

**Shawna Senko**

---

**From:** Schrand, Shelly <sschrand@carltonfields.com>  
**Sent:** Monday, October 21, 2013 2:45 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Gamba, Blaise N.; Rehwinkel, Charles; Saylor, Erik; 'F. Alvin Taylor'; 'James Brew '; 'Jon C. Moyle Jr. '; Keino Young; Kelly, JR; 'Schef Wright '; Michael Lawson; Walls, J. Michael; 'Myndi Qualls'; 'Paul Lewis Jr. '; Costello, Jeanne; john.burnett@duke-energy.com  
**Subject:** Docket 100437-EI - Duke's Motion to Dismiss with Prejudice  
**Attachments:** Docket 100437-EI Duke Motion to dismiss 2013-10-21 \_1.pdf

Electronic Filing

a. Person responsible for this electronic filing:

James Michael Walls, Esq.  
Carlton Fields, P.A.  
4331 W. Boy Scout Blvd, Suite 1000  
Tampa, FL 33607  
813-223-7000  
[mwalls@carltonfields.com](mailto:mwalls@carltonfields.com)

b. Docket No. 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.

c. Document being filed on behalf of Duke Energy Florida, Inc.

d. There are a total of 6 pages.

e. The document attached for electronic filing is: Duke Energy Florida, Inc.'s Motion to Dismiss with Prejudice the Petition in Docket No. 100437-EI and to Close Docket Nol. 100437-EI.

Thank you for your attention and cooperation to this request.

**CARLTON  
FIELDS**

---

**Shelly Schrand**  
Florida Registered Paralegal  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, Florida 33607-5780  
Direct: 813.229.4339 | Fax: 813.229.4133  
[sschrand@carltonfields.com](mailto:sschrand@carltonfields.com) | [www.carltonfields.com](http://www.carltonfields.com)

**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: October 21, 2013

**DUKE ENERGY FLORIDA, INC.'S MOTION TO DISMISS WITH PREJUDICE  
THE PETITION IN DOCKET NO. 100437-EI AND TO CLOSE DOCKET NO. 100437-EI**

Duke Energy Florida, Inc. (“DEF” or the “Company”) moves the Florida Public Service Commission (the “Commission”) to dismiss with prejudice the *Petition for an Order Investigating the Prudence of Progress Energy Florida’s Efforts to Obtain NEIL Insurance Proceeds, Establishing that Customers Have No Responsibility for Costs of Certain Abandoned CR3 Uprate Costs That are No Longer Subject to the Nuclear Cost Recovery Mechanism, and Delineating Parameters of CR3 “Regulatory Asset,”* filed by the Office of Public Counsel (“OPC”) and the Florida Retail Federation (“FRF”) in this docket (the “OPC/FRF Petition”), and to close this docket. DEF files this Motion with the Commission pursuant to Rules 28-106.204 and 28-106.211, F.A.C., Section 120.57(4), Florida Statutes, and the Revised and Restated Stipulation and Settlement Agreement (the “Revised and Restated Settlement Agreement”), approved as fair, just, reasonable, and in the public interest by final Commission vote on October 17, 2013 in Docket No. 130208-EI (the “Effective Date” in the Revised and Restated Settlement Agreement). OPC, FRF, the Florida Industrial Power Users Group (“FIPUG”), and White Springs Agricultural Chemicals, Inc. (“White Springs”), consented to this Motion in the Commission-approved Revised and Restated Settlement Agreement and, therefore, DEF’s motion to dismiss should be granted.

In support, DEF states:

1. In the fall of 2009, during Refueling Outage 16, DEF 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, DEF 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 DEF for Refueling Outage 16 and the outage was extended.

2. By Order No. PSC- 10-0632-PCO-EI, dated October 25, 2010, the Commission granted a DEF motion to create a separate docket to investigate the prudence and reasonableness of DEF’s actions concerning the delamination and to review the prudence of DEF’s resulting fuel and purchased power replacement costs associated with the extended outage and opened this docket.

3. By Order No. PSC-11-0352-PCO-EI, the Prehearing Officer divided this docket into three phases: (a) Phase 1 was a prudence review of the events and decisions of DEF leading up to the October 2, 2009 delamination event; (b) Phase 2 involved a prudence review of DEF’s decision to repair or retire and decommission CR3; and (c) Phase 3 involved a prudence review of the decisions and events subsequent to the October 2, 2009 delamination.

