

GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
SUITE 1400
301 EAST PINE STREET
POST OFFICE BOX 3068

ORLANDO, FLORIDA 32802-3068

TELEPHONE 407-843-8880
FAX 407-244-5690
WEBSITE: www.ghrlaw.com

ORIGINAL

WRITER'S DIRECT DIAL

407-244-5624

E-MAIL ADDRESS

tcloud@ghrlaw.com

Thomas A. Cloud

February 22, 2002

FEDERAL EXPRESS

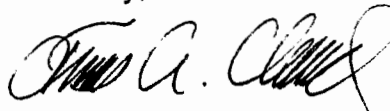
Blanca S. Bayó, Director
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0870

Re: Docket No.: 000824-EI
Publix Super Markets, Inc.'s, Notice of Filing An Amendment to Its
Prehearing Statement, Amendment to Its Prehearing Statement and
Publix Super Markets, Inc.'s Expedited Motion to Compel Florida Power
Corporation to Answer Interrogatory Numbers 47 and 48

Dear Ms. Bayó:

Enclosed please find (1) a copy of Publix Super Markets Inc.'s, Notice of Filing
An Amendment to Its Prehearing Statement (2) an original and fifteen (15) copies of
Amendment to Its Prehearing Statement, and (3) an original and fifteen (15) copies of
Publix Super Markets, Inc.'s Expedited Motion to Compel Florida Power Corporation to
Answer Interrogatory Numbers 47 and 48. *02187-02 thru 02189-02*

Sincerely,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

DISTRIBUTION CENTER

02 FEB 25 AM 8:40

- AUS _____
- CAF _____
- CMP _____
- COM 5
- CTR _____
- ECR _____
- GCL 1
- OPC _____
- MMS _____
- SEC 1
- OTH _____

TAC:gcj

Enclosure

cc: All individuals on docketing service list



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

Submitted for Filing:
February 22, 2002

PUBLIX SUPER MARKETS, INC.'s EXPEDITED MOTION TO COMPEL FLORIDA POWER CORPORATION TO ANSWER INTERROGATORY NUMBERS 47 AND 48

Publix Super Markets, Inc.'s ("Publix"), pursuant to Rule 28-106.206 of the Florida Administrative Code and Florida Rule of Civil Procedure 1.380, moves to compel Florida Power Corporation ("FPC") to respond to Publix third set of interrogatories to FPC, specifically, numbers 47 and 48. In addition, Publix is requesting expedited treatment of this Motion to the extent possible in order to allow Publix to have the answers to these interrogatories prior to the pre-hearing date in this Docket currently set for March 4, 2002. In support of its Motion, Publix states:

1. On January 22, 2002, Publix served FPC with its Third Set of Interrogatories to Florida Power Corporation (Nos. 47 – 50).
2. On January 28, 2002, FPC filed written objections to questions 47 and 48 including all subparts¹ stating in both instances that "FPC objects to this interrogatory and all subparts . . . as irrelevant immaterial and not

¹ Interrogatories 47 and 48 are as follows:

47. Please identify the amounts which FPC has spent over the last five years for the following activities:
 - c. Participating in appellate proceedings on an Amicus Curie basis.
 - d. Public relations and advertising of any type.
 - e. Political Action Committees.
48. For each of the amounts listed in your answer to Interrogatory 48, please indicate if these amounts are recovered or proposed to be recovered in FPC electric rates approved or authorized by the

reasonably calculated to lead to the discovery of admissible evidence. Such amounts are not reflected in the test year and are not included in rate base.”

