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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re Review of Nuclear Outage  
at Florida Power Corporation's  
Crystal River Unit No. 3

DOCKET NO 970261-EI

JUNE 9, 1997

PREHEARING STATEMENT OF ATTORNEY GENERAL

Robert A. Butterworth, Attorney General of the State of Florida, files his Prehearing Statement in accordance with Rule 25-22.038 (3), Florida Administrative Code, and Order No. PSC-97-0246-PCO-EI, and states:

A. Witnesses

1. William R. Jacobs, Jr. Ph.D. Dr. Jacobs will testify as to his investigation of the causes of the current outage at Florida Power Corporation's (FPC) Crystal River Unit No. 3 that began on September 2, 1996, and his evaluation of the performance of FPC management as it relates to the current outage

2. Percy M. Beard, Jr. Mr. Beard will be examined regarding the causes of the current outage and the performance of FPC management in connection with outage.

3. Ralph G. Bird. Mr. Bird will be examined regarding the causes of the current outage and the performance of FPC management in connection with the outage.

4. Gary R. Doughty. Mr. Doughty will be examined regarding the causes of the current outage and the performance of FPC management in connection with the outage.

5. Paul F. McKee. Mr. McKee will be examined regarding the causes of the current outage and the performance of FPC management in connection with the outage.

6. James H. Sniezek. Mr. Sniezek will be examined regarding the relevance of NRC

ACK ✓  
AFA 2  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG (circled)  
LEG 3  
LIR 5  
M \_\_\_\_\_  
RCH 2  
SEC 1  
MTR \_\_\_\_\_  
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inspections, evaluations, and violations in determining the prudence of management in connection with the current outage at Crystal River Unit No. 3.

The Attorney General reserves the right to call any witness listed by any other party for direct and/or cross-examination, and to call additional witnesses as may be required by later filed testimony, the completion of discovery, or new issues identified at the Prehearing Conference.

#### B. EXHIBITS

1. Exhibits WRG-1 through WR-8 to the prefiled testimony of William R. Jacobs, Jr., Ph.D.
2. Exhibits PMB-1 through PMB-3 to the prefiled testimony of Percy M. Beard, Jr.
3. Exhibit RGB-1 to the prefiled testimony of Ralph G. Bird.
4. Exhibits GRD-1 through GRD-14 and rebuttal exhibits to the prefiled direct and rebuttal testimony of Gary R. Doughty.
5. Exhibits PFM-1 through PFM-7 and rebuttal exhibits to the prefiled direct and rebuttal testimony of Paul F. McKee.
6. Exhibit JHS-1 to the prefiled testimony of James H. Sniezek.

The Attorney General reserves the right to introduce any exhibit listed by any other party, and to introduce additional exhibits as may be required by later filed testimony, the completion of discovery, or new issues identified at the Prehearing Conference.

#### C. BASIC POSITION

This docket concerns the Public Service Commission's (Commission) authorization to Florida Power Corporation (FPC) to recover approximately \$70 million from its customers over the twelve month period from April 1, 1997 through March 31, 1998 for replacement fuel costs

resulting from the ongoing outage at its Crystal River nuclear power plant. The Crystal River power plant outage began on September 2, 1996, and the Commission authorized FPC to collect from its customers the consequent fuel replacement costs incurred during the six month period following the beginning of the outage, i.e., from September 2, 1996 through March 31, 1997. The Commission took this action in connection with the fuel adjustment proceeding on February 19, 1997 in Docket No. 970001-EI. Significantly, the Commission approved the \$70 million recovery without any factual basis in the record or otherwise, and did not require FPC to make even a prima facie showing that the outage, and, hence, the additional fuel costs, were incurred as a result of prudent management by FPC. In fact, the outage and resultant increase in fuel costs was caused by poor and imprudent management of the nuclear power plant. Accordingly, FPC's management and its shareholders should have assumed the increased fuel cost. On the contrary, the Commission relieved FPC of the financial consequences of its mismanagement and poor performance of its power plant on the backs of FPC's customers without any factual basis. To add insult to injury, FPC's parent company, Florida Progress, enhanced its executive compensation packages and declared a dividend for its shareholders almost immediately after receiving the \$70 million windfall from the Commission.

