

McWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE:
100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126
P O BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 Fax

PLEASE REPLY TO
JOHN McWHIRTER
TAMPA

66
MAR -5
TALLHASSEE OFFICE:
117 SOUTH GARDEN
TALLHASSEE, FLORIDA 32301
(850) 222-2425
(850) 222-5606 Fax

March 2, 1999

Hon Blanca S. Bayo'
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Fl 32399-0850

In re: Docket 990067
Our File # F15-14359

Dear Ms. Bayo'

I have responded to Mr Robert E. Sherman's *ex parte* communication to Commissioner Garcia. A copy of that response is attached hereto in accordance with § 350.042(4). I have corrected syntax errors contained in the e-mail version. If you wish that version as well please advise.

Sincerely Yours,


John W. McWhirter, Jr.

ACK _____
AFA _____
APP _____
CAF _____ Cc. Rob Vandiver
CMU _____ Jorge Cruz-Bustillo
CTR _____ Parties of record.
EAG 1 _____
LEG 1 _____
LIN _____
PC _____
RCH _____
SCL 1 _____
W S _____
O H _____

DOCUMENT NUMBER-DATE

02918 MAR-5 99

Subj: **Stockholder concerns.**

Date: 3/1/1999 7:23:44 PM Eastern Standard Time

From: JohnM99368

To: rsherman@heinrichgordon.com

CC: jgarcia@psc.state.fl.us, andy@hueylaw.com, JGL50

CC: Vgkesq

Mr. Sherman:

This e-mail is in response to your e-mail complaint to the Chairman of the Florida Public Service Commission. You contend that you, as a small stockholder of FPL "have lost thousands of dollars" on a "small amount of shares" as a result of something the Commission has done.

I don't think you are being totally fair to the Commission. The Florida Public Service Commission has done nothing except grant all of FPL requests since December 1, 1998. A rate case has been filed by Florida's consumer counsel, other FPL customer representatives have asked to join in the case..

The share price of FPL's stock has declined 19.8% since Dec 31. For comparison, no regulatory action has been taken with respect to Tampa Electric Company, another Florida utility. Over the same period its stock has fallen 30.33%.

I am one of the lawyers representing consumer groups that recently requested the Public Service Commission to review FPL's rates. Your e-mail to Chairman Garcia was dispatched to all parties of record to give us the opportunity to respond.

As a customer and stockholder I am sure that you appreciate that the Public Service Commission has a responsibility to investigate and establish a fair return for Florida's electric utilities, which are government-protected monopolies.

After receiving rate increases at least biannually in the 1970s and early 1980s because interest rates were going up, taxes were high, construction costs were soaring and fuel prices had skyrocketed due to the OPEC oil crises, things began to level off. FPL had its last rate case in 1984 nearly fifteen years ago. Since that time energy sales have increased without the necessity to build new power plants, construction costs have gone down, interest rates have fallen dramatically, FPL has laid off thousands of employees and tax rates have been reduced. FPL's base rates have not followed suit. They remained at the highest level ever allowed, but it has increased conservation surcharges. Capacity surcharges have been imposed and it has surcharged customers for environmental improvements. In addition it has received monetary rewards for operating its power plants at an efficiency level that is 30% worse than merchant power plants available on the market today. FPL is fighting to keep these plants out of Florida.

FPL created a holding company that now takes most of the cash flow paid in by Florida's utility customers. It is that holding company in which you invest. The holding company lost \$800 million in the insurance business. It lost money in the cablevision business didn't do very well in the food, citrus and real estate businesses. Now it is concentrating on the utility business outside of Florida and the United States. It bought antiquated power plants in Maine paying 3 to 4 times their book value. It has bought electric generating windmills in Arizona and Iowa and is building large power plants in Washington and Texas. I don't question these investments. Apparently others are enthusiastic about them. FPL announced last fall that it is the most admired utility in the nation.

What I do question, and the reason the customer group I represent filed a protest to a settlement between the Public Service Commission and FPL is the fact that the settlement would permit FPL to charge today's customers some \$700 million more over the next two years than standard regulatory practice would permit. An average Florida residential customer would be charged \$122 over the two-year period to provide this extra cash flow to FPL. I believe Florida customers are entitled to know that the money will be used for their benefit not just to provide funds to engorge the holding company's coffers for extra territorial endeavors.

In the early 1930s utility stockholders were injured, according to findings of the Federal Trade Commission, because utility holding companies watered their stock by making investments in assets that were less valuable than utility holding companies paid for them. Sweetheart contracts between utilities and their affiliated companies resulted in over charges to captive customers. Single state regulators couldn't control out of state investments. The FTC report highlighted these and other abuses that resulted in the passage of the Public Utility Holding Company Act. Today FPL is one of the leading proponents for the repeal of that act.

Florida's regulatory commission has a duty to protect FPL's customers who have no choice except to buy electricity from FPL if they live in its service territory. FPL is entitled to the opportunity to earn a fair return on its investment in Florida. My clients strongly support that opportunity, but they resist with equal vigor any effort by a government protected monopoly to earn windfall profits.

I seriously doubt that our request for fair treatment has caused you to lose thousands of dollars as a small investor. If you had bought FPL's stock when it went to 25 in late 1993 (after the dividend was cut), and sold today you would have made a 108% profit on the sale plus dividends. If you had bought in July of 1998 when it hit an all time high and sold today you would have lost 25% of your investment on the sale, but still received a dividend yield to off set the loss. All other utilities and US treasury bonds have emulated the fall in FPL stock because they are interest rate sensitive. If you had held on to your stock you would have continued to receive and will continue to receive the dividend you bargained for unless it is cut by the holding company not the Public Service Commission.

The question is what caused the stock price to fall in the recent past?

1. Was it the fact that FPL is trying to get out of its \$841 million investment in Maine that doesn't look so good now that it has received an adverse ruling from FERC?
2. Is it because there is a fear that interest rates will go up if the Fed determines inflation is heating up?
3. Is it because investment analysts fear that the FPL holding company is making riskier investments betting on being able to compete in those states where competition is permitted?
4. Is it because the growth in price of other types of equity investment has been more interesting to investors than less risky utility stocks.
5. Is it because Florida's watchdog consumer counsel and some customers have requested that FPL's cash flow be returned to reasonable levels?

Probably a little of each.

If the Florida Public Service Commission abides by its legal responsibility it will cut rates next year anyway after the extraordinary write off being charged today's customers are exhausted. All the present protest has requested is that all the facts be brought into the sunshine.

As an investor that is the greatest service you can receive! Full disclosure is the basis of all security regulation.