



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

RECEIVED-FPSC

01 NOV 20 PM 3:25

COMMISSION
CLERK

November 20, 2001

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 000824-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Second Motion to Compel. A diskette in Word format is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

CJB:bsr

APP
CAF
CMP
COM
CTR
ECR
LEG
OPC
PAI
RGO
SEC
SER
OTH

RECEIVED & FILED
RJM
THE OFFICE OF RECORDS

DOCUMENT NUMBER-DATE

14780 NOV 20 01

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power)
Corporation's earnings, including)
effects of proposed acquisition of)
Florida Power Corporation by)
Carolina Power & Light)

Docket No. 000824-EI

Filed November 20, 2001

CITIZENS' SECOND MOTION TO COMPEL

The Citizens of Florida, by and through Jack Shreve, Public Counsel file this motion requesting the Prehearing Officer to order Florida Power Corporation (FPC) to respond to the interrogatories and produce the documents requested in Citizens' fifth set of interrogatories and sixth set of requests for production of documents, as more fully set forth in this motion.

Fifth Set of Interrogatories

Citizens seek an order from the Prehearing Officer requiring FPC to respond to interrogatories 103 and 104. The interrogatory, FPC's response, and Citizens' rationale to compel answers follow:

Interrogatory 103: For Florida Power Corporation provide a schedule for each month of the years 2000, 2001, and 2002 showing the total number of employees, separately showing the employee counts by management and non-management. In addition show the salary amounts for the management and non-

management groupings. Please also indicate for each grouping the dollar amount of salary that was or will be capitalized. Please use actual numbers where available; otherwise please use your most recent forecasted data. Please also show the forecasted data for 2003, but for 2003 please only provide data for the year in total rather than on a month by month basis.

FPC's Objection: FPC objects to this interrogatory inappropriate and unduly burdensome to the extent it requests FPC to develop categorical information not currently utilized by FPC. Specifically, FPC does not have information responsive to this interrogatory for "management and non-management groupings." FPC also objects to interrogatory 97 as compound and reserves its right to count this interrogatory as two (2) separate interrogatories for the purposes of determining its obligation to continue to provide responses under the order governing procedure in this case.

Citizens' Response: Information produced in response to previous discovery requests indicates that FPC's employee level may change materially during the course of the test year 2002. Information on employee and salary levels during each month of the test year is therefore necessary in order to make an adjustment to test year salary levels which will reflect an appropriate going-forward amount for salaries. Information for the years 2000 and 2001 are relevant for analyzing trends.

FPC should be required to provide information as requested. If information cannot be provided exactly in the form requested, FPC should be ordered to provide sufficient detail on salary levels on a month-by-month basis to allow a computation of an adjustment for changing employee levels over the course of the test year. Efforts to negotiate a compromise with FPC that would provide information sufficient to make this adjustment have not been successful.

FPC's objection that the interrogatory is "inappropriate" has no basis in fact or law. Its claim that responding would be "unduly burdensome" is wholly unsupported by any facts or demonstration that it would in fact be unduly burdensome. The objection should therefore be denied.

Interrogatory 104: For Progress Energy, Inc. and each of its subsidiaries or affiliates (excluding Florida Power Corporation) provide a schedule showing for each month of the years 2000, 2001, and 2002 the total number of employees, the related total salary amounts and the dollar amount of salary that was or will be capitalized. Please also provide this data for the year 2003.

FPC's Objection: FPC objects to this interrogatory as irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

Citizens' Response: Citizens' first motion to compel described the web of financial interrelationships between FPC, its parent, and affiliates. The test year contains a host of charges from such affiliates. Whether the charges included in

the test year are reasonable and reflective of going forward levels of charges, therefore, is legitimately a subject of inquiry in this case. If FPC's affiliates, like FPC itself, expect to undergo changes in the levels of employees during the test year, then the charges included in the test year may not reflect a reasonable level of charges on a going forward basis. The request is relevant, material, and reasonably calculated to lead to the discovery of admissible evidence concerning the level of charges from affiliates that FPC includes in the test year.

