

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
ORDER NO. PSC-01-2475-PCO-EI
ISSUED: December 19, 2001

SECOND ORDER ON DISCOVERY MOTIONS

On November 20, 2001, the Office of Public Counsel (OPC) filed its Second Motion to Compel requesting that the Prehearing Officer compel Florida Power Corporation (FPC) to respond to the interrogatories and produce the documents requested in OPC's Fifth Set of Interrogatories and Sixth Set of Requests for Production of Documents. FPC filed a response on November 27, 2001. On November 21, 2001, OPC filed its Third Motion to Compel requesting that the Prehearing Officer compel FPC to respond to the interrogatories and produce the documents sought in OPC's Second and Third Set of Interrogatories and Third Set of Requests for Production of Documents. On November 28, 2001, FPC filed a response to this motion.

On November 16, 2001, FPC filed a Motion for Temporary Protective Order covering certain documents sought by OPC's Fifth Set of Requests for Production of Documents. Then, on November 30, 2001, FPC filed a Motion for Temporary Protective Order concerning documents solicited by OPC's First Set of Requests for Production of Documents and OPC's Third and Fifth Set of Requests for Production of Documents numbers 29, 36, 41, 42, 44, 55-57, 62, 63, 70, and 93. Next, FPC filed a Motion for Temporary Protective Order on December 6, 2001, pertaining to documents requested by OPC's Sixth Set of Requests for the Production of Documents. Finally, on December 17, 2001, FPC filed a Motion for Temporary Protective Order referring to documents requested by Staff's Fourth Set of Requests for Production of Documents. OPC filed no response to the Motions for Temporary Protective Order described above.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive

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determination of all aspects of the case" Based upon this authority, and having considered the Motions and Responses, the rulings are set forth below.

I. OPC'S SECOND MOTION TO COMPEL

OPC seeks an order compelling FPC to respond to Interrogatory Nos. 103 and 104 of OPC's Fifth Set of Interrogatories. Additionally, OPC requests that several of FPC's general objections to OPC's Sixth Set of Requests for Production of Documents be stricken. Each of OPC's arguments, FPC's response, and the attendant rulings are addressed separately below.

Interrogatories 103 and 104

OPC's Interrogatory No. 103 states:

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 states:

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.

FPC's Response states:

For historical data please see the confidential monthly operating reports schedules 10a and 10b. For 2002 information, please see FPC's response to Citizens' Sixth Set of Requests for Production of Documents to FPC Question #106. FPC does not believe it has information responsive to this interrogatory for 2003.

OPC argues that information produced in response to previous discovery requests shows that FPC's employee level may change materially during the course of the 2002 test year. Information on employee and salary levels during each month of the test year is necessary to make an adjustment to test year salary levels to reflect an appropriate going-forward amount for salaries. Data from 2000 and 2001 are relevant for analyzing trends. OPC states that if FPC cannot provide the information exactly in the requested form, then FPC should 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. OPC argues that FPC's objection that the interrogatory is "inappropriate" has no basis in fact or law. Also, OPC asserts that FPC's claim that responding would be "unduly burdensome" is unsupported by any facts.

FPC responds that it has not refused to provide the requested information entirely. FPC objects to preparing the information in a format not used by FPC in the normal course of business. FPC argues that it is only required to provide information in its custody, not to create information it doesn't otherwise track or keep as a usual business practice. Further, FPC asserts that OPC already has all of the historical information in the format as kept by FPC, and that the company provided its 2002 forecast information in the form and manner in which that information exists, which is all FPC is required to do. FPC does not have the information for 2003. Finally, FPC argues that it would be unduly burdensome to require Florida Power to develop information in a format other than the format in which FPC maintains or develops the information; in order to respond in the format required by OPC, FPC would have to

go employee by employee and break out this information on a managerial, non-managerial basis.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Interrogatory No. 103 is granted as it relates to the data for years 2000, 2001, and 2002. Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." OPC's discovery request may lead to the discovery of admissible evidence. Therefore, FPC shall respond to OPC's Interrogatory No. 103 by the close of business on December 31, 2001. Additionally, FPC's response shall provide sufficient detail on salary levels on a month-by-month basis as to allow a computation of an adjustment for changing employee levels over the course of the test year, if such an adjustment is ultimately determined to be appropriate.

