

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Nuclear cost recovery clause) **Docket No. 170009-EI**
_____) **Filed: June 16, 2017**

**MOTION OF THE OFFICE OF PUBLIC COUNSEL AND WHITE SPRINGS
AGRICULTURAL CHEMICALS, INC., D/B/A/ PCS PHOSPHATE–WHITE SPRINGS
TO TEMPORARILY HOLD IN ABEYANCE AND RESCHEDULE THE 2017 HEARING
FOR DUKE ENERGY FLORIDA, LLC.**

Pursuant to Rule 28-106.204, Florida Administrative Code (“F.A.C.”) and the February 20, 2017 Order Establishing Procedure in this docket, Order No. PSC-17-0057-PCO-EI, the Office of Public Counsel and White Springs Agricultural Chemicals, Inc., d/b/a/ PCS Phosphate–White Springs (“PCS–White Springs”) (collectively, the “Movants”) hereby move the Prehearing Officer to reschedule the time established in this matter for the Duke Energy Florida, LLC (“Duke” or “DEF”) portion of the hearing and to revise filing dates related to that hearing as is described below.

The reason for this request concerns DEF’s petition to recover a portion, but not all of, outstanding Levy Nuclear Plant (“LNP”) costs that the utility has incurred with respect to the LNP project, costs associated with its subsequent litigation with Westinghouse Electric Company, LLC (“WEC”) and Stone & Webster, Inc. (“S&W”) (collectively, the “Consortium”) concerning DEF’s 2014 termination of the engineering, procurement and construction (“EPC”) contract for the LNP project, a federal court determination regarding those claims, subsequent appeals of that ruling, and the Westinghouse petition for bankruptcy filed earlier this year. In sum, in order to allow parties adequate time to more fully understand and incorporate into their litigation positions the recent developments regarding the Westinghouse bankruptcy as it may pertain to the pending appeals and DEF’s proposed LNP cost recovery in this matter, the Movants request that the Duke portion of the NCRC hearing move from August 15-18, 2017, to October 24, 2017, or that the DEF portion of the hearing be held upon the conclusion of the general clause hearing scheduled for October 25-28. In support of the motion, Movants state as follows:

1. In January 2014, Duke terminated its EPC contract with the Consortium for the LNP project. Shortly thereafter, WEC and DEF filed separate suits in federal courts concerning the termination of that agreement which were eventually consolidated. In relevant part, DEF maintained that its reasons for terminating the EPC fell within terms provided in the agreement and the \$30 million termination fee described in the agreement consequently did not apply. DEF also maintained that \$54,127,100 in advance “milestone” payments for anticipated work concerning long lead time equipment (“LLE”) that was never initiated must be refunded. WEC denied these claims and asserted that DEF owed it substantial additional monies associated with the development of the AP1000 reactor design intended for the LNP project. The timeline for resolving that litigation has subsequently affected cost recovery of the contested LNP and contract costs.

2. In the 2014 nuclear cost recovery clause docket, DEF sought clause recovery of LNP costs incurred or estimated to be incurred in 2014 and 2015, including the contested \$54 million. In its October 27, 2014 order in that docket, Order No. PSC-14-0617-FOF-EI, the Commission ordered DEF to make a downward adjustment of \$54,127,100 to its projected 2015 NCRC expenses.
3. To wind down the LNP costs charged to consumers, the 2013 Revised and Restated Stipulation and Settlement Agreement (“RRSSA”) regarding DEF’s electric rates, which the Commission approved in Order No. PSC-13-0598-FOF-EI, established a fixed recovery charge for LNP costs until the known and estimated remaining costs were recovered, with DEF to submit a final true up request of remaining costs by May 2017.
4. DEF eliminated that recovery factor in May 2015 in accordance with Commission Order No. PSC-15-0176-TRF-EI. In the 2015 NCRC docket, Docket No. 150009-EI, the signatories to the RRSSA entered into a stipulation amending the RRSSA to defer the time for considering rate recovery of LNP true-up costs, and potential disputes regarding such recovery, to the utility’s 2017 NCRC filing for the rate factor to be set for 2018. The Commission approved that stipulation in Order No. PSC-15-0521-FOF-EI.
5. On December 22, 2016, the federal trial court rendered a determination on all DEF and WEC contract claims relating to LNP. In brief, the court directed DEF to pay WEC a \$30 million termination fee, plus interest, based on its interpretation of the provisions of the EPC agreement. The court denied WEC’s claims for additional recoveries as well as DEF’s claimed entitlement to recover, or to use as an offset to other WEC claims, the \$54 million advance payment for the LLE work never performed. Both parties have filed notices of appeal that facially include all elements of the court’s determination.
6. In its March 1, 2017 and May 1, 2017 NCRC filings in this docket, DEF has requested, in part, recovery of \$50.3 million for its contested advance payments for LLE work, plus carrying charges, plus approximately \$9.9 million in legal fees associated with the contract dispute with WEC. DEF does not seek clause recovery of the ordered \$30 million EPC termination fee because DEF continues to challenge the validity of that determination and it has not yet incurred that cost. *See* DEF May 1, 2017 Petition at p. 5.
7. On March 29, 2017, WEC filed for bankruptcy due to serious losses incurred in its attempts to construct AP1000 nuclear units in Georgia and South Carolina. The Trustee in bankruptcy initially held further action in the DEF-WEC appeals in abeyance, although, upon information and belief, that action has recently been lifted and a briefing schedule has been established such that briefing of all issues on appeal shall be completed by October 6, 2017.
8. For some time, the RRSSA signatory parties have sought to ascertain whether and to what extent the challenged LNP expenditures incurred by DEF may be recovered from WEC in the first instance. The ongoing appeals, WEC’s 2017 bankruptcy filing and the pall that it has cast on all future or potential AP1000 projects, WEC’s willingness or ability to fully pay any required judgement on the LNP contract dispute, and related prudence questions have all, from the Movants’ perspective, complicated a reasoned assessment in this docket concerning the cost recovery that DEF seeks in its Petition in this docket.

WHEREFORE, for the reasons stated above, the request of the Office of Public Counsel and PCS–White Springs should be granted.

Dated this 16th day of June, 2017.

Respectfully submitted,

/s/ James W. Brew _____

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion of the Office of Public Council and PCS Phosphate to Temporarily Hold in Abeyance and Reschedule the 2017 Hearing for Duke Energy Florida, LLC has been furnished by electronic mail and/or U.S. Mail this 16th day of June 2017 to the following:

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