



Commission Agenda Item

MEETING DATE: July 22, 2013

SUBJECT: Proposed Agreement with the Florida Municipal Power Agency regarding Settlement Discussions with Progress Energy Florida related to the Crystal River Unit 3 Outage

AGENDA SECTION: Consent Agenda

DEPARTMENT: Public Services

PREPARED BY: Mike New, PE, Public Services Director

RECOMMENDED ACTION: Authorize the City Manager to execute an agreement with the Florida Municipal Power Agency to incur up to an additional \$250,000 (for a total of \$500,000) in costs and expenses related to Duke Energy Florida, Inc. (formerly Progress Energy Florida) as its agent in settlement discussions with Duke Energy Florida related to the containment building delamination and ongoing outage at Crystal River Unit 3.

Summary

The City of Alachua owns a fractional portion (0.0079%) of energy entitlements from Duke Energy Florida's (DEF) (formerly Progress Energy Florida) Crystal River Unit 3 (CR3) nuclear power generating station. The City acquired the entitlement in the mid-1970s. It receives power from the power generating facility via Florida's transmission grid and pays an allocated share of operating, maintenance, capital, and retirement costs.

In 2009 PEF scheduled an outage at CR3 to replace the steam generator as part of a project to uprate the facility to yield greater energy output. The project required PEF to cut a hole in the unit's concrete containment building. This was a very complex project, but one that had been successfully undertaken by other nuclear reactor units previously. During the project, portions of the concrete containment building delaminated (split apart) resulting in an extended outage event. PEF engineered a repair and implemented it. The repair was successful; however, more concrete delamination occurred in other parts of the concrete containment building, further delaying the unit's return to service.

In February, 2013, DEF decided that it would retire CR3 due to uncertainty regarding the viability of repairing the damaged containment building.

In June, 2012, the City entered into a Tolling Agreement with PEF regarding settlement discussions related to the containment building damage. The tolling agreement suspends the time in which the City must provide notice to DEF of its intent to file a claim against DEF related to the outage event. The tolling agreement was entered jointly with other municipal owners of CR3 by the Florida Municipal Power Agency (FMPA).

In November, 2012, the City entered into an agreement with FMPA to act as the City's agent during settlement discussions with PEF. A copy of the agreement is attached. The agreement authorizes FMPA to act on the City's behalf during settlement negotiations for the CR3 outage event and stipulates that the City will pay a fair share of FMPA's costs incurred in the settlement discussions. The agreement caps the total legal expenses that can

be incurred by FMPA associated with this agreement at \$250,000. The City agreed to pay a share (0.96%) of the total cost based upon the amount of its energy entitlement at CR3 (Exhibit B). The City's maximum exposure in the agreement is \$2,400 (\$250,000 times 0.96%).

Paragraph 5 of the agreement requires FMPA to notice the City when the total cost and expenses allocable to the Florida Cities equals 80% of the \$250,000 cap. FMPA has approached the 80% total cost and expenses point and transmitted notice to the City (copy attached). FMPA requests that the City authorize it to incur up to an additional \$250,000 in costs and expenses for the ongoing settlement efforts. This additional authorization for expenses would, if approved, bring the City's total exposure to \$4,800 (\$500,000 times 0.96%).

FMPA has full-time legal staff that are extremely knowledgeable of the CR3 entitlement agreements and the power generating industry. By entering the agreement, the city owners of CR3 have a collective voice in discussing the outage with PEF. Alternatives to entering this agreement with FMPA are for the City to procure its own legal team and pursue the item independent of FMPA and the other owner cities or to wait and see what PEF does in terms of passing on repair costs to the City.

ATTACHMENTS: 1) November 2013 Settlement Agreement with FMPA; 2) Letter from FMPA providing notice that 80% of total expenses is imminent; and 3) Authorization for Increased FMPA Costs and Expense Related to the Settlement Negotiations with Duke Energy Florida.