OPC's Interrogatory No. 104 states:

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 states:

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

FPC's Response states:

Progress Energy Service Company does not track information on a monthly basis and did not exist in 2000. The total number of employees is 1,455 for 2001 and 1,856 for 2002, and total salary is \$89,330,000 for 2001 and \$122,214,000 for 2002. These numbers do not include

Florida Power employees that are counted as Service Company employees for performance goals.

OPC argues that there is a web of financial interrelationships between FPC, its parent, and affiliates. The test year, OPC contends, contains numerous charges from affiliates. Whether these charges are reasonable and reflective of going forward levels of charges is a legitimate subject of inquiry. OPC asserts that if FPC's affiliates 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. Furthermore, the request is relevant, material, and reasonably calculated to lead to the discovery of admissible evidence related to affiliate charges included in the test year by FPC.

In response, FPC asserts that it should not be required to gather the requested affiliate employee and salary information, as the only information relevant to this proceeding is the allocation (if any) of employees or salary by other companies to FPC which is included in FPC's test year forecast. FPC states it has provided detailed information concerning these allocations and the methodology used for determining them. FPC maintains that the employee and salary allocations to FPC coming from other affiliates relate directly to a service being provided by a person or persons employed by that affiliate. So, regardless of the changes in total employees in these companies, FPC will continue to require these services, which will continue to be provided by these companies. According to FPC, the only question for this proceeding is whether the cost of those services are reasonable. Indeed, FPC argues it has provided and intends to continue to provide information in connection with the service company.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Interrogatory No. 104 is granted as it relates to the data for 2000, 2001, and 2002. Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." OPC's discovery request may lead to the discovery of admissible evidence. Therefore, FPC shall

respond to OPC's Interrogatory No. 104 by the close of business on December 31, 2001.

Objections to OPC's Sixth Set of Requests for Production of Documents

OPC requests that the following objections be stricken:

General Objection

1) FPC further objects to these requests and any definitions or instructions that purport to expand FPC's obligations under applicable law.

Specific Objections

2) FPC objects to the definition of "FPC", "you", "your" or the "Company" as including Florida Progress Corporation, Progress Energy, Inc., and Progress Energy Service Company, LLC. FPC does not have an obligation under the rules to produce materials in the hands of these companies, but FPC agrees to do so in any event to expedite discovery, to the extent such documents are relevant to the issues in this case. FPC reserves the right to decline to produce any materials that are not pertinent to the issues in this case. FPC further 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.

3) FPC 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. FPC will comply with its obligations under applicable rules of procedure.

OPC argues that objection 1 above should be stricken because it fails to identify the instructions or definitions which are objectionable, rendering the objection meaningless. Next, OPC asserts that objection 2 above should be stricken because it fails to identify any such third parties to whom FPC finds the

application of requests for documents objectionable, making the objection meaningless. Also, OPC contends that objection 2 does not identify or describe the documents it believes are irrelevant to the case, so it is impossible to discern the extent to which FPC is withholding documents it deems irrelevant. Finally, as to objection 3 above, OPC maintains that FPC does not state how the instructions expand FPC's obligations; therefore, the objection should be stricken for lack of specificity.

FPC rebuts OPC's arguments by stating that OPC has not specifically asked the Commission to compel the production of any document by striking FPC's objections. Rather, FPC contends that OPC is asking the Commission to strike general objections in the abstract, without indicating which requests are impacted by these objections.

FPC argues that the Florida Rules of Civil Procedure do not contemplate the striking of objections to discovery requests; rather, motions to strike are only permitted with regard to pleadings, which discovery is not. Rule 1.140(f), Florida Rules of Civil Procedure, states that a "party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." The definition of pleadings, according to FPC, in Rule 1.100(a) of the Florida Rules of Civil Procedure does not include discovery. Therefore, FPC argues there is no authority for the striking of objections to discovery requests.

FPC also argues that these general objections are both necessary and appropriate in order to preserve FPC's rights and to clarify its obligations under existing law and the orders governing discovery in this proceeding. Indeed, FPC contends that OPC created the need for these general objections by including instructions and definitions which are unnecessary and objectionable. FPC asserts that these objections are made in the absence of an interpretation of OPC's instructions and definitions.

Lastly, FPC objects to being defined as something greater than FPC. FPC admits that certain documents related to the merger may be relevant to this proceeding, and FPC states it has provided these documents gratuitously; indeed, if there are documents of this nature that FPC does not produce, then OPC can move to compel

their production, but FPC argues the Commission should not pre-judge this issue by striking the general objections. FPC avows that it is not obligated to identify or produce documents in the hands of other companies. Similarly, FPC affirms it has no ability to obtain the documents of third parties except through the legal process.

