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Subject: Filing Docket 100437
Attachments: PEF Motion to Life Stay on Phase 2.pdf



PEF Motion to
Life Stay on Pha.

Docket 100437

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

Attached for filing in Docket 100437:

1. Progress Energy Florida, Inc.'s Motion to Lift Stay on Phase 2 of Docket No. 100437-EI and to Establish Procedural Case Schedule.
2. This document is being filed on behalf of Progress Energy Florida, Inc.
3. This document contains seven (7) pages.
4. This document is being filed by

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DOCUMENT NUMBER-DATE

00778 FEB-8 2013

FPSC-COMMISSION CLERK

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

Filed: February 8, 2013

**PROGRESS ENERGY FLORIDA, INC.'S MOTION TO LIFT STAY
ON PHASE 2 OF DOCKET NO. 100437-EI AND TO ESTABLISH
PROCEDURAL CASE SCHEDULE**

Pursuant to Rule 28-106.204(1), Florida Administrative Code, and Order No. PSC-11-0352-PCO-EI and Order No. PSC-12-015A-PCO-EI, Progress Energy Florida, Inc. ("PEF" or the "Company") moves the Florida Public Service Commission (the "Commission") to lift the stay in place for Phase 2 of Docket No. 100437-EI and to establish a procedural case schedule to determine the issue designated for resolution in Phase 2 of this Docket in Order No. PSC-11-0352-PCO-EI.

BACKGROUND

In the fall of 2009, during Refueling Outage 16, PEF replaced the Crystal River Unit 3 ("CR3") nuclear power plant's existing steam generators during its steam generator replacement ("SGR") project. On October 2, 2009, during the SGR project, PEF discovered a delamination (cracking of the layers of concrete) in 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 moved the Commission to create a separate docket to investigate the prudence 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 this docket was opened by the Commission.

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FPSC-COMMISSION CLERK

By Order No. PSC-11-0352-PCO-EI, on August 23, 2011, the Prehearing Officer divided this docket into three phases: (a) Phase 1 is a prudence review of PEF's decisions and activities leading up to the October 2, 2009 delamination event; (b) Phase 2 is a prudence review of PEF's decision to repair or retire and decommission CR3 when that decision is made; and (c) Phase 3 is a prudence review of the decisions and events subsequent to the October 2, 2009 delamination through the subsequent repair of the CR3 containment building in the event the Company decided to repair CR3.

Subsequently, on January 20, 2012, PEF filed its petition for a limited proceeding to approve a Settlement Agreement between PEF and the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), White Springs Agricultural Chemicals, Inc. ("White Springs"), and the Federal Executive Agencies ("FEA"). The Settlement Agreement settled issues in existing and continuing Commission dockets, including this Docket. The Commission approved the Settlement Agreement, finding it was in the public interest, in Order No. PSC-12-0104-FOF-EI on March 8, 2012.

Based on the Settlement Agreement, PEF moved to dismiss Phase 1 and to stay Phases 2 and 3 of this Docket. On March 14, 2012, in Order No. PSC-12-0115-PCO-EI, the Commission granted PEF's Motion to Dismiss Phase 1 and to Stay Phases 2 and 3 of Docket No. 100437-EI. The Order provided the Prehearing Officer with the discretion to determine when Phase 2 was ready to proceed and the stay should be lifted. The issue that the Commission must decide in Phase 2 is the prudence of PEF's decision to repair or retire CR3, therefore, the Phase 2 stay should be lifted when PEF makes this decision.

The Company has decided to retire CR3. This decision was announced on February 5, 2013, following the Duke Energy, Inc. Board of Directors decision to retire CR3. Accordingly, this decision is now ripe for Commission review and the Phase 2 stay should be lifted for the Commission to review and determine the prudence of this decision.

REQUESTED RELIEF

PEF moves the Commission to grant its motion to lift the stay as to Phase 2 of this Docket. Rule 28-106.211, F.A.C. provides that the presiding officer has the authority to issue any order necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. In the Order granting the Phase 2 stay in this docket, the Commission granted the presiding officer the discretion to lift the stay when appropriate. *See* Order No. PSC-12-0115-PCO-EI, p. 2. The Commission has previously lifted a stay of a proceeding that is in place upon motion by one of the parties. *See* Order No. PSC-05-1100-PCO-TP, Docket No. 00475-TP (Order Granting Motion to Lift Stay and Establish Procedural Schedule). The parties and Prehearing Officer to this Docket further acknowledged at Status Conferences in this Docket that Phase 2 is ripe for hearing when a repair or retire decision is made by the Duke Energy Board of Directors. *See generally* August 16, 2012 Status Conference Transcript, pp. 16 and 29; October 30, 2012 Status Conference Transcript, p. 37.¹ That decision has now been made by the Duke Energy Board of Directors. The Company's decision to retire CR3 is ripe for review in Phase 2 of this Docket. Accordingly, PEF moves the Commission to lift the stay as to Phase 2 of this Docket.

