

ORIGINAL



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

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January 11, 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 is the original and 15 copies of
Citizens' Response to FPC's Motion to Compel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter.

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

Filed January 11, 2002

CITIZENS' RESPONSE TO FPC's MOTION TO COMPEL

The Citizens of Florida, by and through Jack Shreve, Public Counsel, file this response to Florida Power Corporation's expedited motion to compel filed on January 9, 2002.

1. On December 18, 2001, Florida Power Corporation served its first set of interrogatories and first set of requests for production of documents on Citizens. Among other things, the discovery requests asked Citizens to identify and produce documents that did not exist on the date of service of the discovery requests. Many of the documents requested do not exist even today.

2. After Citizens filed an objection to providing documents not in existence on the date of service of the request, several e-mails (attached to this pleading) were exchanged between the parties. Citizens explained that the Florida Rules of Civil Procedure gives parties thirty days to respond to interrogatories and requests for production of documents. The purpose of this is to allow parties some time to formulate responses and gather responsive documents. It can't be done on a changing landscape, for otherwise the thirty day period would effectively become zero. Florida Power Corporation's request

attempts to deny Citizens the thirty days provided by the Rules to gather responses.

3. Nonetheless, Citizens committed to Florida Power Corporation that we would provide documents related to the testimony by no later than one week after we file the testimony. In addition, Citizens told Florida Power Corporation that we would not wait the full week if we could get the documents gathered and prepared before that, and that we would gather the workpapers, back-up schedules, etc., as quickly as we could. Florida Power Corporation's motion (at page 5) neglects to mention the part of the commitment that we would provide documents before the end of the one week if possible, and that we would gather the documents as quickly as possible. See Citizens e-mail dated January 7, 2002, at 10:29 a.m.

4. We have already asked all of our witnesses to e-mail our office attachments containing workpapers, spreadsheets, materials, databases, etc., once their testimony is complete. Therefore, for all practical purposes, it is likely that Florida Power Corporation will in fact receive the workpapers and other documents when we file our testimony.

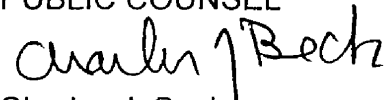
5. With respect to Florida Power Corporation's request about documents reviewed by our witnesses, even if not relied on for their testimony, Florida Power Corporation narrowed their request in an e-mail sent some hours after they filed the instant motion. In fact, the e-mail indicated they would "seek appropriate relief" the next morning if we couldn't agree on the two points in contention, without mentioning that the motion had already been filed. With the

narrowing of the request contained in the January 9, 2002 8:53 p.m. e-mail of Florida Power Corporation's attorney, Citizens will have no objection to providing the requested documents.

6. There is little left in dispute between Citizens and Florida Power Corporation with respect to their discovery requests. Although we do not believe that Florida Power Corporation has the right to demand documents not even in existence at the time when the demand is made, we have made an effort to recognize the deadlines facing Florida Power Corporation and have proposed a practical solution. The matter of the documents reviewed by Citizens' witnesses would have been settled if Florida Power Corporation had narrowed their request before filing the motion to compel, and with their request now narrowed, there is no dispute on that point.

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



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

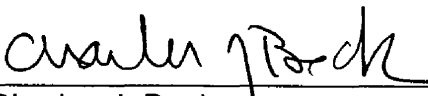
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Room 812
Tallahassee, FL 32399-
1400

(850) 488-9330

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 11th day of January, 2001.


Charles J. Beck
Deputy Public Counsel

Mary Anne Helton, Esquire
Adrienne Vining, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
P.O. Box 3350
Tampa, FL 33601-3350

James A. McGee, Esquire
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Michael B. Twomey, Esquire
Post Office Box 5256
Tallahassee, FL 32314-5256

James P. Fama, Esquire
LeBoeuf, Lamb, Greene
& MacRae LLP
1875 Connecticut Ave., Suite 1200
Washington, DC 20009

Gary L. Sasso, Esquire
James M. Walls, Esquire
Carlton Fields Law Firm
Post Office Box 2861
St. Petersburg, FL 33731

Vickie Gordon Kaufman
Florida Industrial Power Users Group
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Ronald C. LaFace, Esquire
Seann M. Frazier, Esquire
Greenberg Traurig Law Firm
101 East College Ave.
Tallahassee, FL 32301

Paul E. Christensen
Sugarmill Woods Civic Assoc., Inc.
26 Nibiscus Court
Homosassa, FL 34446

Buddy L. Hansen
13 Wild Olive Court
Homosassa, FL 34446

Paul Lewis, Jr.
Florida Power Corporation
106 East College Avenue
Suite 800
Tallahassee, FL 32301
32830

James J. Presswood, Jr.
Legal Environmental Assistance Foundation
1114 Thomasville Road
Tallahassee, FL 32303-6290

Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3068
Orlando, Florida 32801

Lee Schmudde
Vice President, Legal
Walt Disney World Co.
1375 Lake Buena Drive
Lake Buena Vista, FL

Florida Retail Federation
100 East Jefferson Street
Tallahassee, FL 32301

Attachments

From: Bowman, Jill H.
To: 'Charlie Beck'
Cc: Sasso, Gary L.
Sent: Thursday, January 03, 2002 9:25 AM
Subject: RE: Issues and Objections

Charlie:

I am writing to you in an effort to resolve issues concerning Citizens objections to the discovery served by Florida Power such that it might obtain background information, work papers, and other information relating to witnesses who intend to file testimony on behalf of Citizens on or after January 18, 2002. As you are well aware, the timing of Florida Power's discovery requests was specifically aimed at obtaining this information simultaneously with the filing of Citizens intervenor testimony. This was absolutely necessary given the short time frame between the filing of intervenor testimony and the due date for Florida Power's rebuttal testimony, which is less than 30 days following the filing of intervenor testimony and presently set for February 4, 2002.

