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May 16, 2003

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

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COMMISSION
CLERK

Re: Docket No. 000824-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Motion in Limine and Motion to Strike.

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

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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

Dated May 16, 2003

MOTION IN LIMINE AND MOTION TO STRIKE

The Citizens of Florida ("Citizens"), Florida Industrial Power Users Group ("FIPUG"), Florida Retail Federation ("Retail Federation"), Buddy Hansen / Sugarmill Woods Civic Association ("Sugarmill Woods"), and Publix Super Markets, Inc. ("Publix") file this motion seeking an order from the Florida Public Service Commission prohibiting Progress Energy Florida, Inc., f/k/a Florida Power Corporation ("Progress Energy") from commenting on or arguing at the Commission's agenda conference any facts or matters not explicitly set forth in the stipulation and settlement filed in this docket on March 27, 2002, or in the order approving the settlement, order no. PSC-02-0655-AS-EI issued May 14, 2002. In addition, movants request the Commission to strike the affidavit of Javier Portuondo dated March 7, 2003. In support of these motions, movants state the following:

- 1. On March 27, 2002, Progress Energy entered into a settlement with the other parties to resolve all outstanding issues in this docket. Among other things, the settlement agreement required Progress Energy to make refunds to customers if its revenues should exceed certain thresholds during the years 2002, 2003, 2004, or 2005. The agreement

contained specific provisions concerning the calculation of the refund amount each year.

2. On February 24, 2003, Citizens, FIPUG, Retail Federation, Sugarmill Woods, and Publix filed a motion to enforce the settlement agreement. The motion set forth the amount of the refund owed by Progress Energy for the year 2002, calculated by applying the provisions of the settlement agreement and the order approving the settlement agreement to the amount of revenues earned by Progress Energy during 2002. The parties asked the Commission to issue an order enforcing the settlement agreement and to require Progress Energy to make the refunds mandated by the agreement.

3. On March 7, 2003, Progress Energy filed an opposition to the motion, a request for oral argument or alternatively an evidentiary hearing, and an affidavit of Mr. Javier Portuondo.

4. There have been no evidentiary hearings in this proceeding, so the only matters of record upon which the Commission may rely in making its decision on the motion to enforce the settlement agreement is the written agreement itself, along with the order approving the settlement agreement. There is no other evidence upon which the Commission may base its decision.

5. The parol evidence rule prohibits the use of parol evidence to contradict, vary, defeat, or modify a complete and unambiguous written instrument, or to change, add to, or subtract from it, or affect its construction. 24 Fla. Jur. 2d §444. According to the Florida Supreme Court:

"It is hardly necessary to state again that the parol evidence rule is a fundamental rule of substantive law 'resting on a rational foundation of experience and policy' and is essential to the certainty and stability of written obligations."

Schwartz v. Zaconic, 68 So.2d 173 (Fla. 1953).

The parol evidence rule applies to this case. Progress Energy entered into an agreement that set forth specific calculations determining the amount it would refund for 2002. It cannot rely on matters lying outside of the agreement in order to change its obligations or to make adjustments to the provisions contained in the agreement.

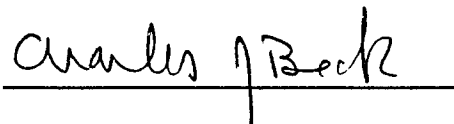
6. The parol evidence rule bars the use of Mr. Portuondo's affidavit in this case, but even if the parol evidence rule did not apply, the affidavit of Javier Portuondo still could not be used by the Commission in making its decision. The Commission has not decided to take evidence, so there has been no forum to test the opinions set forth in the affidavit through cross examination or discovery. In addition, Mr. Portuondo did not participate in most of the meetings leading to the settlement agreement and is therefore incompetent to testify about many of the matters set forth in his affidavit. Should the commission decide to conduct an evidentiary hearing, the parties intend to take depositions of Mr. Portuondo and other employees or agents of Progress Energy concerning the refund, subject their testimony to cross examination at a hearing, and present evidence of our own.

9. Since the Commission has not conducted an evidentiary hearing, there is no evidence other the agreement itself and the order approving the agreement. The Commission should prohibit Progress Energy from commenting on or arguing at the Commission's agenda conference any facts or matters not explicitly set forth in the agreement or the order. In addition, the Commission should strike the affidavit of Javier Portuondo because the Commission has not decided to conduct an evidentiary hearing, the matters set forth in the affidavit have not been subject to discovery or cross

examination, and Mr. Portuondo is incompetent to testify about many of the matters set forth in the affidavit. Attorney General Charles J. Crist, who has filed a motion to intervene in this proceeding, agrees with and supports the position of movants.

Respectfully submitted,

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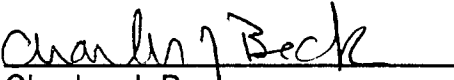
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**CERTIFICATE OF SERVICE
DOCKET NO. 000824-EI**

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 16th day of February, 2003.


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