Pursuant to Order No. PSC-01-2114-PCO-EI, the Order Establishing Procedure in this proceeding, parties may file written objections to discovery requests within 10 days of the request. As stated in Order No. PSC-01-2114-PCO-EI, the purpose of this procedure is "to reduce delay in resolving discovery disputes." The ability to file objections is simply a means by which the parties may work out discovery disputes amongst themselves, without involving the Commission. Discovery objections, while they may be filed at the Commission, are not relied upon by the Commission in making its final decision. As such, I do not find it necessary to rule on OPC's request to strike certain parts of FPC's general objections. The absence of a ruling on this motion will not prejudice either party, and will allow the parties to continue to work towards a mutual resolution of any discovery disputes. If, however, the parties cannot reach a mutual resolution, the parties may seek an order compelling a response.

II. OPC'S THIRD MOTION TO COMPEL

OPC requests an order compelling FPC to respond to the following: Interrogatory Nos. 28 and 48 of OPC's Second Set of Interrogatories; Interrogatory No. 56 of OPC's Third Set of Interrogatories; and, Request for Production Nos. 41, 49, and 50 of OPC's Third Set of Requests for Production of Documents. In addition, OPC requests that the series of objections which FPC includes in all responses to OPC's requests for documents be stricken. Each of OPC's arguments, FPC's response, and the attendant rulings are addressed separately below.

Interrogatory Nos. 28, 48, and 56

OPC's Interrogatory No. 28 states:

Please identify the amount change in control and executive termination payments that were paid as of

December 2000. Please indicate the amount of the payment, to whom the payment was made, and the company the executive worked for.

FPC's Response and Objection states:

Florida Power
Joseph Richardson \$8,099,779
Kenneth Armstrong \$1,691,176
William Kelley \$1,495,931
Other Executives (11) \$13,760,863

Change in control executive termination payments made to executives of Florida Progress or any other company have not been included in Florida Power's monthly reporting of earnings surveillance to the Florida Public Service Commission, thus FPC otherwise objects to this request as irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

OPC argues that the fact that executive termination payments have been included in earnings surveillance reports is not the point. OPC considers that at least a portion of executive termination payments have been included in the test year. As such, these payments are relevant to this proceeding.

FPC responds that it did not include in the test year termination payments made to executives of other companies that it had not reported in its surveillance report. All executive termination payments FPC is seeking to expense against earnings were set forth in its response to the interrogatory.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Interrogatory No. 28 is granted. Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." OPC's discovery request may lead to the discovery of admissible evidence. Therefore, FPC shall respond to OPC's Interrogatory No. 28 by the close of business on December 31, 2001.

OPC's Interrogatory No. 48 states:

With respect to costs allocated to FPC by Progress Energy Service, LLC, please provide the following information for the test year and the 2001: the total dollars by account number and name to which an allocation factor is applied; the allocation factor applied to each account; the calculation of the allocation factor including the numerator and denominator for all companies that are allocated a portion of the cost; and a description of the allocation factor. Provide this information in both hard copy and electronic form.

FPC's Response states:

The 2002 Progress Energy Services allocation to Florida Power in the rate case proceeding was based on the allocation factors in effect for 2001. A summary of the 2001 allocation metrics for each product or service has been provided. At the time that the numbers were provided for the rate case proceeding, the detailed budgets by product/service had not been prepared for the Services Company for 2002. For rate case purposes, in general, we assumed that each departmental budget would have the same split by product/service as in the 2001 budget and that the allocation metrics for each product/service would be the same as were used in the 2001 budget. Therefore, in aggregate the allocation of each department's budget to each legal entity in the rate proceeding forecast is materially the same as used in the 2001 budget. The Information Technology and Telecommunications expenses were handled as exceptions. A detailed description of the approach used in the allocation of Information Technology costs is provided. The Telecommunications costs were allocated based on an estimate of the distribution of devices.

OPC argues that FPC's answer is not responsive. The interrogatory asks for dollars by account numbers, actual allocation factors, including numerators and denominators, and other information which the answer does not provide.

FPC argues that OPC fails to take into account the numerous attachments provided by FPC which contain the numbers to supplement the written response by FPC. FPC contends that this type of response is permitted by Rule 1.340(c), Florida Rules of Civil Procedure. As such, FPC asserts that OPC is seeking to compel something which has already been provided.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Interrogatory No. 48 is denied. Rule 1.340(c), Florida Rules of Civil Procedure, states that when "the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained . . . is a sufficient answer." Therefore, pursuant to Rule 1.340(c) of the Florida Rules of Civil Procedure, FPC sufficiently answered OPC's Interrogatory No. 48, and OPC's motion to compel a more complete response to Interrogatory No. 48 is hereby denied.

