

ORIGINAL



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June 16, 2003

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JUN 16 PM 3:38
COMMISSION
CLERK

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 000384-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Joint Motion for Reconsideration of Order No. PSC-03-0687-PCO-EI issued June 9, 2003. A diskette in Word format is also submitted.

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

AUS _____
CAF _____
CMP _____
COM 5
CTR _____
ECR _____
GCL _____
OPC _____ CJB:bsr
MMS _____
SEC 1
OTH _____

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

05315 JUN 16 2003

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 June 16, 2003

**JOINT MOTION FOR RECONSIDERATION OF ORDER NO. PSC-03-0687-PCO-EI
ISSUED JUNE 9, 2003**

Pursuant to Rule 25-22.0376, Florida Administrative Code, the Citizens of Florida (Citizens), by and through Jack Shreve, Public Counsel, and Charles J. Christ, Jr., Attorney General, State of Florida (Attorney General) file this joint motion requesting the full Commission to reconsider order no. PSC-03-0687-PCO-EI issued June 9, 2003 (Order).

Background

Progress Energy entered into a settlement agreement with the parties in this case on March 27, 2002, and the Florida Public Service Commission approved the settlement by its order PSC-02-0655-AS-EI dated May 14, 2002. The agreement contained provisions requiring a refund to customers if Progress Energy's revenues should exceed certain amounts. Provisions of the settlement agreement concerning the sharing of revenues are as follows:

Sharing Threshold - Retail base rate revenues between the sharing threshold amount and the retail base rate revenue cap will be divided into two shares on a 1/3, 2/3 basis.

FPC's shareholders shall receive the 1/3 share. The 2/3 share will be refunded to retail customers. The sharing threshold for 2002 will be \$1,296 million in retail base rate revenues. For 2002 only, the refund to the customers will be limited to 67.1% (May 1 through December 31) of the 2/3 customer share. The retail base rate revenue sharing threshold amounts for calendar year 2003 and for each calendar year thereafter in which this Plan is in effect will be increased by \$37 million over the prior year's revenue sharing threshold. Section 8 explains how refunds will be paid to customers.....

During July of 2002, Progress Energy notified Citizens for the first time that it believed certain adjustments should be made to the revenue figures included in the agreement, even though the agreement contains no provisions allowing such adjustments. Subsequent lengthy negotiations failed to resolve the matter, so the parties to the agreement, including Citizens, Florida Industrial Power Users Group (FIPUG), Florida Retail Federation (Retail Federation), Buddy Hansen / Sugarmill Woods Civic Association (Sugarmill Woods), and Publix Super Markets, Inc. (Publix) filed a motion to enforce the settlement agreement on February 24, 2003. Progress Energy filed its response on March 7, 2003.

On May 8, 2003, the staff of the Commission filed a recommendation providing the Commission three alternatives to resolve the case without indicating which option staff thought to be correct. On May 14, 2003, Sugarmill Woods filed a public records request with the Commission seeking various documents, including all previous drafts of the staff recommendation, documents concerning the recommendation and the refund, and appointment calendars of the Commissioners. Depositions were taken on May 22, 2003, at which staff was questioned about the changes that had been made to the staff

recommendation over time. Staff was also questioned about certain documents found in the possession of the aides to two Commissioners which appeared to have come from Progress Energy or one of its agents.

It turned out that 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.¹ Some later drafts maintained staff's recommendation to support Public Counsel's position, but they also included an alternative position recommending that Progress Energy refund some, but not all, of the amount urged by Public Counsel. The 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.² 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 after two Commissioners advised the Commission's general counsel that they did not want an affirmative recommendation from staff.³ They told this to the Commission's

¹ See deposition of John Slemkewicz at 51-54, and deposition of Tim Devlin at 8-9.

² See deposition of John Slemkewicz at 60-62, deposition of Tim Devlin at 10-11, 13-14, 20, and deposition of Dr. Mary Bane at 8, 11-12, 32.