REVIEWED BY CITY MANAGER:





Florida Municipal Power Agency

Nicholas P. Guarriello
General Manager and CEO

November 12, 2012

Mike New
Public Service Director
City of Alachua
15001 NW 140th Street
Alachua, FL 32615

RE: Signed Agreement to Represent Florida Cities in Settlement Discussion with Progress Energy Florida

Dear Mike:

Enclosed please find a fully executed agency authorization agreement (the "Agreement") between the Florida Municipal Power Agency (FMPPA) and your city for the purposes of acting as your City's agent in settlement discussions with Progress Energy Florida ("PEF") relating to the steam generator replacement and resulting containment building delamination and ongoing outage at Crystal River Unit 3 (CR3).

FMPPA will be contacting you in the near future to have further discussion with you regarding the status of discussion with Progress Energy concerning outstanding issues relating to CR3.

Please do not hesitate to contact me should you have any questions or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas P. Guarriello".

Nicholas P. Guarriello
General Manager and CEO

Enc.

cc: Fred Bryant, FMPPA
Dan O'Hagan, FMPPA
Jason Wolfe

AGREEMENT

THIS AGREEMENT is entered into on the 12th day of November, 2012, by and between the Florida Municipal Power Agency ("FMPA") and the City of Alachua, Florida ("the City").

WHEREAS, the City owns a 0.0779% undivided ownership interest in the Crystal River Unit 3 Nuclear Power Plant ("Crystal River 3 Plant");

WHEREAS, the City desires to enter into discussions with Florida Power Corporation, doing business as Progress Energy Florida, including any successor in interest ("PEF") concerning certain outstanding issues between PEF and the City relating to the steam generator replacement project and resulting delamination and outage of the Crystal River 3 Plant;

WHEREAS, the City has determined that it would avoid duplication of effort and would be beneficial to the City to have FMPA act as its agent in these discussions with PEF;

WHEREAS, FMPA is willing and able to act as the City's agent in these discussions with PEF;

WHEREAS, FMPA intends to enter into substantially similar agreements (each an "Agency Agreement") as this agreement with other FMPA member utilities that are, or were previously, joint owners of the Crystal River 3 Plant or wholesale purchasers of PEF, or both (collectively with the City, the "Florida Cities"); and

WHEREAS, FMPA, on behalf of itself and the City, has entered into that certain Confidentiality Agreement with respect to Settlement Negotiations by and between Florida Power Corporation d/b/a Progress Energy Florida and Florida Municipal Power Agency, on behalf of itself and the named "Florida Cities" in the Crystal River 3 Tolling Agreement between FMPA and PEF, effective as of August 13, 2012, as amended, (the "Confidentiality Agreement"), a copy of such Confidentiality Agreement being attached to this agreement as Exhibit "A" and is incorporated into and made a material part of this agreement by this reference;

NOW, THEREFORE, for and in consideration of the matters set forth herein, FMPA and the City hereby agree as follows:

1. The City hereby designates FMPA as its agent for the purpose of conducting discussions with PEF relating to the steam generator replacement project and resulting delamination and outage of the Crystal River 3 Plant, including, among other things, the entering into and execution of pertinent confidentiality agreements with PEF on behalf of FMPA and the City, and the City hereby agrees to be bound by the terms and conditions of such agreements, including, without limitation, the Confidentiality Agreement. The City acknowledges that FMPA will be acting in a similar capacity for FMPA, for other municipal owners of the Crystal River 3 Plant, and for certain municipal wholesale power customers of PEF. The City reserves the right to participate directly in any such negotiations from time to time should issues unique to the City arise. The City agrees not to independently negotiate with PEF regarding the Crystal River 3 Plant steam

generator replacement project and resulting delamination and outage prior to the termination of this agreement.

2. FMPA will, at its discretion, provide the necessary legal and technical personnel to collect and analyze all pertinent and available data and information regarding the steam generator replacement project and resulting delamination and outage of the Crystal River 3 Plant, and to assist in the discussions and negotiations with PEF relating to the Crystal River 3 Plant. In so doing, FMPA has and will incur costs and expenses on the City's behalf. Accordingly, FMPA will charge the City, and the City hereby agrees to pay, an amount each month equal to the City's percentage share, as set forth in Exhibit "B," which is attached to and made a material part of this agreement, of such costs and expenses incurred by FMPA.