4. On January 20, 2012, DEF filed its petition for a limited proceeding to approve the Stipulation and Settlement Agreement (the “2012 Settlement Agreement”). The 2012 Settlement Agreement settled issues in several existing and continuing Commission dockets, including this docket. The Commission determined that the 2012 Settlement Agreement was fair, just, and reasonable and in the public interest, and the Commission approved the 2012 Settlement Agreement in Order No. PSC-12-0104-FOF-EI, as amended by Order No. PSC-12-0104A-FOF-EI. Pursuant to the terms of the 2012 Settlement Agreement, DEF moved to

dismiss Phase 1 and to stay Phases 2 and 3 of this docket and the Commission granted that motion in Order No. PSC-12-0115-PCO-EI, as amended in Order No. PSC-12-0115A-PCO-EI.

5. On February 5, 2013, DEF announced its decision to retire CR3 and to settle its CR3 insurance claims with the Nuclear Electric Insurance Limited (“NEIL”). As a result, DEF moved to lift the stay as to Phase 2 of this docket, and the Commission granted that motion, but further decided to lift the stay as to Phases 2 and 3 of the docket in Order No. PSC-13-0080-PCO-EI. On February 25, 2013, OPC and FRF filed the OPC/FRF Petition in this docket. Subsequently, the Commission issues several orders establishing procedure for the determination of the issues in Phases 2 and 3 of this docket and the parties proceeded to comply with the orders establishing procedure.

6. On August 1, 2013, DEF filed its petition for a limited proceeding to approve the Revised and Restated Settlement Agreement in Docket No. 130208-EI. The Revised and Restated Settlement Agreement, among other things, resolves, in a comprehensive manner, the issues in Docket No. 100437-EI related to (1) the circumstances surrounding the delaminations and repairs of the CR3 nuclear power plant; (2) the decision to retire CR3; (3) the decision to settle the CR3 insurance claims with NEIL; and (4) the issues raised by the OPC/FRF Petition. On October 16, 2013, the Commission commenced a public hearing to address DEF’s petition for Commission approval of the Revised and Restated Settlement Agreement to determine if the Revised and Restated Settlement Agreement was fair, just, and reasonable and in the public interest. At the conclusion of the hearing, the Commission determined that the Revised and Restated Settlement Agreement was fair, just, and reasonable and in the public interest, and the Commission voted to approve the Revised and Restated Settlement Agreement on October 17, 2013.

7. Pursuant to the terms of the Revised and Restated Settlement Agreement approved by the Commission, OPC, FRF, FIPUG, and White Springs consented to DEF filing this motion to dismiss, with prejudice, the OPC/FRF Petition, and to close Docket No. 100437-EI. See Revised and Restated Settlement Agreement, ¶ 4. Any remaining issues presented in this Docket that are preserved by the Revised and Restated Settlement Agreement will be addressed in future proceedings before the Commission consistent with Exhibit 10 to the Revised and Restated Settlement Agreement. Id. The Revised and Restated Settlement Agreement approved by the Commission, therefore, contemplates that DEF would file, and the Commission would grant, this Motion.

8. The Commission should grant DEF's motion to dismiss based on Commission approval of the Revised and Restated Settlement Agreement. By approving the Revised and Restated Settlement Agreement, all issues in Docket No. 100437-EI have been resolved by the Commission except for the preserved issues noted above. There is, therefore, no further purpose to be served by continuing the docket. Further, 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 the OPC/FRF Petition with prejudice and closing this docket is, therefore, a straightforward action expressly provided for in the Revised and Restated Settlement Agreement and necessary to give effect to the terms of the Revised and Restated Settlement Agreement approved by the Commission. See Revised and Restated Settlement Agreement, ¶ 4. For these

reasons, DEF respectfully requests that this Commission grant its Motion, dismiss the OPC/FRF Petition with prejudice, and close this docket.

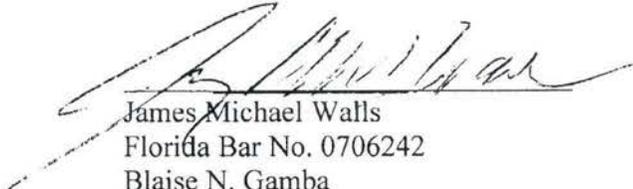
9. Pursuant to Rule 28-106.204(3), F.A.C., DEF conferred with all parties of record. Each of the parties to the Revised and Restated Settlement Agreement supports this Motion.

