

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-11-0363-FOF-EI
ISSUED: August 29, 2011

ORDER DISMISSING PETITION

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 the Commission opened this docket, Docket No. 100437-EI. The Office of Public Counsel, the Florida Industrial Power Users Group, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs, and Southern Alliance for Clean Energy have been granted intervention in this docket. This case was set for hearing by the Order Establishing Procedure, which was issued on August 23, 2011.¹

Petition to Deny CR3 Repair Costs

On July 18, 2011, Saprodani Associates (SA) and Thomas Saporito (Mr. Saporito) filed a Petition to Deny PEF's Costs for Repair of CR3 Nuclear Plant (Petition) in this docket. SA and Mr. Saporito (Petitioners) contend that PEF's decision to repair the CR3 containment building is not prudent and is not in the best interest of PEF's ratepayers because (1) the Nuclear Regulatory Commission (NRC) has not yet reached a decision to allow PEF to restart the CR3 nuclear reactor, (2) PEF's repair plan is likely to fail, (3) the CR3 containment building has an inherent design flaw, and (4) electricity conservation and the installation of on-demand electric water heaters can replace all the electric power provided by the CR3 nuclear power plant. Accordingly, Petitioners assert that to the extent PEF requests recovery for replacement fuel costs in connection with the CR3 repair activities, the Commission must deny PEF's request as a matter of law.

Motion to Dismiss

PEF filed a Motion to Dismiss the Petition on July 25, 2011. PEF states that the Commission should dismiss the Petition because it does not satisfy the intervention requirements

¹ Order No. PSC-11-0352-PCO-EI, issued on August 23, 2011, in Docket No. 100437-EI, Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

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of Rules 25-22.039 and 28-106.201(2), Florida Administrative Code (F.A.C.). PEF also contends that SA is not a proper party to this proceeding because it does not have legal capacity or standing to participate in this proceeding. PEF argues that Mr. Saporito has also failed to demonstrate that he has standing.

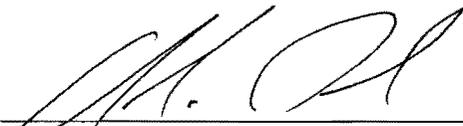
Analysis and Ruling

Upon review, the Petition filed by SA and Mr. Saporito is dismissed on procedural grounds. SA and Mr. Saporito are not original parties to this proceeding, nor have they requested or been granted party status to participate in this proceeding. In order to bring this cause of action and request the type of relief sought, Petitioners must properly intervene under Rule 25-22.039, F.A.C., which states that "persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene." Accordingly, the Petition is not appropriately before the Commission and is hereby dismissed without prejudice.

Based upon the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Petition to Deny Progress Energy Florida's Costs for Repair of Crystal River 3 Nuclear Plant filed by Saprodani Associates and Thomas Saporito is dismissed, without prejudice.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 29th day of August, 2011.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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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.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.