow the controlling dates set forth in Section IX of this Order.

Phase 2

The second phase of this docket will be a consideration of the prudence of PEF's decision to repair rather than decommission CR3. PEF has indicated in its status reports that it is continuing with the repair of the containment structure and is not decommissioning the nuclear unit. In the August 8, 2011 status conference PEF assured the Commission that it would continue with those activities prior to the hearing on Phase 2. At that August 8, 2011 status conference, PEF also indicated it is in the process of doing the engineering work to get a more precise view of the costs and the schedule for repair. PEF stated it believes that information will be complete in the last quarter of 2011. Accordingly, Phase 2 is not ripe for hearing. PEF shall file status reports regarding its analysis of the engineering reports, costs, and schedule for completion of the repair, along with updated information regarding the decision to repair versus retire CR3, in accordance with the controlling dates set forth in Section IX of this Order. The hearing date and schedule for Phase 2 shall be set in a subsequent order.

Phase 3

The third phase of this docket shall include the decisions and events subsequent to the October 2, 2009 delamination leading up to the March 14, 2011 delamination event and the

subsequent repair of the containment building. These events and decisions are still unfolding. Phase 3 is not ripe for hearing. PEF shall file status reports regarding the repair of the containment building in accordance with the controlling dates set forth in Section IX of this Order. The hearing date and schedule for Phase 3 shall be set in a subsequent order.

III. General Filing Procedures

In accordance with Rule 25-22.028, F.A.C., parties filing documents in this proceeding shall submit the original document and the appropriate number of copies to the Office of Commission Clerk for filing in the Commission's docket file. Filings may be made by mail, hand delivery, courier service, or in some instances electronically. Please refer to the rule for the requirements of filing on diskette for certain utilities. To the extent possible, all filings made electronically or on diskette shall be provided in Microsoft Word format. Filings pertaining to this docket should identify the assigned docket number and should be addressed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Testimony and evidence admitted during one phase of this docket, upon proper motion, may be admitted into later phases of the docket.

IV. Prefiled Testimony and Exhibits

Each party shall file, in writing, all testimony and exhibits that it intends to sponsor, pursuant to the schedule set forth in Section IX of this Order. An original and 15 copies of all testimony and exhibits shall be filed with the Office of Commission Clerk, by 5:00 p.m. on the date due. A copy of all prefiled testimony and exhibits shall be served by regular mail, overnight mail, or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins of at least 1.25 inches. All pages shall be filed on three-holed paper, unbound, and without tabs.

Each exhibit sponsored by a witness in support of his or her prefiled testimony shall be:

- (1) Attached to that witness' testimony when filed;
- (2) On three-holed paper, unbound, and without tabs;
- (3) Sequentially numbered beginning with 1 (any exhibits attached to subsequently filed testimony of the same witness shall continue the sequential numbering system);

- (4) Identified in the upper right-hand corner of each page by the docket number, a brief title, and the witness' initials followed by the exhibit's number; and
- (5) Paginated by showing in the upper right-hand corner of each page the page number followed by the total number of pages in the exhibit.

An example of the information to appear in the upper right-hand corner of the exhibit is as follows:

Docket No. 012345-EI
Foreign Coal Shipments to Port of Tampa
Exhibit BLW-1, Page 1 of 2

After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing.

V. Discovery Procedures

A. General Requirements

Discovery shall be permitted continuously during the pendency of this docket, subject to the limitations below. A party shall not be precluded from seeking discovery during any phase of the docket. The Controlling Dates in Section IX for each phase will establish cutoffs for discovery to be used in evidence during that particular phase's hearing but shall not prevent any discovery from being obtained and used in later proceedings.

Discovery shall be conducted in accordance with the provisions of Chapter 120, Florida Statutes (F.S.), and the relevant provisions of Chapter 366 F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery may continue during all phases of this docket. The discovery cut-off dates established for a specific phase, shall apply only to the hearing for that phase.
- (2) Discovery requests shall be served by e-mail, hand delivery, or overnight mail. If a request is served electronically, a hard copy of the request shall be served by hand-delivery, U.S. Mail, or overnight mail on the day that the request is served electronically.
- (3) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate their identification.
- (4) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.

- (5) Discovery responses shall be served within 30 calendar days (inclusive of mailing) of receipt of the discovery request. If responses are served electronically, a hard copy of the responses shall be served by hand-delivery, U.S. Mail, or overnight mail on the day that responses are served electronically.
- (6) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number their produced documents in an unbroken sequence through the final hearing.
- (7) Copies of discovery requests and responses shall be served on parties other than the party from whom discovery is sought to the extent required by the applicable provisions of the Florida Rules of Civil Procedure. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to a total of 1000 for this docket. The parties may divide the number of interrogatories between the phases at their discretion.
- (2) Requests for production of documents, including all subparts, shall be limited to a total of 1000 for this docket. The parties may divide the number of interrogatories between the phases at their discretion.
- (3) Requests for admissions, including all subparts, shall be limited to 200 for this docket. The parties may divide the number of interrogatories between the phases at their discretion.

When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 10 days of service of the discovery request. Further, any specific objections to a discovery request shall be made within 20 days of service of the discovery request. These procedures are intended to reduce delay in resolving discovery disputes.

B. Confidential Information Provided Pursuant to Discovery

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section

366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

When a person provides information that it maintains as proprietary confidential business information to the Office of Public Counsel pursuant to a discovery request by the Office of Public Counsel or any other party, that party may request a temporary protective order pursuant to Rule 25-22.006(6)(c), F.A.C., exempting the information from Section 119.07(1), F.S.