OPC's Interrogatory No. 56 states:

Please provide an income statement and balance sheet for each Tier 1 subsidiary of the Progress Energy for the year 2000 and for the nine month period ended September 30, 2001.

FPC's Response states:

FPC objects to this interrogatory to the extent it includes affiliates, subsidiaries, or divisions of Progress Energy, Inc. other than FPC. Without waiving this objection, FPC refers Citizens to the SEC's public internet Web site. The 2000 financial statements are available now and the financial statements for the nine-month period ended September 30, 2001 will be filed with and available through the SEC by November 15, 2001. Florida Power and the legal entity Florida Progress continue to file financial statements with the SEC, along with Progress Energy, Inc. and Carolina Power & Light, because they all still have outstanding publicly-traded securities.

OPC states it could not locate affiliate balance sheets and income statements on the SEC's public web site. OPC asserts that it seeks this information in order to evaluate the reasonableness of expense allocations to and from affiliates because these expenses are included in the test year. Further, OPC adopts the rationale set forth in its first motion to compel for obtaining affiliate information.

FPC responds that the balance sheets and income statements of any of Progress Energy's affiliates are irrelevant to this proceeding and an invasion of the business records of non-regulated entities. Also, FPC states that, even if produced, the affiliates' balance sheets and income statements will not reflect the expenses being allocated to or from FPC as a separate line item; rather, they may show total expenses charge to or by other affiliates collectively. This information, according to FPC, would not be useful to OPC for its intended purpose. Additionally, FPC asserts that it has already responded to OPC in its responses to Interrogatories 50 through 55, and evaluating the reasonableness of these allocations is a function of comparing the service or product provided by the affiliate and the cost of the same to FPC.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Interrogatory No. 56 is granted. A subsidiary may be compelled to respond to discovery related to a parent company and its affiliates based upon three factors, as outlined in Order No. PSC-01-1725-PCO-EI. These three factors are: 1) the corporate structure; 2) the non-party's connection to the transaction at issue; and, 3) the degree to which the non-party will benefit from an outcome favorable to the corporate party to the litigation. See Afros S.P.A. v. Krauss-Maffei Corp., 113 F.R.D. 127, 130 (D. Del. 1986). FPC meets the three-prong test because of the complex web of financial relationships among FPC, the parent, and the affiliates. Therefore, FPC is compelled to respond to discovery pertaining to the parent company and its affiliates. Accordingly, FPC shall respond to OPC's Interrogatory No. 56 by the close of business on December 31, 2001.

Request for Production of Documents Nos. 41, 49, and 50

OPC's Request for Production of Documents No. 41 states:

Please provide all documents which address or discuss announced lay offs or terminations of personnel as a result of the merger.

FPC's Response states:

FPC is seeking an extension of time to respond to this request. FPC objects to this request to the extent it includes affiliates, subsidiaries, or divisions of Progress Energy, Inc. other than FPC. Without waiving these objections, FPC will produce documents responsive to this request for FPC, making the documents, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

OPC states that this request is relevant for affiliates of FPC to the extent that such costs are included in the test year, whether as allocated expenses or merger related transition costs; indeed OPC asserts that a portion of these expenses are included in the test year, making this information relevant to this proceeding.

FPC rebuts that in its response to Interrogatory 48 it explained that the only change in control, termination payments, and severance payments included in the test year are FPC's. FPC states that no affiliate transition costs have been included either as transition costs or as a part of any allocation to FPC, obviating the need of OPC for these documents.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Request for Production of Documents No. 41 is granted. A subsidiary may be compelled to respond to discovery related to a parent company and its affiliates based upon three factors, as outlined in Order No. PSC-01-1725-PCO-EI. These three factors are: 1) the corporate structure; 2) the non-party's connection to the transaction at issue; and, 3) the degree to which the non-party will benefit from an outcome favorable to the corporate party to the litigation. See

Afros S.P.A. v. Krauss-Maffei Corp., 113 F.R.D. 127, 130 (D. Del. 1986). FPC meets the three-prong test because of the complex web of financial relationships among FPC, the parent, and the affiliates. Therefore, FPC is compelled to respond to discovery pertaining to the parent company and its affiliates. Accordingly, FPC shall respond to OPC's Request for Production of Documents No. 41 by the close of business on December 31, 2001.

