

ORIGINAL

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: March 6, 2002

RECEIVED - FPSC
02 MAR - 6 PM 4: 27
COMMISSION CLERK

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

Florida Power Corporation ("Florida Power") by its undersigned counsel, files this response to the expedited motion to compel filed by Publix Super Markets, Inc. ("Publix") requesting the Prehearing Officer to order Florida Power to further answer two interrogatories propounded by Publix in its third set of interrogatories to Florida Power, specifically interrogatories numbered 47 and 48. In response to this motion, Florida Power states:

Interrogatories 47 and 48 concern the amounts Florida Power has spent over the last five years in:

- (a) Opposing merchant power plant siting and development in the State of Florida;
(b) Lobbying for legislative changes in Florida law relative to the siting and development of merchant power plants in the State of Florida;
(c) Participating in appellate proceedings on an Amicus Curie basis;
(d) Public relations and advertising of any type; and
(e) Political Action Committees;

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC
OTH

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

02618 MAR - 6 02

FPSC-COMMISSION CLERK

Florida Power objected to interrogatories 47 and 48 to the extent they sought information regarding costs that Florida Power is not seeking to recover in the base rates. Specifically, Florida Power objected on the basis that, “Such amounts are not reflected in the test year and are not included in rate base.”

Notwithstanding this objection, Florida Power answered interrogatories 47 and 48 to the extent that they requested information regarding costs that are included in the base rate. Thus, in its February 21, 2002 response to Publix's Third Set of Interrogatories, Florida Power provided information regarding advertising expenses for the historical period requested.

Publix now requests the Commission to compel Florida Power to provide more complete answers to these interrogatories. In particular, Publix's motion seeks more information regarding subparts (c), (d) and (e). However, since the time Publix filed its motion, it has agreed to withdraw its request for more information regarding public relations expenditures, one portion of subpart (d). In fact, the parties have agreed to drop Issues 76 and 77 outlined in Florida Power's Prehearing Statement concerning franchise fee public relations expenditures. The parties – including Publix – agreed that because these costs are recorded below the line and are not being passed on to retail customers, those issues are not relevant to this proceeding.

In light of the developments since Publix filed its motion, the question now before the Commission is whether Florida Power should be compelled to answer questions concerning expenses related to participation as Amicus curie in appellate courts and concerning expenses related to Political Action Committees. Just as with the public relations expenditures, Florida Power should not be compelled to further answer these remaining interrogatories because the information Publix seeks is completely irrelevant to the true issues in this proceeding.

All of the information Publix seeks by its motion concerns costs recorded below the line by Florida Power that are not included in the test year, and thus are not being passed on to the retail customers. Furthermore, Publix's stated justification for its motion does not withstand scrutiny. Publix points to Issue 74 of Florida Power's Prehearing Statement and claims that this issue makes its interrogatories both relevant and material. What Publix fails to point out, however, is that the complete statement of Issue 74 shows precisely why the additional information Publix requests is completely irrelevant to this proceeding. Issue 74 reads, in its entirety:

Issue 74: What is the appropriate amount of outside services expense to be allowed in operating expense for FPC? (Revell, Monic, Costner) (OPC 28, PSM 30, Staff 62)

FPC: All outside services expenses included in the Company's 2002 test year are appropriate.

Witnesses: (Myers, Bazemore)

(emphasis added).

It hardly bears mentioning that costs not included in the test year and thus not included in the base rate are not at issue in this proceeding. As Florida Power stated in its objections to these interrogatories, the costs associated with Amicus Curie and Political Action Committees are below the line costs that are not included in the test year. Requiring Florida Power to provide information regarding these below the line expenses would only serve to interject irrelevant material into an already complicated rate proceeding. Furthermore, Florida Power has already provided answers to these two interrogatories with respect to any advertising costs. Thus, to require Florida Power to further answer subpart (d) would be to ask Florida Power to either do the impossible or provide information unnecessary to the disposition of this proceeding.

