

ORIGINAL



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May 27, 2003

COMMISSION
CLERK

MAY 27 PM 3:15

RECEIVED

Blanca S. Bayo, Director
Division of Records and Reporting
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' Opposition to Motion Filed by Progress Energy.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

RECEIVED & FILED

[Signature]
FPSC-BUREAU OF RECORDS

[Signature: Charles J. Beck]

Charles J. Beck
Deputy Public Counsel

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Enclosures

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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 --)
2002 Revenue Sharing)

Docket No. 000824-EI

Filed May 27, 2003

CITIZENS' OPPOSITION TO MOTION FILED BY PROGRESS ENERGY

The Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, file this response in opposition to the motion filed by Progress Energy Florida, Inc. (Progress Energy) on May 23, 2003, which it styled "motion to continue depositions and establish a reasonable discovery schedule."

1. The recommendation filed in this case on May 8, 2003, was preceded by a number of earlier drafts containing significantly different recommendations. The earlier drafts of the recommendation supported Public Counsel's position in its entirety and recommended requiring Progress Energy to refund an additional \$18 million to customers. Some later drafts maintained staff's recommendation to support Public Counsel's position, but also included an alternative position recommending that Progress Energy refund some, but not all, of the amount urged by Pubic Counsel. These later drafts included the alternative recommendation after one Commissioner advised staff that he would like to see an alternative recommendation if he did not agree with staff's primary recommendation.* Ultimately, the staff recommendation filed on May

8, 2003, contained no affirmative recommendation at all. The filed recommendation simply set forth three options from which the Commission could choose. The filed recommendation came out in this form only after two Commissioners advised the Commission's general counsel that they did not want an affirmative recommendation from staff. They told this to the Commission's general counsel after being advised that the Commission staff supported Public Counsel's position.

2. The possible involvement of Progress Energy in this series of events is not clear. A few of the public records produced by the Commission on May 16, 2003, may have been provided to the Commission by Progress Energy or one of its agents. In addition, at depositions held on May 23, 2003, the parties learned that an employee of Progress Energy had told staff that two Commissioners were going to vote in the company's favor on the matter of the amount to be refunded to customers.

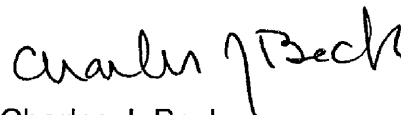
3. Staff supported Public Counsel's position concerning the amount of the refund, and apparently no staff member agreed with the position advanced by Progress Energy. Yet a recommendation favoring Public Counsel's position was transformed into one where the position advanced by Progress Energy was given equal support to the one advanced by Public Counsel. These changes adversely affected Citizens by making it less likely that the customers of Progress Energy would receive an additional \$18 million refund.

4. There must be no delay in getting answers to the questions that remain about the involvement of Progress Energy, if any, in these series of events. The Commission has made it abundantly clear that it will decide a motion *in limine* and a motion to strike at an agenda conference scheduled for June 30, 2003, and that it will

decide the amount of refund due customers at a special agenda scheduled for July 9, 2003. Citizens believe it is likely that the contents of the documents to be produced by Progress Energy and the answers given at depositions will lead to another round of discovery in order to adequately answer the questions that have been raised. In order to allow time to complete this investigation, Florida Progress must be ordered to respond to discovery by this Friday and attend depositions scheduled for Wednesday of next week.

4. Accordingly, Citizens urge the Prehearing Officer to deny the motion filed by Progress Energy on May 23, 2003, and require Progress Energy to (1) respond to Citizens' outstanding interrogatory and requests for production of documents by May 30, 2003, and (2) require the Progress Energy employees noticed for deposition on Wednesday, June 4, 2003, to appear at the depositions.

Respectfully submitted,



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

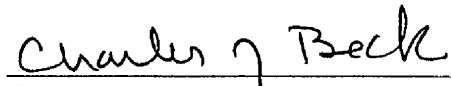
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(850) 488-9330

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 27th day of March, 2003.


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