3. (a) FMPA may amend Exhibit B from time to time to reflect revised estimates of the City's percentage share of FMPA's costs and expenses. Except as provided in paragraph 3(b), FMPA shall provide to the City a copy of a proposed Exhibit B amendment with an effective date established by FMPA that shall not be less than fifteen (15) days after the issuance of the proposed Exhibit B amendment.

(b) In the event that any Florida City provides notice to FMPA of its intent to terminate its Agency Agreement, FMPA shall, as soon as reasonably practicable after receipt of such notice, provide to the City a copy of a proposed Exhibit B amendment to reflect the removal of such terminating Florida City from the Exhibit B cost allocation, which amendment shall be effective on the date commensurate with the termination date of the departing Florida City's Agency Agreement.

(c) In the event of any Exhibit B amendment, the City shall be responsible for its share of FMPA's costs and expenses incurred (including costs accrued but not yet billed) at the City's percentage allocation share reflected in Exhibit B in effect as of the date such costs and expenses were incurred by FMPA.

4. This agreement will remain in effect until the earlier of (a) the date on which this agreement is terminated by either party upon fifteen (15) days written notice to the other party; or (b) the date on which PEF terminates negotiations with FMPA; provided, however, the City will be responsible for its share of all costs and charges incurred (including costs accrued but not yet billed, as well as costs committed to by contract that cannot reasonably be cancelled or avoided) up to the date of termination.

5. FMPA's total costs and expenses allocable to the Florida Cities shall not exceed \$250,000 without the advance written consent of the Florida Cities. FMPA shall provide notice to the City when FMPA reasonably believes that it has incurred costs and expenses equal to 80% of \$250,000. FMPA shall not be required to provide services or incur additional costs or expenses in excess of \$250,000 without advance written authorization from the City, and agreement by the City to reimburse FMPA for the City's percentage share of such additional FMPA costs and expenses, as set forth in Exhibit B.

6. FMPA shall bill the City monthly, and the City shall pay FMPA, within fifteen (15) days of the postmark of each bill, to the offices of

Florida Municipal Power Agency
8553 Commodity Circle
Orlando FL 32819-9002

or such other address as FMPA shall specify in writing to the City.

In the event the City fails to make payment when due of any amount owed hereunder, FMPA may impose a late-payment charge for each delinquent day, equal to the prime rate as published for that month in The Wall Street Journal.

7. All notices issued pursuant to this agreement shall be sent via email to the following:

To FMPA:

Nicholas P. Guarriello
Email: nick.guarriello@fmpa.com

With a required copy to:
Jody Lamar Finklea
Dan O'Hagan
Email: jody.lamar.finklea@fmpa.com
dan.ohagan@fmpa.com

To the City:

Traci L. Cain, City Manager
Email: tcain@cityofalachua.org

With required copy to:
Mike New, Public Services Director
Email: mnew@cityofalachua.org

8. Subject to FMPA's, the City's, or both, obligation to keep such data and information confidential pursuant to any confidentiality agreement, including without limitation, the Confidentiality Agreement, the City shall be entitled to receive copies of (a) all pertinent and available data and information regarding the steam generator replacement project and resulting delamination and outage of the Crystal River 3 Plant that is gathered by FMPA and any experts hired by FMPA, and (b) any resulting analysis and reports; provided that such data, information, analysis or reports are made or received by FMPA in its role as agent for the City pursuant to this agreement.

9. FMPA shall give updates on the progress of the negotiations no less than monthly unless no activity for given month had taken place, in which case FMPA will notify the City to that effect as its update.

10. This agreement does not constitute or create a joint venture, partnership, or any other similar arrangement between FMPA and the City. FMPA and the City are each independent entities and neither is the agent of, nor has the authority to bind the other for any purpose other than as specifically set forth in this agreement. Except as specifically set forth in this agreement, no party shall bind any other, or represent that it has the authority to do so.