Finally, Publix requests the Commission to enter sanctions against Florida Power for its failure to answer Publix's interrogatories to Publix's satisfaction. Even if this Commission believed that the information Publix seeks was somehow relevant to the issues in this proceeding, it still would be totally inappropriate to impose sanctions. The law is clear that a party may raise objections to what it views to be overbroad discovery requests and then make a good faith effort to answer those portions of the requests that the party believes are reasonable. See Fla. R. Civ. P. 1.340(a) and Fla. R. Civ. P. 1.380(a); Herold v. Computer Components International, Inc., 252 So. 2d 576 (Fla. 4th DCA 1971). That is exactly what Florida Power did in this case. For sanctions to be warranted, the Commission would have to find not only that Florida Power's objections were totally unworkable but also that there was an element of bad faith in its answers. See Able Bail Bonds, Inc. v. Able Bail Bond, Inc., 626 So. 2d 1105 (Fla. 3d DCA 1993); Allington Towers North, Inc. v. S.A. Weisberg, 439 So. 2d 891 (Fla. 4th DCA 1983). Here, quite to the contrary, Florida Power made every effort to fully answer those interrogatories that were in any way relevant to the issues in this proceeding. Florida Power then properly raised objections to the extent it believed Publix was engaging in an improper fishing expedition seeking information wholly irrelevant to the issues in this proceeding..

For these reasons, Florida Power respectfully requests the Commission to deny Publix's Expedited Motion to Compel Florida Power Corporation to Answer Interrogatory Numbers 47 and 48.

Respectfully submitted,



James A. McGee
FLORIDA POWER CORPORATION
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

Gary L. Sasso
James Michael Walls
Jill H. Bowman
W. Douglas Hall
CARLTON FIELDS, P. A.
Post Office Box 2861
St. Petersburg, FL 33731
Telephone: (727) 821-7000
Facsimile: (727) 822-3768
Attorneys for Florida Power Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of foregoing has been furnished via hand delivery

(where indicated by *) and via U.S. Mail to the following on February 21, 2002.

Mary Anne Helton, Esquire **
Adrienne Vining, Esquire
Bureau Chief, Electric and Gas
Division of Legal Services
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Phone: (850) 413-6096
Fax: (850) 413-6250
Email: mhelton@psc.state.fl.us

Jack Shreve, Esquire
Public Counsel
John Roger Howe, Esquire
Charles J. Beck, Esquire
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Fax: (850) 488-4491
Attorneys for the Citizens of the State of
Florida

Daniel E. Frank
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2415
Phone: (202) 383-0838
Fax: (202) 637-3593
Counsel for Walt Disney World Co.

Russell S. Kent, Esq.
Sutherland Asbill & Brennan LLP
2282 Killlearn Center Blvd.
Tallahassee, FL 32308-3561
Phone: (850) 894-0015
Fax: (850) 894-0030
Counsel for Walt Disney World Co.

Thomas A. Cloud, Esq.
Gray, Harris & Robinson, P.A.
301 East Pine Street, Ste. 1400
P.O. Box 3068
Orlando, FL 32801
Phone: (407) 244-5624
Fax: (407) 244-5690
Attorneys for Publix Super Markets, Inc.

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350
Phone: (813) 224-0866
Fax: (813) 221-1854
Counsel for Florida Industrial Power Users
Group

Joseph A. McGlothlin, Esquire
Vicki Gordon Kaufman, Esquire
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden
Tallahassee, FL 32301
Phone: (850) 222-2525
Fax: (850) 222-5606
Counsel for Florida Industrial Power Users
Group and Reliant Energy Power Generation,
Inc.

Michael B. Twomey, Esq.
8903 Crawfordville Road (32305)
P.O. Box 5256
Tallahassee, FL 32314-5256
Phone: (850) 421-9530
Fax: (850) 421-8543
Counsel for Sugarmill Woods Civic
Association, Inc. and Buddy L. Hansen



Attorney