

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-13-0257-PCO-EI  
ISSUED: June 10, 2013

ORDER GRANTING IN PART AND DENYING IN PART PARTIES' JOINT MOTION TO STAY PROCEEDINGS

Background

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., was opened at the request of Progress Energy Florida, Inc., (now known as Duke Energy Florida, Inc. or DEF) to address the extended outage at its nuclear plant Crystal River Unit 3 (CR3), and the resulting replacement fuel/power costs. By Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI, the Commission approved a global stipulation and settlement that addressed outstanding issues in several dockets, including issues raised in this docket concerning the CR3 outage (2012 Settlement). By Order No. PSC-13-0080-PCO-EI, issued on February 13, 2013, the Prehearing Officer lifted the stay on this docket at the request of DEF after its Board of Directors made the decision to retire CR3. The remaining issues raised in Phase II and Phase III of the 2012 settlement will be addressed in this docket.

On February 12, 2013, the Office of Public Counsel (OPC) served its seventh set of requests for production of documents to DEF. This request generally covered documents related to insurance coverage for CR3 and the dispute between DEF and the Nuclear Energy Insurance Limited (NEIL) over the CR3 insurance claims. On February 18, 2013, DEF served its general and specific objections to OPC's request which, among other things, objected to request nos. 64, 65 and 66(a)-(d), claiming attorney-client privilege and work product privilege. On April 30, 2013, DEF furnished a revised privilege log that identified the documents it asserts are subject to privilege. Subsequently on May 14, 2013, OPC filed its first motion to compel, asking the Commission to conduct an in camera inspection of the subject documents and compel the production of those documents absent a showing that a valid privilege exists. DEF filed its response in opposition to OPC's motion to compel on May 21, 2013 requesting that OPC's request for an in camera inspection and its motion to compel be denied. On May 29, 2013, by Order No. PSC-13-0232-PCO-EI this Commission ordered an in camera inspection of the subject documents. On June 3, 2013, all the parties in this docket filed a Joint Motion of the Parties for a Temporary Stay and Extension of Deadlines in the Third Order Establishing Procedure.

In support of their motion, the parties stated several rationales. First, the parties requested additional time because several disputed issues in this docket must be resolved before the parties can complete their testimony, and noted that the next issue conference will be held only four days prior to the deadline for submitting testimony. Second, parties contend that

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despite good faith efforts by all of the parties there are issues that are preventing the timely completion of discovery requests. In particular, as stated in the joint motion, "pending disputes with respect to attorney-client and work product privileged material, presently before the Commission on OPC's motion to compel which has not yet been resolved, and mediation settlement privileged material, impact the timing of depositions, potentially requiring multiple depositions of the same individuals depending on the resolution of these disputed issues." Third, parties assert that the forty-five day stay will allow the parties sufficient time to narrow the issues in this docket and streamline the discovery needed for the parties to present their testimony and exhibits. The parties specifically ask for an extension for all deadlines and discovery in the Third Order Establishing Procedure, as well as for an extension of the deadline for producing the documents subject to privilege as described in Order No. PSC-13-0232-PCO-EI.

#### Decision

Based upon a review of the parties' motion, I find that the parties have not provided sufficient justification to grant a stay in the current proceedings. However, I find that the parties have provided sufficient justification to extend several of the deadlines in the Third OEP. Specifically, the parties stated that they need additional time to consider in their testimony the results of the June 13, 2013 issues conference as well as additional time to depose individuals outside of DEF's control. Therefore, based on the parties' motion, I find that it is appropriate to toll the June 17, 2013 deadline for the Utility to file testimony and exhibits to June 28, 2013. Any other adjustments of the dates or deadlines established in the third order establishing procedure<sup>1</sup> will be addressed in a future order issued by the Prehearing Officer if such an order is needed.

In Order No. PSC-13-0232-PCO-EI, this Commission ordered Duke Energy Florida, Inc. to produce certain documents no later than June 7, 2013 for an in camera review. In order for the Commission to retain outside counsel, the deadline for providing these documents to the Commission Clerk has been extended to June 14, 2013.

Based on the foregoing, it is

ORDERED by of Commissioner Eduardo E. Balbis, as Prehearing Officer that the Parties' Joint Motion to Stay Proceedings is denied. It is further

ORDERED that the June 17, 2013 deadline for Duke Energy Florida, Inc. to file testimony and exhibits as established in Order No. PSC-13-0175-PCO-EI is extended to June 28, 2013. It is further

ORDERED that the deadline for Duke Energy Florida, Inc. to furnish documents to the Commission Clerk as previously described in Order No. PSC-13-0232-PCO-EI is extended to June 14, 2013.

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<sup>1</sup> Order No. PSC-13-0175-PCO-EI, issued April 26, 2013, in 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.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 10<sup>th</sup> day of  
June, 2013



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MTL

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.