CITY OF ALACHUA, FLORIDA

by Traci L Cain

Traci L Cain
(please print name)

its City Manager

FLORIDA MUNICIPAL POWER AGENCY

by Nicholas P. Guarriello

Nicholas P. Guarriello
its General Manager and CEO

Exhibit A

First Amended Confidentiality Agreement with respect to Settlement Negotiations

WHEREAS, Florida Power Corporation d/b/a Progress Energy Florida, Inc. ("Progress Energy") and Florida Municipal Power Agency, on behalf of itself and the named "Florida Cities" in the Crystal River Unit 3 Tolling Agreement between FMPA and PEF, agreed to as of July 9, 2012, and amended on September 6, 2012 to add additional Florida Cities (collectively, "FMPA") (individually a "Party" and together the "Parties" including Recipients under paragraph 3 of this Confidentiality Agreement) wish to engage in confidential settlement negotiations concerning potential FMPA claims in connection with the current outage (the "Outage") at the Crystal River Unit 3 ("CR3") nuclear power plant; and

WHEREAS, this Confidentiality Agreement will encourage complete and unfettered settlement negotiations by ensuring that the Parties have confidence that their settlement communications will remain confidential;

NOW, THEREFORE, in consideration of the Parties' agreement to engage in confidential settlement negotiations, the Parties agree as follows:

1. All Protected Material (as defined herein) exchanged by and between the Parties as part of settlement negotiations shall be kept confidential by the Parties, but as to FMPA to the extent permitted by Florida law, and shall be used by the Parties solely for confidential settlement negotiations and the related actions of the parties in the fulfillment or furtherance of such negotiations and performance under this Confidentiality Agreement, and shall not be used by the Parties for any other purpose, including, without limitation, for purposes of prosecuting or defending claims in connection with the Outage that may be asserted in any future litigation, arbitration, or other legal proceeding.
2. Protected Material means all documents prepared by Progress Energy or FMPA for use in connection with settlement discussions between Progress Energy and FMPA. Protected Material also includes all written and oral settlement discussions and communications between Progress Energy and FMPA.
3. The Parties may disclose Protected Material to (i) counsel retained to represent their interests in connection with the Outage; (ii) consultants retained by the Parties solely for purposes of negotiating settlement of potential claims in connection with the Outage; and (iii) in response to a valid public records request or as otherwise required by judicial or governmental action (including by subpoena), except that the Party subject to such request or action shall promptly notify the other Party of the same so that the other Party may, if it elects, seek at its own cost to contest, limit, or otherwise protect the Protected Material. In the event of (iii) above, FMPA, to the extent permitted by Florida law, agrees to cooperate with PEF in any proceeding to maintain the confidentiality of the Protected Material at issue. Recipients of Protected Material are to be informed of the existence of this Confidentiality Agreement and requested in writing to abide by its terms.

Exhibit A

4. Usage of Protected Material also shall be subject to Rule 408 of the Federal Rules of Evidence and section 90.408, Florida Statutes.
5. Neither this Confidentiality Agreement nor any acts taken under or pursuant to this Confidentiality Agreement shall preclude either Party from using or disclosing its own information or documents, or information or documents that it obtains other than from these confidential settlement negotiations, including, but not limited to, any documents obtained pursuant to the rights of FMPA (expressly including each of the Florida Cities) under the Crystal River Unit No. 3 Participation Agreement, dated July 31, 1975.
6. Except to enforce the terms of this Confidentiality Agreement or to respond to assertions about its effect, no Party shall use the execution of this Confidentiality Agreement, or any negotiations leading to its execution, against the other Party in any litigation, arbitration, or other legal proceeding.
7. This Confidentiality Agreement may be signed in separate counterparts, with the same force and effect as if all Parties had executed a single copy of the Confidentiality Agreement.
8. Upon written notice by either Party to counsel for the other Party, this Confidentiality Agreement shall terminate, but all protections and privileges set forth herein shall survive and continue even after termination, including without limitation, the provisions contained in Paragraphs 1, 2, and 3 of this Confidentiality Agreement.
9. The undersigned warrant and represent that they have the authority to enter into this Confidentiality Agreement on behalf of Florida Power Corporation d/b/a Progress Energy Florida, Inc. and FMPA, respectively.

