



JACK SHREVE
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STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
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COMMISSION
CLERK

November 21, 2001

Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
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 Citizens' Third Motion to Compel.

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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Enclosure

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DOCUMENT NUMBER-DATE

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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

Filed November 21, 2001

CITIZENS' THIRD MOTION TO COMPEL

The Citizens of Florida, by and through Jack Shreve, Public Counsel file this motion requesting the Prehearing Officer to order Florida Power Corporation (FPC) to respond to the interrogatories and produce the documents requested in Citizens' second and third set of interrogatories and third set of requests for production of documents, as more fully set forth in this motion.

Second Set of Interrogatories

Citizens seek an order from the Prehearing Officer requiring FPC to respond fully to interrogatories 28 and 48. The interrogatory, FPC's response, and Citizens' rationale to compel answers follow:

Interrogatory 28: 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:

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.

Citizens' Response: Although Florida Power Corporation states that "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," whether such costs are included in the company's surveillance reports is not the point. Citizens believe that at least a portion of such costs have been included in the test year.¹ As such, it is relevant to this case.

Interrogatory 48: With respects to costs allocated to FPC by Progress Energy Service, LLC, please provide the following information for the test year and the

¹ For example, Dr. Cicchetti identifies \$69.676 million of "merger-related transition costs" that they wish to amortize over 15 years, starting with the test year. Direct testimony of Charles J. Cicchetti, footnote 3. See also MFR schedule C-3c, where the company includes an "operating expense" acquisition adjustment of \$55.441 million.

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: 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.

Citizens' Response: The company's answer is not responsive to the interrogatory. The interrogatory asks for dollars by account numbers; actual allocation factors, including numerators and denominators; and other information. The answer does not provide this information.

Third Set of Interrogatories

Interrogatory 56: 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: 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 the 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.

Citizens' Response: Citizens could not locate affiliate balance sheet and income statements on the SEC's public interest web site, as suggested by FPC's

response. We seek this information to evaluate the reasonableness of expense allocations to and from affiliates, as such expenses are included in the test year. Citizens adopt the rationale set forth in our first motion to compel for obtaining information regarding affiliates of Florida Power Corporation.

Third Set of Requests for Production of Documents

Citizens seek an order from the Prehearing Officer requiring FPC to respond fully to requests for production of documents 38, 39, 41, 49, and 50. In addition, Citizens request the Prehearing Officer to strike various general objections made by the company.

The interrogatory, FPC's response, and Citizens' rationale to compel answers follow:

Request for Documents #41: Please provide all documents which address or discuss announced lay offs or terminations of personnel as a result of the merger.

FPC's Response: 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 objection, 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.

Citizens' Response: This request is relevant for affiliates of FPC to the extent that such costs are included in the test, whether as allocated expenses or as merger related transition costs. See Citizens' response concerning interrogatory 28.

Request for Documents #49: Please provide copies of all contracts between Progress Energy Service, LLC and each of Progress Energy's affiliates for which it provides any services.

FPC's Response: FPC objects to this request to the extent it includes affiliates, subsidiaries, or divisions of Progress Energy, Inc. other than FPC. Without waiving this objections, 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.

Citizens' Response: Contracts between Progress Energy Service, LLC, and other affiliates are relevant to test the reasonableness of the contracts with Florida Power Corporation. The consolidated entity has a clear incentive to charge more to the regulated utility than to unregulated entities. A comparison of

the contracts is highly relevant to determine whether the contracts with the utility are reasonable.

Request for Documents #50: 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: FPC objects to this request as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

Citizens' Response: Just as the consolidated entity has an incentive to overcharge the regulated company compared to unregulated affiliates, the company has an incentive to charge more to the regulated utility than to unaffiliated entities. Such contracts are relevant to determining the reasonableness of the contracts with the utility.

Other Matters

In addition to these specific objections, FPC includes a series of objections to all of the requests for documents served by Citizens. Citizens request the Prehearing Officer to strike these objections and order FPC to produce the documents as requested.

FPC objects to any definitions or instructions that purport to expand FPC's obligations under applicable law, but it identifies no such definitions or instructions. Without identifying the instructions or definitions to which it objects, the objection is meaningless and should be stricken.

FPC also objects to the definition of FPC to the extent it includes Florida Progress Corporation, Progress Energy, Inc., and Progress Energy Service Company, LLC. FPC agrees to produce documents "in the hands of these companies," but only to the extent such documents are relevant to the issues in this case. FPC, however, does not identify or describe the documents it believes are irrelevant to the case, and it is therefore impossible to tell the extent to which it is withholding documents because it believes them to be irrelevant. Since it has not identified any such documents, the objection should be stricken.

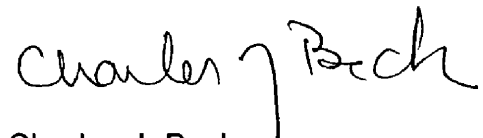
In addition, FPC objects to the definition of "FPC" , "you" , "your" or the "Company" to the extent it includes third parties whose documents are not within its possession, custody, or control. However, it fails to identify any such parties. This objection should be stricken because it does not identify any such parties and is therefore meaningless.

FPC also 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. Like so many of FPC's objections, FPC doesn't state how the instructions expand FPC's obligations. The objection should be stricken for lack of specificity.

WHEREFORE, Citizens request the Prehearing Officer to order FPC to respond to the interrogatories and produce the documents requested in Citizens' second and third set of interrogatories and third set of requests for production of documents, as more fully set forth in this motion.

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL

A handwritten signature in black ink that reads "Charles J. Beck". The signature is written in a cursive style with a large, stylized initial "C".

Charles J. Beck
Deputy Public Counsel
Fla. Bar No. 217281

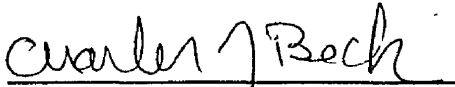
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Attorney for Florida's
Citizens

**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 21st day of November, 2001.


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