¹ Specifically at the October 30, 2012 status conference the Prehearing Officer noted that "one of my goals when I separated this into three phases is ... when a decision is ripe for hearing, to, to start that process as soon as possible to reduce regulatory lag." *Id.*

PEF further moves the Commission to establish a procedural case schedule consistent with the existing hearing dates reserved by Commission Staff for Phase 2 of this Docket. The Commission Staff indicated at the October 30, 2012 Status Conference in this Docket that Commission Staff had reserved potential dates for a hearing in Phase 2 of this Docket in April 2013. Commission Staff further indicated that, once the Company made a decision to repair or retire CR3, Commission Staff would schedule the next phase for hearing to review the decision. *Id.* at p. 40. At the most recent Status Conference, on January 7, 2013, the Prehearing Officer discussed initiation of the Phase 2 hearing process and the signatory parties agreed that the April 2013 dates were acceptable if a decision to repair or retire was made in the near future. *Id.* at pp. 24-26. That decision has now been made, accordingly, to promote the just, speedy, and inexpensive determination of the Phase 2 issue in this Docket and to reduce regulatory lag, PEF requests that the Commission establish a procedural case schedule consistent with the April 2013 hearing dates reserved by the Commission Staff for Phase 2 of this Docket.

PEF includes in this motion a proposed case schedule corresponding to the April 2013 hearing dates preliminarily reserved by the Commission Staff based on the Prehearing Officer's direction to schedule an expedited review and hearing on the Phase 2 issue as soon as the matter is ripe for determination. The proposed case schedule is outlined below:

Proposed Case Schedule:

- | | |
|---|-------------------|
| (1) Utility's Testimony and Exhibits | February 13, 2013 |
| (2) Interveners Testimony and Exhibits, if any ² | March 14, 2013 |

² The signatories to PEF's aforementioned Settlement Agreement have waived their right to challenge the prudence of a decision to retire CR3. The Southern Alliance for Clean Energy ("SACE") is the only party of record that did not waive this right.

(3) Staff's Testimony and Exhibits, if any	March 21, 2013
(4) Utility's Rebuttal Testimony and Exhibits, if any	March 29, 2013
(5) Prehearing Statements	April 1, 2013
(6) Prehearing Conference	April 9, 2013
(7) Discovery Deadlines	April 1, 2013
(8) Hearing	April 15-17, 2013
(9) Post hearing Brief, if any	May 13, 2013

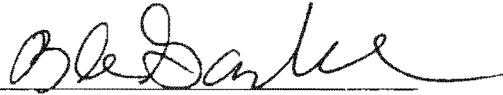
The Commission's practice is to hold condensed and expedited proceedings when necessary or appropriate. *See e.g.*, Order No. PSC-08-0151-PCO-EI, Docket No. 080148-EI, issued March 12, 2008 (2 ½ month controlling dates case schedule for the Levy Need determination proceeding). An expedited proceeding is appropriate for Phase 2 of this Docket. Phase 2 involves a single, narrow issue, that is: Is PEF's decision to retire CR3 reasonable and prudent. PEF will provide the Commission testimony and exhibits that support the reasonableness and prudence of that decision. PEF further agrees to discovery on an expedited basis, in the event there is discovery, with discovery responses being served within ten (10) calendar days of the receipt of the discovery request. For these reasons, the expedited proceeding to hearing by the dates reserved by Commission Staff for Phase 2 of this Docket is reasonable and PEF requests that the Commission establish this procedural schedule for Phase 2 of this Docket.

CONFERENCE WITH OTHER PARTIES

Pursuant to Rule 28-106.204(3), F.A.C., PEF has conferred or attempted to confer with all parties of record and is authorized to represent that SACE, OPC, FIPUG, FRF, and White Springs do not oppose this motion.

WHEREFORE, for all of the reasons stated above, PEF respectfully requests that the Commission grant this motion to lift the stay on Phase 2 of this Docket and establish the Phase 2 case schedule prescribed in this Motion.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 8th day of February, 2013.



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