**CONCLUSION**

WHEREFORE, pursuant to the terms of the Revised and Restated Settlement Agreement approved by final vote of the Commission on October 17, 2013, Section 120.57(4), Florida Statutes, and the Commission's long-standing policy of approving settlements in the public interest, DEF respectfully requests this Commission to enter an order granting its Motion and closing this docket.

Respectfully submitted this 21<sup>st</sup> day of October, 2013.

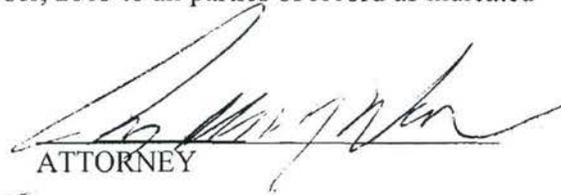
John Burnett  
Deputy General Counsel  
DUKE ENERGY FLORIDA, INC.  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Telephone: (727) 820-5184  
Facsimile: (727) 820-5519



James Michael Walls  
Florida Bar No. 0706242  
Blaise N. Gamba  
Florida Bar No. 0027942  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133

**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 21st day of October, 2013 to all parties of record as indicated below.

  
ATTORNEY

<p>Office of General Counsel Keino Young Michael Lawson Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 <a href="mailto:kyoung@psc.state.fl.us">kyoung@psc.state.fl.us</a> <a href="mailto:mlawson@psc.state.fl.us">mlawson@psc.state.fl.us</a></p>	<p>Florida Industrial Power Users Group Jon C. Moyle, Jr. Moyle Law Firm 118 North Gadsden Street Tallahassee, FL 32301 <a href="mailto:vkaufman@kagmlaw.com">vkaufman@kagmlaw.com</a> <a href="mailto:jmoyle@kagmlaw.com">jmoyle@kagmlaw.com</a></p>
<p>Brickfield Law Firm James W. Brew/F. Alvin Taylor Eighth Floor, West Tower 1025 Thomas Jefferson Street, NW Washington, DC 20007 <a href="mailto:jbrew@bbrslaw.com">jbrew@bbrslaw.com</a> <a href="mailto:ataylor@bbrslaw.com">ataylor@bbrslaw.com</a></p>	<p>Office of Public Counsel J.R. Kelly/Charles Rehwinkel/Erik Sayler c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32393-1400 <a href="mailto:kelly.jr@leg.state.fl.us">kelly.jr@leg.state.fl.us</a> <a href="mailto:rehwinkel.charles@leg.state.fl.us">rehwinkel.charles@leg.state.fl.us</a> <a href="mailto:sayler.erik@leg.state.fl.us">sayler.erik@leg.state.fl.us</a></p>
<p>Duke Energy Florida, Inc. Mr. Paul Lewis, Jr. 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740 <a href="mailto:paul.lewisjr@pgnmail.com">paul.lewisjr@pgnmail.com</a></p>	<p>Robert Scheffell Wright Gardner Bist Wiener Law Firm 1300 Thomaswood Drive Tallahassee, FL 32308</p>

**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: October 21, 2013

**DUKE ENERGY FLORIDA, INC.'S MOTION TO DISMISS WITH PREJUDICE  
THE PETITION IN DOCKET NO. 100437-EI AND TO CLOSE DOCKET NO. 100437-EI**

Duke Energy Florida, Inc. ("DEF" or the "Company") moves the Florida Public Service Commission (the "Commission") to dismiss with prejudice the *Petition for an Order Investigating the Prudence of Progress Energy Florida's Efforts to Obtain NEIL Insurance Proceeds, Establishing that Customers Have No Responsibility for Costs of Certain Abandoned CR3 Uprate Costs That are No Longer Subject to the Nuclear Cost Recovery Mechanism, and Delineating Parameters of CR3 "Regulatory Asset,"* filed by the Office of Public Counsel ("OPC") and the Florida Retail Federation ("FRF") in this docket (the "OPC/FRF Petition"), and to close this docket. DEF files this Motion with the Commission pursuant to Rules 28-106.204 and 28-106.211, F.A.C., Section 120.57(4), Florida Statutes, and the Revised and Restated Stipulation and Settlement Agreement (the "Revised and Restated Settlement Agreement"), approved as fair, just, reasonable, and in the public interest by final Commission vote on October 17, 2013 in Docket No. 130208-EI (the "Effective Date" in the Revised and Restated Settlement Agreement). OPC, FRF, the Florida Industrial Power Users Group ("FIPUG"), and White Springs Agricultural Chemicals, Inc. ("White Springs"), consented to this Motion in the Commission-approved Revised and Restated Settlement Agreement and, therefore, DEF's motion to dismiss should be granted.