³ See deposition of Dr. Mary Bane at 15, 19, deposition of Tim Devlin at 22, 25, and deposition of Harold McLean at 11-13, 17, 57-58, 61-63.

general counsel after being advised that the Commission staff supported Public Counsel's position.⁴

Some of the public records produced by the Commission on May 16, 2003, were provided to the aides of the two Commissioners by an agent of Progress Energy. Those documents, which had not been provided to any of the other parties in this docket, are attached to this motion as attachment 1. The documents include a "timeline of events,"⁵ a document entitled "revenue sharing issue," and two pages of questions. The two pages of questions, which appear to be questions to be directed to staff, begin with fairly neutral questions, but then steadily lead to a series of questions designed to support Progress Energy's position in the case. Finally, at depositions held on May 23, 2003, the parties learned that an employee of Progress Energy had told staff that two Commissioners were favorably disposed toward Progress Energy's position on the amount of refund due customers.⁶

Discovery Served on Progress Energy

Citizens filed the following requests for documents and interrogatory on May 21:

Document Request 4. Please provide all documents in your possession, custody or control provided by you (including, but not limited, by your employees, agents, attorneys, and independent contractors) to any member of the staff of the Florida Public Service Commission or any Florida Public Service Commissioner

⁴ See deposition of Harold McLean at 7, 9-10, 14, 18, 28, 31.

⁵ The copy of this document provided in response to discovery includes two prominent blackouts. The copy of this document provided by Commissioner Davidson's aide in response to Sugarmill Wood's public records request contains these same blackouts, but the copy provided by Commissioner Bradley's aide only contains one of the blackouts.

⁶ See deposition of Dr. Mary Bane at 26, deposition of Tim Devlin at 42-43, and deposition of Harold McLean at 20-22.

concerning refund or refunds required by your stipulation and settlement dated as of March 27, 2002.

Document Request 5. Please provide all e-mails, memoranda and other communications or documents in your possession, custody or control regarding the settlement agreement dated as March 27, 2002, meetings or communications with Florida Public Service Commission staff members, meetings or communications with Florida Public Service Commissioners, or the amount of refund or refunds required under the stipulation and settlement dated as of March 27, 2002.

Document Request 6. Please provide all e-mails, memoranda or other communications or documents in your possession, custody or control regarding actions or communications by contractors or consultants regarding the amount of refund or refunds required under the stipulation and settlement dated as of March 27, 2002.

Interrogatory 2. For each document responsive to document request 4 contained in Citizens' third set of requests for production of documents dated May 21, 2003, please identify the document and provide the following:

- (a) the name and position of the person providing the document to the Florida Public Service Commissioner or to the member of the staff of the Florida Public Service Commission,
- (b) the name of the person to whom the document was provided, and
- (c) the date the document was provided.

The requests applied to all documents created on or after January 1, 2002. Citizens also noticed five employees of Progress Energy for deposition. By order PSC-03-0659-PCO-EI issued May 29, 2003, the Prehearing Officer denied Citizens' motion to require responses to discovery by May 30, 2003, and gave Progress Energy until June 11, 2003, to serve its responses to the written discovery requests. He also ordered the

parties to confer to schedule the depositions at a mutually agreeable time between June 11 and June 20, 2003, instead of the date set in Citizens' notice of depositions.

Progress Energy's Motions

On May 29, 2003, Progress Energy filed a motion to restrict the scope of all discovery and a motion to prohibit depositions of Gary Roberts and H. William Habermeyer, Jr., in their entirety. The company sought to have all pending discovery restricted solely to the topic of communications by Progress Energy with Commissioners and staff concerning the merits of the refund issue during the period November 22, 2002, to date. Progress Energy derived the date of November 22, 2002, by applying the provisions of §350.042, Florida Statutes⁷, to the formal filing date of the motion to enforce the settlement agreement.

The Prehearing Officer's Order

On June 9, 2003, the Prehearing Officer issued an order fully granting Progress Energy's motion to limit the scope of discovery and granting in part the company's motion to prohibit depositions of Roberts and Habermeyer. The Prehearing Officer decided that the scope of investigation by the parties would be limited solely to the issue of whether any ex parte communications between Progress Energy and any Commissioner amounted to a violation of law. All documents to be produced by

⁷ §350.042, Florida Statutes, states that a commissioner shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under §120.54 or §120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days.

