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ORIGINAL

June 20, 2003

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COMMISSION
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Blanca S. Bayo, Director
Division of Records and Reporting
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 the Joint Response to Progress Energy's Notice of Withdrawal of Affidavit and Suggestion of Mootness.

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

AUS _____
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OPC _____
MMS _____
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OTH _____

Enclosures

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05533 JUN 20 03

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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 June 20, 2003

**JOINT RESPONSE TO PROGRESS ENERGY'S NOTICE OF WITHDRAWAL OF
AFFIDAVIT AND SUGGESTION OF MOOTNESS**

The Citizens of Florida (Citizens) and Attorney General Charles J. Crist, Jr. (Attorney General) file this response to the notice of withdrawal of affidavit and suggestion of mootness filed by Progress Energy of Florida, Inc. (Progress Energy) on June 13, 2003

1. The suggestion of mootness filed by Progress Energy claims that its withdrawal of the affidavit of Javier Portuondo "substantially moots" the pending motion in limine. Progress Energy goes on to state that it will instead rely upon the settlement agreement itself, the Commission's order approving the settlement agreement, and matters of record before the Commission as of the time the Commission entered its order approving the settlement agreement. The company does not explain what it means by "matters of record."
2. The motion in limine pointed out that there have been no evidentiary hearings in this proceeding, so that the only matters 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. Other

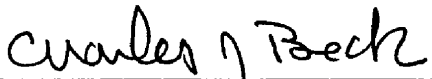
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REGISTRATION CLERK

"matters of record," which presumably includes every document filed with the Commission's clerk's office in the docket, cannot be considered as evidence in the case by the Commission. Such items become evidence only if they are submitted in an evidentiary proceeding, offered subject to cross examination of its sponsor and to objection, and then entered into the record of an evidentiary proceeding.

3. If Progress Energy would rely solely on the settlement agreement and the order approving the settlement agreement, the motion in limine would indeed be moot. Progress Energy, however, still intends to rely on matters other than the agreement and the order in an attempt to persuade the Commission to adopt adjustments that cannot be found in the agreement or in the order approving the agreement. As such, the Commission must still rule on the pending motion in limine. If the Commission denies the motion in limine, it must then conduct an evidentiary hearing to obtain evidence about matters not contained in the agreement or order.

Respectfully submitted,

Office of Public Counsel

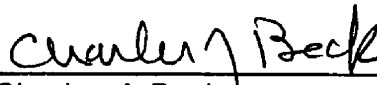


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**CERTIFICATE OF SERVICE
DOCKET NO. 000824-EI**

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 20th day of June, 2003.



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