

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-03-0659-PCO-EI
ISSUED: May 29, 2003

ORDER GRANTING MOTION TO CONTINUE DEPOSITIONS AND
ESTABLISH A REASONABLE DISCOVERY SCHEDULE,
AND DENYING MOTION TO REQUIRE RESPONSES
TO DISCOVERY BY MAY 30, 2003

On May 21, 2003, the Office of Public Counsel (OPC) filed a Motion to Require Responses to Discovery by May 30, 2003 in this matter. In its Motion, OPC notes that it served its second set of interrogatories and third set of requests for production of documents on Progress Energy Florida, Inc. (PEFI) on May 21, 2003, which pertain to the Settlement Agreement reached in this docket on or about March 27, 2002.

At the May 20, 2003, Agenda Conference, the Commission stated that it would schedule a special Agenda Conference for June 30, 2003, to address several pending matters, including OPC's Motion in Limine and Motion to Strike, filed on May 16, 2003. A second Special Agenda Conference is scheduled for July 9, 2003, at which time OPC's Motion to Enforce Settlement Agreement, filed February 24, 2003, will be addressed. Furthermore, on May 19, 2003, OPC filed notice of depositions of PEFI employees, which are scheduled to take place on June 4, 2003.

OPC contends that the limited scope of its discovery, coupled with the timing of the depositions and agenda conferences, warrant responses to its discovery by Friday, May 30, 2003. OPC notes that PEFI has reserved its right to respond to the Motion to Require Discovery Responses by May 30, 2003.

On May 23, 2003, PEFI filed a Motion to Continue Depositions and Establish a Reasonable Discovery Schedule (Motion to Continue). PEFI contends that, in the past several days, OPC has undertaken to schedule five depositions and demand expedited responses to written

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discovery. PEFI states that OPC unilaterally set the five depositions without contacting PEFI's counsel as to the availability of the witnesses. PEFI does not agree that OPC's proposed schedule is reasonable, and seeks to continue the June 4 depositions until after June 11, 2003, at which time it will agree, subject to its objections, to respond to OPC's pending discovery. PEFI contends that this balances PEFI's right to a fair and reasonable discovery schedule and OPC's desire to conduct discovery prior to the June 30, 2003 Special Agenda Conference.

On May 27, 2003, OPC filed a response in opposition to PEFI's Motion to Continue (Response). In its Response, OPC states its belief that the contents of the documents to be produced in response to its discovery requests, and the answers given at the depositions, will lead to another round of discovery. Accordingly, OPC requests that PEFI's Motion to Continue be denied.

It is the normal course of professional advocacy to accord some consideration to the scheduling concerns of the party upon whom depositions will be taken. Normally, scheduling conflicts are worked out in advance between the parties, but in this instance, it appears that the parties have failed to communicate effectively among themselves with regard to this matter, thus requesting and requiring this tribunal to resolve the matter.

Having reviewed both motions and OPC's response, it appears that PEFI's request is reasonable, in that it permits OPC to conduct its discovery in time for the scheduled Special Agenda Conferences, and also addresses PEFI's request for a reasonable discovery schedule. PEFI's Motion to Continue is therefore granted, and OPC's Motion to Require Responses to Discovery by May 30, 2003 is denied. PEFI shall complete its responses to all pending discovery on or before June 11, 2003, and the parties shall confer to find a mutually agreeable time to conduct the depositions between June 11 and June 20, 2003.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Progress Energy Florida, Inc.'s Motion to Continue Depositions and Establish a Reasonable Discovery Schedule is granted. It is further

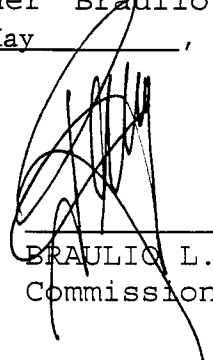
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ORDERED that the Office of Public Counsel's Motion to Require Responses to Discovery by May 30, 2003 is denied. It is further

ORDERED the Progress Energy Florida, Inc., shall serve its responses to the Office of Public Counsel's second set of interrogatories and third set of requests for production by June 11, 2003. It is further

ORDERED that the parties shall confer to reschedule the depositions at a mutually agreeable time, between June 11 and June 20, 2003.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 29th day of May, 2003.

 for Commissioner Braulio Baez

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

JSB

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.

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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; or (2) 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 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.