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Subject: WOODS.MONICA
DOCKET 100437 Filing
Attachments: PEF Motion to Dismiss Phase I and Motion to Stay Phases 2 and 3.pdf



PEF Motion to
Dismiss Phase I.

Docket 100437-EI

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

1. Attached for filing is Progress Energy Florida, Inc.'s Motion to Dismiss Phase 1 and Motion to Stay Phases 2 and 3 of Docket No. 100437-EI
2. This document has six (6) pages.
3. This document is being filed on behalf of Progress Energy Florida, Inc.
4. This document is being filed by:

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DOCUMENT NUMBER-DATE

01104 FEB 27 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and) Docket No. 100437-EI
Replacement fuel/power costs)
Associated with the CR3 steam)
Generator replacement project,)
By Progress Energy Florida, Inc.) Filed: February 27, 2012

**PROGRESS ENERGY FLORIDA, INC.'S MOTION TO DISMISS PHASE 1 AND
MOTION TO STAY PHASES 2 AND 3 OF DOCKET NO. 100437-EI**

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Rules 28-106.204 and 28-106.211, F.A.C., Section 120.57(4), Florida Statutes, and the Stipulation and Settlement Agreement (the "Agreement") approved by final Florida Public Service Commission (the "Commission") vote on February 22, 2012 in Docket No. 120022-EI (the "Implementation Date" in the Agreement), moves to dismiss Phase 1 and to stay Phases 2 and 3 of this docket. Pursuant to the terms of the Agreement, PEF, the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), White Springs Agricultural Chemicals, Inc. ("White Springs"), and the Federal Executive Agencies ("FEA") (collectively, the "Parties"), settled the outstanding issues related to Phase 1 of this docket thereby rendering Phase 1 moot; therefore, PEF's motion to dismiss Phase 1 should be granted. Additionally, the Agreement's provisions potentially eliminate, and at the least defer, the need for this Commission to undertake Phases 2 and 3 of this docket, and therefore the Commission should grant the motion to stay those phases of this docket.

In support, PEF states:

1. In the fall of 2009, during Refueling Outage 16, PEF replaced the Crystal River Unit 3 ("CR3") nuclear power plant's existing steam generators during its steam generator replacement ("SGR") project. On October 2, 2009, during the SGR project, PEF discovered a

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FPSC-COMMISSION CLERK

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.

2. 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.

3. By Order No. PSC-11-0352-PCO-EI, the Prehearing Officer divided this docket into three phases: (a) Phase 1 is a prudence review of the events and decisions of PEF leading up to the October 2, 2009 delamination event; (b) Phase 2 involved a prudence review of PEF's decision to repair or retire and decommission CR3 when that decision was made; and (c) Phase 3 involved a prudence review of the decisions and events subsequent to the October 2, 2009 delamination through the subsequent repair of the CR3 containment building in the event the Company decided to repair CR3.

4. On January 20, 2012, PEF filed its petition for a limited proceeding to approve the Agreement, which was assigned Docket No. 120022-EI. The Agreement settled issues in several existing and continuing Commission dockets, including this docket. On February 20, 2012, the Commission commenced a public hearing to address PEF's petition for Commission approval of the Agreement to determine if the Agreement was fair, just, and reasonable and in the public interest. At the conclusion of the hearing, the Commission determined that the Agreement was fair, just, and reasonable and in the public interest, and the Commission voted to approve the Agreement on February 22, 2012.

5. Pursuant to the terms of the Agreement approved by the Commission, Phase 1 of this docket should be dismissed and Phases 2 and 3 should be stayed. See Agreement, ¶ 7 (“It is the intent of the Parties that, within five days of the [Commission’s approval of the Agreement], PEF will file a motion to dismiss Phase 1 and to stay Phases 2 and 3 of Docket No. 100437-EI consistent with the terms of this Agreement.”).

6. The Agreement approved by the Commission resolves issues related to Phase 1 of this docket rendering Phase 1 moot and, therefore, the Parties agreed PEF should move to dismiss Phase 1. Commission approval of the Agreement recognizes the express intent of the Parties to move to dismiss Phase 1 of this docket, and accordingly, the Commission should grant PEF’s motion to dismiss Phase 1 based on the Agreement and the Commission’s approval thereof. This Commission has a strong policy in favor of settling disputes by stipulation. See, e.g., In re: Petition to Vacate Order No. PSC-01-1003-AS-EI, Order No. PSC-04-1115-FOF-EI (Fla. PSC Nov. 9, 2004) (noting the requested relief was contrary to “the Commission’s longstanding commitment to the support and encouragement of negotiated settlements.”). See also § 120.57(4), Fla. Stat. (“Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.”). Dismissal of Phase 1 of this docket is, therefore, a straightforward action expressly provided for in the Agreement and directly necessary to give effect to the Agreement’s terms and the Commission’s approval thereof. See Agreement, ¶ 7. For these reasons, PEF respectfully requests this Commission to dismiss Phase 1 of this docket.

7. Similarly, the Parties expressed their intent to stay Phases 2 and 3 of this docket in the Agreement and the Commission approved the Agreement containing these terms. The Parties agreed to stay Phases 2 and 3 of this docket because the Agreement sets forth a

framework for the resolution of the issues identified by the Commission for determination in Phases 2 and 3 of this docket. The Agreement potentially avoids or narrows any hearings on the issues to be determined by the Commission in Phases 2 and 3 of this docket under Order No. PSC-11-0352-PCO-EI. See Agreement, at ¶¶ 7, 10-11. The Agreement, therefore, promotes the efficient administration of the Commission's resources and the resources of the Parties and, for these reasons, PEF requests that the Commission grant this motion to stay Phases 2 and 3 of this docket consistent with the terms of the Commission-approved Agreement and this Commission's long-standing policy favoring negotiated settlements that are in the public interest.

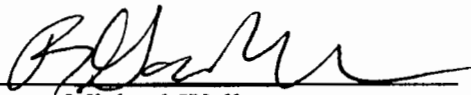
8. Pursuant to Rule 28-106.204(3), F.A.C., PEF has conferred with all parties of record. The Parties to the Agreement support this Motion. The Southern Alliance for Clean Energy ("SACE") represented that it does not oppose this Motion.

CONCLUSION

WHEREFORE, pursuant to the terms of the Agreement approved by final vote of the Commission on February 22, 2012, and pursuant to Section 120.57(4), Florida Statutes, and the Commission's long-standing policy of approving settlements in the public interest, PEF respectfully requests this Commission to enter an order dismissing Phase 1 and staying Phases 2 and 3 of this docket.

Respectfully submitted this 27th day of February, 2012.

R. Alexander Glenn
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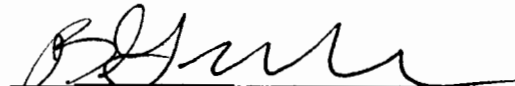

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. Mail this 27th day of February, 2012 to all parties of record as indicated below.


ATTORNEY

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