This having been said, Florida Power has some significant concerns about one of the objections made by Citizens in response to Florida Power's Interrogatories and Document Requests. Specifically, Citizens object to providing any "documents or information that did not exist on the date the discovery requests were served." This objection is inappropriate and is not supported by the applicable rules governing discovery. Florida Power is entitled to the workpapers and other information prepared, reviewed, or relied upon by witnesses filing testimony on Citizens behalf in this proceeding. Given the time-frame for deposing these witnesses (if Florida Power determines it would like to do so) prior to the filing of rebuttal testimony, it is imperative that Florida Power obtain these documents or information simultaneous with the filing of Citizens' witnesses testimony.

By serving these discovery requests well ahead of the due date for Citizens testimony, Florida Power has given Citizens ample notice that it should be collecting such information or documents as its witnesses' testimony is prepared. Citizens have served similar discovery requests on Florida Power's employee and consulting witnesses, and although timing permitted Citizens to serve its discovery requests and interrogatories after having the benefit of reviewing Florida Power's testimony, the Commission schedule for this proceeding does not afford Florida Power this luxury.

Please advise me immediately if Citizens actually intend to withhold documents and information that exists on the due date for Florida Power's discovery.

In addition to this overriding issue, Florida Power has some concern about Citizens objection to providing documents responsive to Florida Power's interrogatory 2(h) and request number 9 that seeks the identification and production of documents or other information reviewed by Citizens' witnesses in the preparation of their testimony, whether or not they refer to it or rely on it specifically. Florida Power is entitled to know what Citizens' witnesses reviewed, including but not limited to Florida Power's documents provided to the witness by Citizens' counsel, or any other data, information or documents reviewed by the witnesses in preparing his/her testimony whether or not it was ultimately used or relied upon. Of course it is not necessary for Citizens to provide copyrighted texts -- these items simply need to be identified. Please advise me as to whether you are willing to provide these documents or other information given this clarification.

Finally, Florida Power is uncertain as to the meaning of the following objection:

Citizens object to Florida Power Corporation's discovery requests to the extent it requests proprietary or confidential information belonging to entities other than Florida Power Corporation or its affiliates.

Please clarify the types of materials Citizens intend to exclude from the production based on this objection.

I look forward to hearing from you with regard to each of these matters immediately.

Jill

From BECK.CHARLES
To Jill Bowman
Sent Mon 01/07/2002 10:29 a.m.

Jill, the Florida Rules of Civil Procedure gives parties thirty days to respond to interrogatories and requests for production of documents. The purpose of this is to allow parties some time to formulate responses and gather responsive documents. It can't be done on a changing landscape, for otherwise the thirty day period would effectively become zero. I believe it is clear you're not entitled to documents created subsequent to your request.

Nonetheless, I understand the timing constraints you face for preparing rebuttal testimony. I am willing to commit to providing documents related to the testimony we will be filing by no later than 1 week after we file the testimony. I will not wait the full week if I can get the documents gathered and prepared before that -- I will provide them to you earlier than the one week deadline as they become available. Filing our testimony on the due date is going to be our first priority, but I will gather the workpapers, back-up schedules, etc., as quickly as I can.

With regard to identifying and providing documents the witnesses did not rely upon, I am not going to ask our witnesses to try to identify documents they didn't rely upon during the course of preparing testimony. It's outlandish and burdensome to try to ask someone to identify everything they didn't rely on, and in a practical sense it probably can't be done. We will, of course, identify documents relied upon.

With respect to confidentiality, some of the witnesses have filed testimony in other jurisdictions that contains confidential information. In such instances we will provide you redacted copies of the documents. We obviously wouldn't provide confidential information belonging to other companies, just as we wouldn't agree to provide FPC's confidential information to others.

Charlie

From: Bowman, Jill H.
To: BECK.CHARLES@leg.state.fl.us
Sent: Wednesday, January 09, 2002 8:53 p.m.

Charlie:

With regard to the confidential testimony of your witnesses, your position is acceptable.

With regard to FPC's request for the identification of all reviewed items whether relied upon or not, FPC is entitled to know what witnesses reviewed. All FPC is really asking for here I for you to identify everything you gave them to review. With this clarification, I trust you will be willing to provide the information.

In connection with your refusal to timely provide documents that are very simple for the witnesses to collect as they are preparing their testimony, FPC must insist that those documents be provided along with the testimony, on the due date. Otherwise, FPC will not have the information in time to obtain depositions of OPC's witnesses as necessary prior to filing its rebuttal.

*

No other party has indicated a problem with meeting this deadline.

Of course, FPC will agree that you cannot provide these documents prior to the extended testimony filing deadline, however, given that FPC was not granted a corresponding extension, the timing of the receipt of these materials is all that much more critical.

Please advise me first thing tomorrow if you will reconsider. Otherwise, we will seek appropriate relief.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)