Sixth Set of Requests for Production of Documents

FPC includes a series of objections to all of the requests for documents served by Citizens. Citizens request the Prehearing Officer to strike the objections discussed below and order FPC to produce the documents as requested.

FPC objects to any definitions or instructions that purport to expand FPC's obligations under applicable law, but it identifies no such definitions or instructions. Without identifying the instructions or definitions to which it objects, the objection is meaningless and should be stricken.

Next, FPC objects to the definition of FPC to the extent it includes Florida Progress Corporation, Progress Energy, Inc., and Progress Energy Service Company, LLC. FPC agrees to produce documents "in the hands of these companies," but only to the extent such documents are relevant to the issues in this case. FPC, however, does not identify or describe the documents it believes are irrelevant to the case, and it is therefore impossible to tell the extent to which

it is withholding documents because it believes them to be irrelevant. Since it has not identified any such documents, the objection should be stricken.

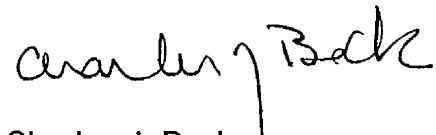
FPC objects to the definition of "FPC", "you", "your" or the "Company" to the extent it includes third parties whose documents are not within its possession, custody, or control. However, it fails to identify any such parties. This objection should be stricken because it does not identify any such parties and is therefore meaningless.

FPC also objects to the instructions calling upon FPC to provide designated information regarding any documents withheld from production to the extent it purports to expand FPC's obligations. Like so many of FPC's objections, FPC doesn't state how the instructions expand FPC's obligations. The objection should be stricken for lack of specificity.

WHEREFORE, Citizens request the Prehearing Officer to order FPC to respond to the interrogatories and produce the documents requested in Citizens' fifth set of interrogatories and sixth set of requests for production of documents, as more fully set forth in this motion.

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



Charles J. Beck
Deputy Public Counsel
Fla. Bar No. 217281

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-
1400

(850) 488-9330

Attorneys for Florida's
Citizens

**CERTIFICATE OF SERVICE
DOCKET NO. 000824-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 20th day of November, 2001.



Charles J. Beck
Deputy Public Counsel

Mary Anne Helton, Esquire
Adrienne Vining, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
P.O. Box 3350
Tampa, FL 33601-3350

James A. McGee, Esquire
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Michael B. Twomey, Esquire
Post Office Box 5256
Tallahassee, FL 32314-5256

James P. Fama, Esquire
LeBoeuf, Lamb, Greene
& MacRae LLP
1875 Connecticut Ave., Suite 1200
Washington, DC 20009

Gary L. Sasso, Esquire
James M. Walls, Esquire
Carlton Fields Law Firm
Post Office Box 2861
St. Petersburg, FL 33731

Vickie Gordon Kaufman
Florida Industrial Power Users Group
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Ronald C. LaFace, Esquire
Seann M. Frazier, Esquire
Greenberg Traurig Law Firm
101 East College Ave.
Tallahassee, FL 32301

Paul E. Christensen
Sugarmill Woods Civic Assoc., Inc.
26 Nibiscus Court
Homosassa, FL 34446

Buddy L. Hansen
13 Wild Olive Court
Homosassa, FL 34446

Paul Lewis, Jr.
Florida Power Corporation
106 East College Avenue
Suite 800
Tallahassee, FL 32301

Lee Schmudde
Vice President, Legal
Walt Disney World Co.
1375 Lake Buena Drive
Lake Buena Vista, FL 32830

James J. Presswood, Jr.
Legal Environmental Assistance Foundation
1114 Thomasville Road
Tallahassee, FL 32303-6290

Florida Retail Federation
100 East Jefferson Street
Tallahassee, FL 32301

Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3068
Orlando, Florida 32801