OPC's Request for Production of Documents No. 49 states:

Please provide copies of all contracts between Progress Energy Services, LLC and each of Progress Energy's affiliates for which it provides any services.

FPC's Response states:

FPC objects to this request to the extent it includes affiliates, subsidiaries, or divisions of Progress Energy, Inc. other than FPC. Without waiving this objection, FPC will produce contracts responsive to this request between FPC and Progress Energy Service, LLC, making the documents, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

OPC argues that contracts between Progress Energy Services, LLC, and other affiliates are relevant to test the reasonableness of the contracts with FPC. The consolidated entity, according to OPC, has an incentive to charge more to the regulated utility than to the unregulated entities. A comparison of these contracts is relevant to determine whether the contracts with the utility are reasonable.

FPC asserts that it provided the contract between FPC and the service company, and that the form of agreements entered into between Progress Energy Service Company, LLC, and any affiliate is filed with the SEC and publicly available. Nevertheless, FPC agrees to produce the agreements between Progress Energy Service and its other affiliates.

Since FPC has voluntarily agreed to respond to OPC's Request for Production of Documents No. 49, it is not necessary to rule on

OPC's motion to compel relating to this request. Accordingly, no ruling is required on OPC's motion to compel related to its Request for Production of Documents No. 49.

OPC's Request for Production of Documents No. 50 states:

Please provide copies of all contracts between Progress Energy Service, LLC and each non-affiliated company for which it provides any services.

FPC's Response states:

FPC objects to this request as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

OPC contends that the company has an incentive to charge more to the regulated utility than to unaffiliated entities. As such, the contracts are relevant to determining the reasonableness of contracts with the utility.

While FPC asserts that such contracts would be irrelevant, it has confirmed that Progress Energy Service has not entered into any contracts with third parties to provide services to date. Therefore, FPC argues that OPC's request is moot as there are no responsive documents.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel complete responses to its Request for the Production of Documents No. 50 is denied. A party cannot be required to produce documents that are not shown to exist. Balzebre v. Anderson, 294 So.2d 701, 702 (Fla. 3d DCA 1974); Bissell Brothers, Inc. v. Fares, 611 So.2d 620 (Fla 2d DCA 1993). In this case, FPC has represented that there are no service contracts between Progress Energy Service, LLC, and third parties. Because FPC cannot be compelled to provide documents that do not exist, OPC's motion to compel a more complete response to its Request for the Production of Documents No. 50 is hereby denied.

FPC's Objections to OPC's Requests for Documents

OPC's arguments and FPC's responses regarding objections are the same for the Third Motion to Compel as those asserted in the Second Motion to Compel, which are summarized in Part I. For the reasons discussed in Part I, it is not necessary to rule on OPC's request to strike certain parts of FPC's general objections.

III. FPC'S MOTIONS FOR TEMPORARY PROTECTIVE ORDER

Motion Filed November 16, 2001

On November 16, 2001, FPC filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought by OPC's Fifth Set of Requests for Production of Documents. FPC argues that OPC seeks confidential proprietary information prepared by consultants for FPC, which has been utilized by FPC in a confidential manner. This information includes confidential information concerning employee retirement and pension benefits, which would harm the competitive business of FPC if disclosed. FPC seeks protection for these documents, and objects to providing confidential, proprietary business information, but will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed.

Section 366.093(2), Florida Statutes, directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to public records law as confidential and exempt from the public records law, Chapter 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6) (a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility

or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

Specifically, Rule 25-22.006(c), Florida Administrative Code, states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon review of the pleadings and consideration of the arguments, FPC's Motion for Temporary Protective Order, filed on November 16, 2001, shall be granted. FPC has demonstrated that the material requested by OPC is proprietary confidential business information concerning employee retirement and pension benefits. Accordingly, this information will be granted confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