3. FPC should be compelled to provide complete responses to Publix Interrogatories 47 (c), (d) and (e) and 48 (as applicable to 47 (c) (d) and (e)). While FPC has objected to these interrogatories as irrelevant immaterial and not calculated to lead to discovery of admissible evidence, this position is inconsistent with the Pre-Hearing Issues List in this Docket to which all the parties have responded in their Pre-Hearing Statements. Issue 74 of the Pre-Hearing Issues List reads “What is the appropriate amount of outside services expense to be allowed in operating expense for FPC? Publix has requested in its Interrogatories 47 (c), (d) and (e) and 48 information directly related to amounts expended by FPC for outside services. Therefore, Publix Interrogatories 47 (c) (d) and (e) and 48 are both relevant and material.
4. The information requested by Publix in its Interrogatories 47 and 48 are crucial to the preparation by Publix for cross examination during the hearings on this Docket. Without the requested information, Publix’s ability to adequately cross examine witness will be compromised and to allow FPC to withhold such information prior to the hearing would most certainly deprive Publix of its due process rights to a meaningful opportunity to adequately prepare for the hearings. See Duval County School Board v. Armstrong, 336 So. 1219, 1220(Fla. 1st DCA 1976). Due

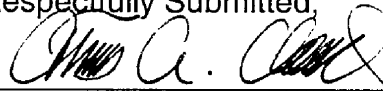
process requires that FPC be required to respond to Publix Interrogatories on or before March 4, 2002.

5. Publix submits that FPC's failure to properly respond to the interrogatories has been intended to prevent Publix from preparing for the final hearing on this Docket. Consequently, sanctions are warranted as punishment and to deter FPC and others from engaging in discovery abuse in the future.

WHEREFORE, Publix request that the Commission enter an Order as follows:

- A. Compelling FPC to serve complete responses to Publix interrogatories 47 and 48, including subparts on or before Monday, March 4, 2002;
- B. Awarding Publix its expenses incurred in preparing this Motion, including reasonable attorneys' fees; and,
- C. Affording Publix such additional relief as it deems just under the circumstances.

Respectfully Submitted,



Thomas A. Cloud, Esquire
W. Christopher Browder, Esquire
Michael J. Bittman, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801
Ph. (407) 843-8880
Fax: (407) 244-5690

and
Peter Antonacci, Esquire

Florida Bar No. 280690
Gray, Harris & Robinson, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32302-3189
Ph. (850) 577-9090
Fax: (850) 222-7717
Attorneys for Publix Super Markets, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US Mail to the following parties of record and interested parties, this 22nd day of February, 2002:

Parties of Record:

Office of Public Counsel
Jack Shreve
111 West Madison Street, # 812
Tallahassee, Florida 32399
Fax No. 850-488-4491

Florida Industrial Power Users Group
McWhirter Law Firm
Vicki Kaufman
117 South Gadsden Street
Tallahassee, Florida 32301
Fax No. 850-222-5606

Michael Twomey, Esquire
Post Office Box 5256
Tallahassee, FL 32314-5256
Fax No. 850-421-8543

Mary Ann Helton
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oaks Boulevard
Tallahassee, FL 32399-0850
Fax No. 850-413-6250

Walt Disney World Co.
Lee Schmudde
1375 Lake Buena Drive
Fourth Floor North
Lake Buena Vista, FL 32830
Ph.: 407-828-1723
Fax: 407-828-1180

PG&E National Energy Group Co.
Melissa Lavinson
7500 Old Georgetown Road
Bethesda, MD 20814
Fax No. 301-280-6379

Reliant Energy Power Generation, Inc.
Michael Briggs
801 Pennsylvania Ave., Ste. 620
Washington, DC 20004
Fax No.

Florida Municipal Power Agency
Robert C. Williams
8553 Commodity Circle
Orlando, FL 32819-9002
Ph.: 407-355-7767
Fax: 407-355-5794

Sutherland Asbill & Brennan LLP (DC)
Daniel Frank
1275 Pennsylvania Ave., NW
Washington, DC 20004-2415
Ph.: 202-383-0838
Fax: 202-637-3593

Carlton, Fields Law Firm
Gary L. Sasso/James M. Walls
P.O. Box 2861
St. Petersburg, FL 33731
Ph.: 727-821-7000
Fax: 727-822-3768

Florida Retail Federation
100 E. Jefferson St.
Tallahassee, FL 32301
Ph.: 850-222-3461

LeBoeuf Law Firm
James Fama
1875 Connecticut Ave., Ste. 1200
Washington, DC 20009
Ph: 202-986-8053
Fax: 202-986-8102