The initial outage was the result of the failure of FPC to conduct routine inspections which were indicated by a history of problems preceding the oil leak which precipitated the initial outage. The total scope of the outage is not known at this time and will not be known until the power plant returns to service. However, the reasons the power plant was not back on line immediately after repairing the oil leak are readily ascertainable and point directly to managerial imprudence as the direct cause. The current outage can be traced to imprudent solutions which

FPC employed to address concerns it had with the power plant in 1987. FPC addressed a subsequent concern in 1990 with a modification which was inextricably tied to the 1987 modification for its successful operation. However, during a 1996 refueling outage, FPC became concerned about problems which it should have dealt with in 1987. Inexplicably, FPC reversed the 1987 modification to solve its current concern without considering that the 1990 modification was dependent upon the 1987 modification remaining in place. Consequently, reversal of the 1987 modification without considering the 1990 modification caused serious safety problem at FPC's nuclear power plant. In order to remedy this dangerous condition, FPC is now reinstating the 1987 modification which will in turn allow proper operation of the 1990 modification.

Essentially, the nuclear power plant is down because FPC management failed to perform a complete modification in 1987. Moreover, the empirical data, technology, and know-how to perform a proper evaluation were available in 1987. Therefore, the complete modification could have been done during refueling and other scheduled outages. The Attorney General adopts and incorporates herein the basic position of the Office of Public Counsel to the extent not specifically stated herein.

#### D. FACT ISSUES

See Attorney General's Position on Issues below.

#### E. LEGAL ISSUES

See Attorney General's Position on Issues below.

#### F. POLICY ISSUES

See Attorney General's Position on Issues below.

## G. ATTORNEY GENERAL'S POSITION ON ISSUES

The Attorney General will respond below to specific issues for which it is taking a position at this time. The Attorney General's position with respect to all other issues for which there is no specific response is, "No position at this time." The Attorney General is not taking a position on such issues either because the matter is not presently at issue for the Attorney General or because the Attorney General is unable to take a position at this time. The Attorney General hereby reserves the right to raise and take a position on any such issue at the time of Prehearing Conference, Hearing, or in its Post-hearing Statement.

1. The initiating cause of the outage at Crystal River resulted from imprudent actions on the part of FPC's management.

2. FPC's decision to continue the outage beyond the time necessary to repair the oil leak resulted from imprudent actions on the part of FPC's management.

3. Deficiencies in FPC's attention to safety, including, but not limited to cost reduction and downsizing, prevented continued operation of the power plant, and FPC allowed itself to get into a position where it could not restart the unit after repairing the oil leak.

4. The modifications being performed during the current outage should have been performed during previous planned outages.

5. FPC displayed a pattern of mismanagement decisions which resulted in the current outage.

6. FPC should be ordered to cease collection of replacement fuel costs caused by the current outage at CR-3, and all replacement fuel costs collected to date should be refunded with interest.

7. FPC should not be permitted to recover a windfall of \$70 million on the backs of its customers, when its increased fuel costs are a direct consequence of its own mismanagement. Executives and shareholders of FPC, who have control of management decisions should bear the increased costs rather than FPC's customers who have no input into the management decisions.

8. The Commission should consider that the consequences of the outcome of this docket may have a total impact on FPC's customers in the amount of approximately \$300 million, in light of the projected duration of the outage for which FPC may request additional recovery, in addition to the capital costs and expenses which FPC may seek in a subsequent rate case.

The Attorney General adopts and incorporates herein the position on issues contained in the Prehearing Statement of the Office of Public Counsel to the extent not specifically stated herein.

#### H. STIPULATIONS

The Attorney General is not aware of any issues that have been stipulated to by the parties.

#### I. PENDING MOTIONS

- (1) FPC's Motion for Protective Order;
- (2) FPC's Motion to Strike Testimony of William R. Jacobs, Jr., and
- (3) Lake Dora's Motion to Establish Hearing Schedule to Allow Reasonable discovery

#### J. INABILITY TO COMPLY

The Attorney is not aware of any requirement set forth in the Order Establishing Procedure that cannot be complied with.

Dated this 9th day of June, 1997.

Respectfully submitted,

**ROBERT A. BUTTERWORTH**  
Attorney General

A handwritten signature in cursive script, appearing to read "Michael A. Gross", written over a horizontal line.

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CERTIFICATE OF SERVICE  
DOCKET NO. 970261

I CERTIFY that a copy hereof has been furnished by mail to the following persons on this

9th day of June, 1997:

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