In support, DEF states:

1. In the fall of 2009, during Refueling Outage 16, DEF 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, DEF 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 DEF for Refueling Outage 16 and the outage was extended.

2. By Order No. PSC- 10-0632-PCO-EI, dated October 25, 2010, the Commission granted a DEF motion to create a separate docket to investigate the prudence and reasonableness of DEF’s actions concerning the delamination and to review the prudence of DEF’s resulting fuel and purchased power replacement costs associated with the extended outage and opened this docket.

3. By Order No. PSC-11-0352-PCO-EI, the Prehearing Officer divided this docket into three phases: (a) Phase 1 was a prudence review of the events and decisions of DEF leading up to the October 2, 2009 delamination event; (b) Phase 2 involved a prudence review of DEF’s decision to repair or retire and decommission CR3; and (c) Phase 3 involved a prudence review of the decisions and events subsequent to the October 2, 2009 delamination.

4. On January 20, 2012, DEF filed its petition for a limited proceeding to approve the Stipulation and Settlement Agreement (the “2012 Settlement Agreement”). The 2012 Settlement Agreement settled issues in several existing and continuing Commission dockets, including this docket. The Commission determined that the 2012 Settlement Agreement was fair, just, and reasonable and in the public interest, and the Commission approved the 2012 Settlement Agreement in Order No. PSC-12-0104-FOF-EI, as amended by Order No. PSC-12-0104A-FOF-EI. Pursuant to the terms of the 2012 Settlement Agreement, DEF moved to

dismiss Phase 1 and to stay Phases 2 and 3 of this docket and the Commission granted that motion in Order No. PSC-12-0115-PCO-EI, as amended in Order No. PSC-12-0115A-PCO-EI.

5. On February 5, 2013, DEF announced its decision to retire CR3 and to settle its CR3 insurance claims with the Nuclear Electric Insurance Limited (“NEIL”). As a result, DEF moved to lift the stay as to Phase 2 of this docket, and the Commission granted that motion, but further decided to lift the stay as to Phases 2 and 3 of the docket in Order No. PSC-13-0080-PCO-EI. On February 25, 2013, OPC and FRF filed the OPC/FRF Petition in this docket. Subsequently, the Commission issues several orders establishing procedure for the determination of the issues in Phases 2 and 3 of this docket and the parties proceeded to comply with the orders establishing procedure.

6. On August 1, 2013, DEF filed its petition for a limited proceeding to approve the Revised and Restated Settlement Agreement in Docket No. 130208-EI. The Revised and Restated Settlement Agreement, among other things, resolves, in a comprehensive manner, the issues in Docket No. 100437-EI related to (1) the circumstances surrounding the delaminations and repairs of the CR3 nuclear power plant; (2) the decision to retire CR3; (3) the decision to settle the CR3 insurance claims with NEIL; and (4) the issues raised by the OPC/FRF Petition. On October 16, 2013, the Commission commenced a public hearing to address DEF’s petition for Commission approval of the Revised and Restated Settlement Agreement to determine if the Revised and Restated Settlement Agreement was fair, just, and reasonable and in the public interest. At the conclusion of the hearing, the Commission determined that the Revised and Restated Settlement Agreement was fair, just, and reasonable and in the public interest, and the Commission voted to approve the Revised and Restated Settlement Agreement on October 17, 2013.

7. Pursuant to the terms of the Revised and Restated Settlement Agreement approved by the Commission, OPC, FRF, FIPUG, and White Springs consented to DEF filing this motion to dismiss, with prejudice, the OPC/FRF Petition, and to close Docket No. 100437-EI. See Revised and Restated Settlement Agreement, ¶ 4. Any remaining issues presented in this Docket that are preserved by the Revised and Restated Settlement Agreement will be addressed in future proceedings before the Commission consistent with Exhibit 10 to the Revised and Restated Settlement Agreement. Id. The Revised and Restated Settlement Agreement approved by the Commission, therefore, contemplates that DEF would file, and the Commission would grant, this Motion.