McWhirter Law Firm
Joseph McGlothlin
117 S. Gadsden St.
Tallahassee, FL 32301
Ph: 850-222-2525
Fax: 850-222-5605

Sutherland Asbill & Brennan LLP
Russell S. Kent
2282 Killearn Center Blvd.
Tallahassee, FL 32308-3561
Ph.: 850-894-0015
Fax: 850-894-0030

Foley & Lardner Law Firm
Thomas J. Maida/N. Wes Strickland
106 East College Ave., Ste. 900
Tallahassee, FL 32301
Fax No. 850-224-3101

Ausley Law Firm
James Beasley/Willis
P.O. Box 391
Tallahassee, FL 32302
Fax No. 850-222-7952

Mirant Americas Development, Inc.
Beth Bradley
1155 Perimeter Center West
Atlanta, GA 30338-5416
Fax No. 678-579-5293

Florida Power Corporation
Paul Lewis, Jr.
106 East College Ave., Ste. 800
Tallahassee, FL 32301-7740
Fax No. 850-222-9768

Landers Law Firm
Leslie J. Paugh
310 West College Ave.
Tallahassee, FL 32301
Fax No. 850-224-5595
Ph.: 850-681-0311

Moyle Law Firm
Jon C. Moyle/Cathy M. Sellers
118 North Gadsden Street
Tallahassee, FL 32301
Fax No. 850-681-8788

Katz, Kutter Law Firm
Bill Bryant, Jr./Natalie Futch
106 E. College Avenue, Suite 1200
Tallahassee, FL 32301
Fax No. 850-222-0103

Seminole Electric Cooperative, Inc.
Mr. Timothy Woodbury
16313 N. Dale Mabry Highway
Tampa, FL 33688-2000
Phone: 813-963-0994
Fax: 813-264-7906

Calpine Eastern
Thomas W. Kaslow
The Pilot House, 2nd Floor
Boston, MA 02110
Fax No. 617-557-5353

CPV Atlantic, Ltd.
145 NW Central Park Plaza, Ste. 101
Port St. Lucie, FL 34986
Fax No. 561-873-4540

Enron Corporation
Marchris Robinson
1400 Smith Street
Houston, TX 77002-7361
Phone: 713-853-3342
Fax: 713-646-8160

Duke Energy North America
Lee E. Barrett
5400 Westheimer Court
Houston, TX 77056-5310
Fax No. 713-627-6566

Florida Municipal Power Agency
Frederick M. Bryant
2061-2 Delta Way
Tallahassee, FL 32303
Fax No. 850-297-201

Interested Parties:

Florida Power & Light Company
Bill Walker
215 S. Monroe St., Ste. 810
Tallahassee, FL 32301-1859
Fax No. 850-224-7517
Ph. 850-224-7517

Tampa Electric Company
Ms. Angela Llewellyn
Regulatory Affairs
P.O. Box 111
Tampa, FL 33601-0111
Fax No. 813-228-1770

Steel Law Firm
Matt Childs
215 S. Monroe St., #601
Tallahassee, FL 32301
Ph.: 850-222-4192
Fax: 850-222-7510

Florida Industrial Co-Generation
Association
c/o Richard Zambo, Esquire
598 S.W. Hidden River Ave.
Palm City, FL 34990
Fax No. 561-220-9402

Florida Electric Cooperatives
Association, Inc.
Michelle Hershel
2916 Apalachee Parkway
Tallahassee, FL 32301
Fax No. 850-656-5485

Holland & Knight
Bruce May
P.O. Drawer 810
Tallahassee, FL 32302-0810
Fax No. 850-224-8832



Thomas A. Cloud, Esquire
W. Christopher Browder, Esquire
Michael J. Bittman, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801
Ph. (407) 843-8880
Fax: (407) 244-5690

and

Peter Antonacci, Esquire
Gray, Harris & Robinson, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32302-3189
Ph. (850) 577-9090
Fax: (850) 222-7717
Attorneys for Publix Super Markets, Inc.