

ORIGINAL

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 January 24, 2002

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FLORIDA POWER CORPORATION'S EMERGENCY MOTION FOR EXTENSION OF TIME TO FILE REBUTTAL TESTIMONY

Florida Power Corporation ("Florida Power" or the "Company"), pursuant to Rule 28-106.204(5) of the Florida Administrative Code (F.A.C.), moves for a one week extension of time to serve rebuttal testimony to the intervenors' testimony that was filed with the Public Service Commission ("Commission") on January 17, 18, and 22 and Staff's Testimony still to be filed on January 28, 2002. In support of its motion, Florida Power states:

1. The Commission has imposed an ambitious schedule on the parties in order to expedite this rate review proceeding. Pursuant to this schedule, Florida Power filed its initial testimony of three witnesses on September 14, 2001. On November 15, 2001, Florida Power filed the testimony of twelve more witness and additional testimony from one of the witnesses whose testimony was first filed in September.

2. On the Commission's original schedule, the responsive testimony of intervenors and Staff was due respectively on January 18th and January 28th. Likewise, the Commission's schedule requires Florida Power to file its rebuttal testimony on or before February 4, 2002, just two weeks and one business day after the original intevenor filing deadline. Due to subsequent events, various intevenors filed testimony on January

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17<sup>th</sup>, 18<sup>th</sup>, and 22<sup>nd</sup>. Specifically, on January 17, 2002, Florida's Citizens filed testimony of one witness. On January 18, 2002, Publix filed the testimony of two witnesses, and the Florida Industrial Power User's Group filed the testimony of three witnesses. Then, on January 22, 2002, Florida Citizens filed the testimony of five additional witnesses. In addition, Commission Staff has advised Florida Power that they intend to file testimony of five witnesses on Monday, January 28th. Not including what Staff may file, the intervenors have so far filed testimony of 11 witnesses for a total of over 780 pages of testimony and exhibits.

3. In addition to witness testimony, the intervenors have also served Florida Power with numerous documents relating to the filed testimony in response to Florida Power's discovery requests, including the workpapers of the various witnesses that must be reviewed and analyzed in addition to the testimony.

4. As noted above, at present Florida Power is required by the Commission's schedule to file all rebuttal testimony to the intervenors' pre-filed testimony by February 4, 2002. This gives Florida Power eight business days from the last intervenor's filing deadline to review the testimony of 11 witnesses, all supporting documentation provided through discovery, and complete any necessary analysis and rebuttal testimony. Moreover, it leaves Florida Power only four business days to review the testimony, accompanying documentation, and draft any necessary rebuttal testimony for up to five more witnesses whose testimony Florida Power has not even seen yet.

5. While Florida Power appreciates the Commission's desire to expedite this rate review proceeding, requiring Florida Power to review, analyze, and respond to such a large volume of information in eight business days or less is manifestly unfair. This is not a typical rate case where the utility chose the timing to file MFRs and had every

opportunity in advance to prepare its case and to be poised to respond to discovery.

Rather, the Commission ordered Florida Power to file MFRs on a schedule prescribed by the Commission. That schedule afforded Staff and intervenors anywhere from two to four months to review and respond to the testimony of Florida Power's witnesses.

6. Florida Power desires to respond thoroughly and meaningfully to all issues raised in the intervenors' pre-filed testimony. The amount of time Florida Power has to respond under the Commission's present schedule, however, makes it prohibitively difficult for Florida Power to do so and compromises the Company's due process rights. Giving Florida Power only eight business days to respond amounts to a deprivation of Florida Power's due process right to a meaningful opportunity to be heard by having adequate time to prepare for the hearing in this matter. See Duval County School Board v. Armstrong, 336 So. 2d 1219, 1220 (Fla. 1<sup>st</sup> DCA 1976) (stating that teacher in disciplinary proceeding "[u]nquestionably would be deprived of due process of law if he should be forced abruptly into a hearing without adequate opportunity to inspect the documentary evidence, interview witnesses or otherwise adequately prepare.").

The practical constraints of this case require that Florida Power be given at least a one-week extension to file rebuttal testimony. Even with an additional week, Florida Power will have to work arduously to prepare a meaningful response. Fundamental fairness dictates that Florida Power be given additional time within which to file its rebuttal testimony, especially when the intervenors were given substantially more time to accomplish a similar task and raised detailed challenges that Florida Power could not fully anticipate until the testimony was served. See Department of Law Enforcement v. Real Property, 588 So. 2d 957, 960 (Fla. 1991) (stating due process clause "contemplates that the defendant shall be given fair notice [ ] and afforded a real opportunity to be heard

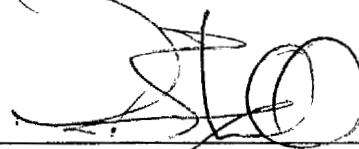
and defend [ ] in an orderly procedure. . . .”) (quoting State ex. rel. Gore v. Chillingworth, 171 So. 653, 654 (Fla. 1936)).

7. A one-week extension will greatly assist Florida Power in developing meaningful responses to the issues raised by the intervenors' testimony and the yet unfiled testimony of Staff and will not unduly delay the proceedings. Indeed, Florida Power does not believe an adjustment of any of the other presently set deadlines will be necessitated by its requested extension.

8. Florida Power has contacted counsel for all intervenors' who have filed testimony in this matter and is authorized to state that FIPUG has no objection to the requested extension of time, Citizens have no objection to this request, and Publix objects to the extension of time,

WHEREFORE, Florida Power requests that the Commission consider this motion on an expedited basis and enter an order extending the time for Florida Power to file rebuttal testimony from February 4, 2002 until February 11, 2001.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of foregoing has been furnished via U.S.

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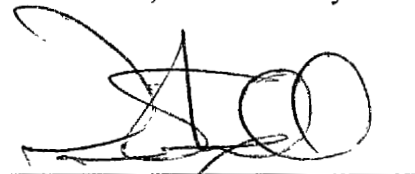
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