Progress Energy were limited by this Commission-imposed restriction. In addition, the Prehearing Officer allowed Progress Energy to withhold all documents created before November 26, 2002. Limiting deposition questions to this scope of investigating illegal acts, the Prehearing Officer allowed the parties to take a deposition of Mr. Habermeyer, but not Mr. Roberts. The Prehearing Officer likened the three requests for documents, one interrogatory, and five depositions to a "fishing expedition" which he would not permit.

Standard of Review

We are fully aware of the Commission's practice of limiting review of prehearing officer's orders to a clear mistake of law or fact. For example, when Progress Energy asked to Commission to make a *de novo* review of a prehearing officer's order in docket 020953-EI, the Commission refused, stating that were this argument accepted, any party, for any reason, could seek reconsideration from the full Commission of any decision of a prehearing officer, rendering the prehearing officer superfluous at best. Commission order no. PSC-02-1754-FOF-EI issued December 12, 2002.

The disputes here are not garden variety discovery disputes. Important questions have arisen about the fundamental fairness of the process leading to the filing of the May 8 staff recommendation, including the influence Progress Energy may have had on that process. Staff provided sworn testimony at depositions that an employee of Progress Energy had indicated that two Commissioners were favorably disposed toward Progress Energy's position concerning the refund. Given the prohibitions contained in §350.042, Florida Statutes, these statements are puzzling. We also know that actions

by two Commissioners led staff to change its recommendation from one supporting the Public Counsel's position to one to one that merely listed options which the Commissioners could adopt. Before taking these actions, the two Commissioners were told that staff supported Public Counsel's position. Finally, documents produced by the aides to the two Commissioners include documents which originated by Progress Energy. These documents had not been provided to the other parties in this case.

These recently developed facts raise questions that transcend the issue of whether there was a technical violation of law by Progress Energy. These revelations bring into question the fundamental fairness of the process used at the Commission to develop recommendations and decide cases. Although we believe this motion for reconsideration meets the tradition standard applied by the Commission for reconsideration, the unique importance of resolving issues concerning the fundamental fairness of processes used at the Commission warrants a *de novo* review of the Prehearing Officer's order.

The Prehearing Officer Erred by Restricting All Discovery to the Issue of Illegal Communications

The limited written discovery served on Progress Energy relates to the settlement agreement itself or communications with Commissioners and staff about the settlement. This can hardly be considered a "fishing expedition."

Under rule 1.280(b) of the Florida Rules of Civil Procedure, the scope of discovery includes any matter, not privileged, that is relevant to the subject matter of the pending action. Requests for internal documents regarding the settlement agreement

go to a central issue before the Commission: should matters extrinsic to the agreement itself be considered by the Commission, and if so, what are they? There are other questions surrounding this issue. Did Progress Energy always maintain that adjustments to the agreement should be made, or was this something that they decided after the agreement was signed? Did Carolina Power and Light Company direct Progress Energy to argue for these adjustments after they reviewed the contents of the agreement? What strategies did the company develop to lobby the Commission and staff about their position?

By limiting discovery only to documents and matters occurring since November 22, 2003, the Prehearing Officer precluded us from fully inquiring into claims made by Progress Energy extrinsic to the agreement. It makes no sense that Progress Energy would ask the Commission to consider matters not contained in the agreement but then object to discovery related to those claims. As long as Progress Energy claims that the Commission should consider matters not contained in the agreement, the Commission must allow us full discovery related to those claims, including an inspection of their internal documents related to the agreement.

§350.042, Florida Statutes, states that a commissioner shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under §120.54 or §120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The matter of refunds for the years 2002 through 2005 has been pending since the Commission approved the settlement between Progress Energy and the parties.