Motion Filed November 30, 2001

On November 30, 2001, FPC filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, concerning documents solicited by OPC's First Set of Requests for Production of Documents and OPC's Third and Fifth Set of Requests for Production of Documents numbers 29, 36, 41, 42, 44, 55-57, 62, 63, 70, and 93. FPC argues that OPC seeks confidential proprietary information related to the following: 1) the merger of Florida Progress and its subsidiaries with Carolina Power & Light; 2) confidential studies prepared by outside consultants with the understanding that they would be kept confidential; 3) confidential strategic business initiatives of the combined companies; 4) internal audits; and, 5) confidential contract, severance and employee personal information. This information was developed: to access the merger; to relate FPC's business practice or the

combination of its business practices with those of Carolina Power & Light; for contract, severance and personal employee information; for studies by outside consultants assessing the business and the combination thereof; for internal audit reports; and, confidential strategic business plans that if disclosed would harm the competitive business of the company and the interests of the ratepayers and the company. FPC seeks protection for these documents, and objects to providing confidential, proprietary business information, but will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, FPC requests that the Commission require OPC to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

Upon review of the pleadings and consideration of the arguments, FPC's Motion for Temporary Protective Order, filed on November 30, 2001, shall be granted in part. FPC has demonstrated that the material requested by OPC is proprietary confidential business information related to the merger of Florida Progress and its subsidiaries with Carolina Power & Light, as well as confidential studies prepared by outside consultants, internal audits, and contract, severance and employee personal information. Accordingly, this information will be granted confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

No ruling is necessary on FPC's request that OPC be ordered to provide FPC with notice of its intent to use these confidential documents in connection with the hearing. Order No. PSC-01-2114-PCO-EI, the Order Establishing Procedure, provides for a seven day notice requirement concerning the use of confidential information at hearing. As such, OPC is already required to provide FPC with seven days notice of its intent to use any confidential information at the hearing. Therefore, no ruling is required.

Motion Filed December 6, 2001

On December 6, 2001, FPC filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, pertaining to documents requested by OPC's Sixth Set of Requests for the

Production of Documents. FPC argues that OPC seeks confidential proprietary information related to strategic business initiatives of FPC, as well as confidential financial information. If disclosed, this information would harm the competitive business of FPC and the interests of the ratepayers and the company. FPC seeks protection for these documents, and objects to providing confidential, proprietary business information, but will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, FPC requests that the Commission require OPC to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

Upon review of the pleadings and consideration of the arguments, FPC's Motion for Temporary Protective Order, filed on December 6, 2001, shall be granted in part. FPC has demonstrated that the material requested by OPC is proprietary confidential business information concerning strategic business plans and financial information. Accordingly, this information will be granted confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

For the reasons discussed above concerning FPC's Motion for Temporary Protective Order, filed November 30, 2001, no ruling is necessary on FPC's request that OPC be ordered to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

Motion Filed December 17, 2001

On December 17, 2001, FPC filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, referring to documents requested by Staff's Fourth Set of Requests for the Production of Documents. FPC requests protection for these documents because copies have been informally requested by OPC. These documents contain confidential financial information, confidential information provided to the SEC, and business information of Progress Energy Service Company, that if disclosed would harm the competitive business of the company and its affiliates and parent. FPC seeks protection for these documents, and objects to providing confidential, proprietary business

information, but will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, FPC requests that the Commission require OPC to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

Upon review of the pleadings and consideration of the arguments, FPC's Motion for Temporary Protective Order, filed on December 17, 2001, shall be granted in part. FPC has demonstrated that the material requested by OPC is proprietary confidential business information concerning financial information, information provided to the SEC, and business information of Progress Energy Service Company. Accordingly, this information will be granted confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

For the reasons discussed above concerning FPC's Motion for Temporary Protective Order, filed November 30, 2001, no ruling is necessary on FPC's request that OPC be ordered to provide FPC with notice of its intent to use these confidential documents in connection with the hearing.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Second and Third Motions to Compel filed by the Office of Public Counsel are denied in part and granted in part as discussed above. It is further

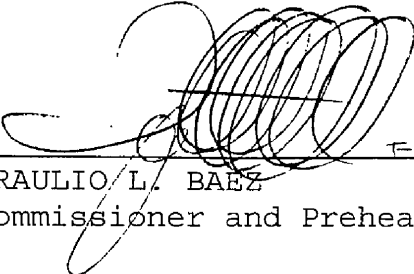
ORDERED that Florida Power Corporation shall produce the documents discussed above in Parts I and II by December 31, 2001. It is further

ORDERED that Florida Power Corporation's Motion for Temporary Protective Order, filed November 16, 2001, is granted as set forth in the body of this Order. It is further

ORDERED that Florida Power Corporation's Motions for Temporary Protective Order, filed November 30, 2001, December 6, 2001, and December 17, 2001, are granted in part, as set forth in the body of this Order.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 19th day of December, 2001.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for

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reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.