DATED: September 10, 2012

Florida Power Corp. d/b/a Progress Energy Florida

By: Bernard M. Hyatt

Its: Assistant General Counsel

DATED: September 10, 2012

Florida Municipal Power Agency, on behalf of itself and the Florida Cities

By: Nicholas P. Scarnello

Its: General Manager & CEO

EXHIBIT B

PROPOSED MEMBER COST ALLOCATION FOR CR3 NEGOTIATIONS WITH PROGRESS ENERGY FLORIDA

Member	Ownership Energy (MWh) [1]	Purchased Energy (MWh) [2]	Total Energy (MWh)	Proposed Cost Allocation (%) [3]
Gainesville	90,973	24,412	115,385	21.99%
OUC	103,482	0	103,482	19.72%
Ocala	86,152	0	86,152	16.42%
Leesburg	53,269	0	53,269	10.15%
New Smyrna Beach	36,237	9,019	45,256	8.62%
KUA	43,642	0	43,642	8.32%
Homestead	0	30,482	30,482	5.81%
Mt. Dora	0	13,131	13,131	2.50%
Bartow [4]	0	8,563	8,563	1.63%
FMPA (ARP) [4]	0	5,469	5,469	1.04%
Alachua	5,034	0	5,034	0.96%
Williston	0	4,740	4,740	0.90%
Chattahoochee	0	4,593	4,593	0.88%
Quincy [4]	0	3,000	3,000	0.57%
Bushnell	2,507	0	2,507	0.48%
Newberry [5]	0	0	0	0.00%
Havana [6]	0	0	0	0.00%
Total	421,296	103,409	524,705	100.00%

[1] Represents the assumed average level of energy each CR3 owner could have expected to have received from CR3 in a typical year.

[2] Amounts represent the estimated average annual requirements energy each city purchased from PEF over the period 2010-2011 (calendar years) that could have been expected to have come from CR3 had the unit been in service.

[3] Represents each member's total energy from CR3 as a percent of the entire group's energy from CR3.

[4] Bartow, the FMPA ARP, and Quincy stopped purchasing requirements energy from PEF effective January 1, 2011, and are no longer exposed to baseload energy purchases from PEF. Additionally, Bartow, the FMPA ARP, and Quincy received reimbursement from PEF for at least a portion of their increased purchased power costs in 2010 due to the CR3 outage. As such, their respective claims to damages are limited compared to many of the Florida Cities, and their respective cost allocations have been adjusted, accordingly.

[5] At this time, since Newberry i) joined the ARP in 2000 and began taking service from the ARP on January 1, 2006, and ii) no longer purchases energy directly from PEF, Newberry has not been allocated any costs.

[6] At this time, since Havana i) joined the ARP in 2000 and began taking service from the ARP on May 1, 2003, and ii) no longer purchases energy directly from PEF, Havana has not been allocated any costs.



Florida Municipal Power Agency

Nicholas P. Guarriello
General Manager and CEO

June 14, 2013

Via Email

Re: Increased FMPA Costs and Expenses for Crystal River Unit 3 Negotiations

Mr. Mike New
City of Alachua
15001 NW 140th Street
Alachua, FL 32615

Dear Mike:

As you know FMPA has been negotiating with Duke Energy Florida, Inc. (“Duke”) on behalf of the Crystal River Unit 3 (“CR3”) joint owners and Duke municipal wholesale customers (collectively the “Florida Cities”¹) regarding the failed CR3 steam generator replacement project, the resulting extensive containment building delamination, extended outage, and forced retirement of the plant. As we have previously discussed, there are numerous complicated legal and technical issues involved in this matter. Despite this, the negotiations are continuing and I believe there is a possibility that FMPA may be able to settle some or all of the Florida Cities’ potential claims against Duke.