When a party other than the Commission staff or the Office of Public Counsel requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

VI. Prehearing Procedures

A. Prehearing Statements

All parties in this docket and the Commission staff shall file a prehearing statement pursuant to the schedule set forth in Section IX of this Order. The original and seven copies of each prehearing statement shall be filed with the Office of Commission Clerk by 5:00 p.m. on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission.

Each party's prehearing statement shall set forth the following information in the sequence listed below:

- (1) The name of all known witnesses whose testimony has been prefiled or who may be called by the party, along with subject matter of each such witness' testimony;
- (2) A description of all prefiled exhibits and other exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each;
- (3) A statement of the party's basic position in the proceeding;
- (4) A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue. Parties who wish to maintain "no position at this time" on any particular issue or issues should refer to the requirements of subsection C, below;
- (5) A statement of issues to which the parties have stipulated;
- (6) A statement of all pending motions or other matters the party seeks action upon;

- (7) A statement identifying the party's pending requests or claims for confidentiality;
- (8) Any objections to a witness' qualifications as an expert. Failure to identify such objection will result in restriction of a party's ability to conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing; and
- (9) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position on each such issue.

B. Attendance at Prehearing Conference

Pursuant to Rule 28-106.209, F.A.C., a Prehearing Conference will be held for Phase 1, May 23, 2012, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the prehearing conference. Failure of a party (or that party's representative) to appear shall constitute waiver of that party's issues and positions, and that party may be dismissed from the proceeding. Prehearing Conferences for Phases 2 and 3 shall be established by subsequent order.

Waiver of Issues

Any issue not raised by a party either before or during the Phase-Specific Prehearing Conference shall be waived by that party, except for good cause shown. A party seeking to raise a new issue related to an identified phase after the hearing for that phase shall demonstrate each of the following:

- (1) The party was unable to identify the issue because of the complexity of the matter.
- (2) Discovery or other prehearing procedures were not adequate to fully develop the issue.
- (3) Due diligence was exercised to obtain facts touching on the issue.
- (4) Information obtained subsequent to the Prehearing Conference was not previously available to enable the party to identify the issue.
- (5) Introduction of the issue would not be to the prejudice or surprise of any party.
- (6) The Commission has not ruled on that issue during a prior phase of the docket.

Specific reference shall be made to the information received and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall take a position on each issue by the time of the Prehearing Conference or by such later time as may be permitted by the Prehearing Officer. If a party is unable through diligence and good faith efforts to take a position on a matter at issue for that party, it shall explicitly state in its Prehearing Statement why it cannot take a position. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue, and the party's position shall be shown as "no position" in the Prehearing Order. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement. Commission staff may take "no position at this time" or a similar position on any issue without having to make the showing described above.

D. Motions to Strike Prefiled Testimony and Exhibits

Motions to strike any portion of the prefiled testimony and related portions of exhibits of any witness shall be made in writing no later than the Prehearing Conference. Motions to strike any portion of prefiled testimony and related portions of exhibits at hearing shall be considered untimely, absent good cause shown.

E. Demonstrative Exhibits

If a party wishes to use a demonstrative exhibit or other demonstrative tools at hearing, such materials must be identified by the time of the Prehearing Conference.

F. Official Recognition

Parties seeking official recognition of materials pursuant to Section 120.569(2)(i), F.S., shall notify all other parties and staff in writing no later than two business days prior to the first scheduled hearing date. Such notification shall identify all materials for which the party seeks official recognition, and to the extent such materials may not be readily available to all parties, such materials shall be provided along with the notification.

VII. Hearing Procedures

A. Attendance at Hearing

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date of the following:

- (1) All parties agree that the witness will not be needed for cross examination.
- (2) All Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

B. Cross-Examination

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

C. Use of Confidential Information at Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential

classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

VIII. Post-Hearing Procedures

If the Commission (or assigned panel) does not render a bench decision at the hearing, it may allow each party to file a post-hearing statement of issues and positions pursuant to the schedule set forth in Section IX of this Order. In such event, a summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 50 words. If a post-hearing statement is required and a party fails to file in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time, unless modified by the Presiding Officer.

IX. Controlling Dates

The following dates have been established to govern the key activities for Phase 1 of this case:

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| (1) Utility's testimony and exhibits | October 10, 2011 |
| (2) Intervenors' testimony and exhibits | February 10, 2012 |
| (3) Staff's testimony and exhibits, if any | March 12, 2012 |
| (4) Rebuttal testimony and exhibits | April 12, 2012 |
| (5) Prehearing Statements | May 14, 2012 |
| (6) Prehearing Conference | May 23, 2012 |
| (7) Discovery deadline | May 31, 2012 |
| (8) Hearing | June 11 – 15, 2012 |
| (9) Briefs | July 20, 2012 |

The following dates have been established to govern the activities of Phases 2 and 3 of this case:

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| (1) Status Report | January 9, 2012 |
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| (2) Status Report | July 1, 2012 |
| (3) Status Report | January 7, 2013 |
| (4) Status Report | July 1, 2013 |
| (5) Status Report | January 6, 2014 |

In addition, all parties should be on notice that the Prehearing Officer may exercise the discretion to schedule additional prehearing conferences or meetings of the parties as deemed appropriate. Such meetings will be properly noticed to afford the parties an opportunity to attend.

Based upon the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 23rd day of August, 2011.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
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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 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.