

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-13-0283-PCO-EI
ISSUED: June 17, 2013

ORDER GRANTING OFFICE OF PUBLIC COUNSEL'S MOTION TO STAY

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 the Prehearing Officer 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. By Order No. PSC-13-0257-PCO-EI, issued June 10, 2013, the motion to stay was denied; however, the deadlines for producing documents and filing testimony were extended.

On June 13, 2013, OPC filed a Motion to Stay or Hold in Abeyance Citizen's First Motion to Compel Discovery and Request for In Camera Review of Documents. In support of its motion, OPC stated it needed additional time to conduct discussions with DEF regarding the

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essence of the documents in question. OPC has requested that the Commission stay, until further notice, consideration of the motion to compel.

Decision

Based upon a review of the motion, I find that OPC has provided sufficient justification for a stay to be granted in the current proceedings. OPC is the movant regarding the motion to compel and now requests a stay of that motion. I find it is appropriate to stay the proceeding with regard to OPC's first motion to compel discovery. In Order No. PSC-13-0257-PCO-EI, DEF was to produce certain documents no later than June 14, 2013 for an in camera review. Pursuant to this Order, the deadline for providing those documents to the Commission Clerk is hereby stayed.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer that the Office of Public Counsel's Motion to Stay or Hold in Abeyance Citizen's First Motion to Compel Discovery and Request for In Camera Review of Documents is granted. 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-13-0257-PCO-EI is hereby stayed.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 17th 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.

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.