FMPA has entered into agreements with each of the Florida Cities, by which each has designated FMPA as its agent for purposes of these settlement negotiations (the “Agency Agreement”). Pursuant to the Agency Agreement, FMPA’s total costs and expenses relating to the CR3 negotiations are not to exceed \$250,000 without advance written consent of the Florida Cities, and FMPA is required to provide notice when actual costs and expenses reach 80% of \$250,000 (i.e. \$200,000).

¹ The Florida Cities are: City of Alachua; City of Bartow; City of Bushnell; City of Chattahoochee; Gainesville Regional Utilities; Town of Havana; City of Homestead; Kissimmee Utility Authority; City of Leesburg; City of Mount Dora; City of Newberry; Utilities Commission, City of New Smyrna Beach; City of Ocala; Orlando Utilities Commission; City of Quincy; City of Williston; and FMPA All-Requirements Power Supply Project.

The purpose of this letter is to: (1) notify you that FMPA has, to date, incurred \$190,042.66² (i.e. approximately 76% of the \$250,000 limit) in CR3 settlement negotiation related costs, and (2) request written authority to incur up to an additional \$250,000 in costs for our ongoing settlement efforts, upon the condition that FMPA (a) not exceed the additional \$250,000 without the Florida Cities' consent and (b) will provide the Florida Cities with notice when FMPA reasonably believes that it has incurred costs equal to 80% of that amount.

If you agree to the additional \$250,000 spending authority, subject to the conditions listed in the preceding paragraph, please execute and return the authorization form included with this letter to FMPA.

Also Included with this letter is a copy of Exhibit B of the Agency Agreement, which indicates each of the Florida Cities' proportional cost responsibility.

Very truly yours,



Nicholas P. Guarriello
General Manager and CEO

Enclosures (2)

² The Florida Cities have paid a total of \$158,570.73 to date. On June 11, FMPA issued invoices for an additional \$31,471.93 of incurred costs, resulting in a total of \$190,042.66.

Authorization for Increased FMPA Costs and Expense

Alachua authorizes FMPA to incur up to an additional \$250,000 (for a total of \$500,000) in costs and expenses related to negotiations with Duke Energy Florida, Inc. (formerly Progress Energy Florida, Inc.) regarding the Crystal River 3 Plant steam generator replacement project, the resulting extensive containment building delamination, extended outage, and forced retirement of the Crystal River 3 Plant. FMPA's costs and expenses shall not exceed the additional \$250,000 without Alachua's, and the other the Florida Cities', advance written consent. FMPA shall provide Alachua and the other Florida Cities with notice when FMPA reasonably believes that it has incurred costs and expenses equal to 80% of the additional \$250,000. FMPA's incurrence of such costs and expenses, and Alachua's obligation to reimburse FMPA for its proportionate share of such costs and expenses is subject to the Agency Agreement between FMPA and Alachua. Capitalized terms used in this authorization have the meaning given to them in the Agency Agreement.

Alachua

by _____

(please print name)

its _____

Date: _____

FLORIDA MUNICIPAL POWER AGENCY



Nicholas P. Guarriello
its General Manager and CEO

Date: June 14, 2013

EXHIBIT B

PROPOSED MEMBER COST ALLOCATION FOR CR3 NEGOTIATIONS WITH PROGRESS ENERGY FLORIDA

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KUA	43,642	0	43,642	8.32%
Homestead	0	30,482	30,482	5.81%
Mt. Dora	0	13,131	13,131	2.50%
Bartow [4]	0	8,563	8,563	1.63%
FMPA (ARP) [4]	0	5,469	5,469	1.04%
Alachua	5,034	0	5,034	0.96%
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Quincy [4]	0	3,000	3,000	0.57%
Bushnell	2,507	0	2,507	0.48%
Newberry [5]	0	0	0	0.00%
Havana [6]	0	0	0	0.00%
Total	421,296	103,409	524,705	100.00%

[1] Represents the assumed average level of energy each CR3 owner could have expected to have received from CR3 in a typical year.

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