8. The Commission should grant DEF's motion to dismiss based on Commission approval of the Revised and Restated Settlement Agreement. By approving the Revised and Restated Settlement Agreement, all issues in Docket No. 100437-EI have been resolved by the Commission except for the preserved issues noted above. There is, therefore, no further purpose to be served by continuing the docket. Further, 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 the OPC/FRF Petition with prejudice and closing this docket is, therefore, a straightforward action expressly provided for in the Revised and Restated Settlement Agreement and necessary to give effect to the terms of the Revised and Restated Settlement Agreement approved by the Commission. See Revised and Restated Settlement Agreement, ¶ 4. For these

reasons, DEF respectfully requests that this Commission grant its Motion, dismiss the OPC/FRF Petition with prejudice, and close this docket.

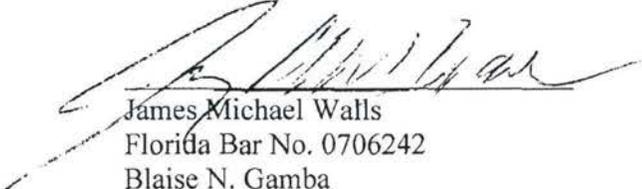
9. Pursuant to Rule 28-106.204(3), F.A.C., DEF conferred with all parties of record. Each of the parties to the Revised and Restated Settlement Agreement supports this Motion.

### CONCLUSION

WHEREFORE, pursuant to the terms of the Revised and Restated Settlement Agreement approved by final vote of the Commission on October 17, 2013, Section 120.57(4), Florida Statutes, and the Commission's long-standing policy of approving settlements in the public interest, DEF respectfully requests this Commission to enter an order granting its Motion and closing this docket.

Respectfully submitted this 21<sup>st</sup> day of October, 2013.

John Burnett  
Deputy General Counsel  
DUKE ENERGY FLORIDA, INC.  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Telephone: (727) 820-5184  
Facsimile: (727) 820-5519



James Michael Walls  
Florida Bar No. 0706242  
Blaise N. Gamba  
Florida Bar No. 0027942  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133

**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 21st day of October, 2013 to all parties of record as indicated below.

  
ATTORNEY

<p>Office of General Counsel Keino Young Michael Lawson Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 <a href="mailto:kyoung@psc.state.fl.us">kyoung@psc.state.fl.us</a> <a href="mailto:mlawson@psc.state.fl.us">mlawson@psc.state.fl.us</a></p>	<p>Florida Industrial Power Users Group Jon C. Moyle, Jr. Moyle Law Firm 118 North Gadsden Street Tallahassee, FL 32301 <a href="mailto:vkaufman@kagmlaw.com">vkaufman@kagmlaw.com</a> <a href="mailto:jmoyle@kagmlaw.com">jmoyle@kagmlaw.com</a></p>
<p>Brickfield Law Firm James W. Brew/F. Alvin Taylor Eighth Floor, West Tower 1025 Thomas Jefferson Street, NW Washington, DC 20007 <a href="mailto:jbrew@bbrslaw.com">jbrew@bbrslaw.com</a> <a href="mailto:ataylor@bbrslaw.com">ataylor@bbrslaw.com</a></p>	<p>Office of Public Counsel J.R. Kelly/Charles Rehwinkel/Erik Sayler c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32393-1400 <a href="mailto:kelly.jr@leg.state.fl.us">kelly.jr@leg.state.fl.us</a> <a href="mailto:rehwinkel.charles@leg.state.fl.us">rehwinkel.charles@leg.state.fl.us</a> <a href="mailto:sayler.erik@leg.state.fl.us">sayler.erik@leg.state.fl.us</a></p>
<p>Duke Energy Florida, Inc. Mr. Paul Lewis, Jr. 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740 <a href="mailto:paul.lewisjr@pgnmail.com">paul.lewisjr@pgnmail.com</a></p>	<p>Robert Scheffell Wright Gardner Bist Wiener Law Firm 1300 Thomaswood Drive Tallahassee, FL 32308</p>