Even if the Commission temporarily closed this docket administratively after approving the agreement, the matter of the refund still remained. Implicit in the Prehearing Officer's ruling is the notion that it would be perfectly proper for Progress Energy to engage in ex parte communications with Commissioners between May 14, 2002 (the date of the order approving the settlement) and November 26, 2002 concerning the amount of refund owed for 2002, even though it was a pending matter. This extremely narrow reading of the ex parte statute does not make sense in this case, particularly since Progress Energy began advocating its position to parties and staff by no later than July of 2002.

The Prehearing Officer Erred by Limiting Depositions

In response to Progress Energy's motion for a protective order against taking the depositions of Gary Roberts and H. William Habermeyer, jr., the Prehearing Officer allowed the deposition of Mr. Habermeyer to go forward, subject to strict scope limitations, and granted a protective order against taking the deposition of Mr. Roberts. Mr. Roberts works with Paul Lewis, who in turn is the person who boasted to staff that two Commissioners were favorably disposed toward Progress Energy's position on the amount of refund due customers. Although we do not know the basis for Mr. Lewis' claims, the fact that he told this to staff makes us want to know to whom else he may have made similar statements and whether he told others how he developed this information. Mr. Roberts, who works with Mr. Lewis, is an obvious person to ask about this. The Prehearing Officer's order, however, precludes us from inquiring into these matters. According to the Prehearing Officer's order, "the better course of obtaining

information about Mr. Lewis' statements is by deposing Mr. Lewis himself."⁸ Thus, we would have to take everything said by Mr. Lewis at face value and would be denied the opportunity to investigate his credibility or check with others for inconsistencies about his statements. Credibility of statements by a witness is always an issue, and we see no basis for the Prehearing Officer's order precluding such inquiries.

Conclusion

An enormous amount of money is at stake in this proceeding concerning refunds. For the year 2002, the difference amounts to \$18.2 million. But the decision in this case will also act as a precedent on accounting for approximately \$14 million in each of the following three years. Thus, as much as \$60 million is potentially at stake by the Commissioner's decision here concerning the amount of refund due customers for 2002.

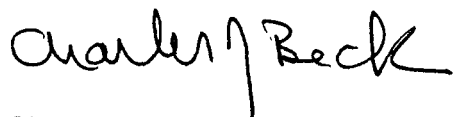
The Commission should reconsider the Prehearing Officer's order severely limiting discovery in this case. It is not only the money that is at stake in this proceeding. Behind-the-scenes manipulation by Progress Energy threatens to undermine the processes used at the Commission. It is as much in the Commission's interest as it is the parties' interest to get these matters resolved, and they cannot be resolved if the Commission ties our hands behind our backs during the investigation.

⁸ Order at 4.

The Commission should reverse the Prehearing Officer's order and allow discovery to proceed without prior restrictions imposed by the Commission.

Respectfully submitted,

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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 16th day of June, 2003.



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PROGRESS ENERGY
Docket # 000824-EI

Timeline of Events

March 27, 2002- Parties [Progress Energy vs. OPC, on behalf of Florida Industrial Power Users Group (FIPUG), Florida Retail Federation, Buddy Hansen/Sugermill Woods Civic Association, and Public Supermarkets, Inc. (collectively referred to as the Movants)] entered into settlement agreement, which was approved by the Commission on May 14, 2002.

February 24, 2003: Motion to Enforce Settlement Agreement – filed by office of Public Counsel.

March 6, 2003- OPC served its First Set of Interrogatories and its second Request for Production of Documents to Progress Energy.

March 7, 2003- Progress Energy's Request for Oral Argument and, in the Alternative, for an Evidentiary Hearing

March 7, 2003- Progress Energy's Opposition to OPC's Motion to Enforce Settlement Agreement, includes Javier affidavit.

March 10, 2003: Order granting the Office of Public Counsel's Motion to Require Responses to Discovery in Fourteen Days

March 19, 2003- progress Energy Florida's Unopposed Motion for Temporary protective Order

March 27, 2003- Notice of Informal Meeting between Commission staff, Progress Energy, Office of Public Counsel, and other parties to the docket to discuss Motion to Enforce Settlement Agreement. Docket No. 000824-EI- Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

April 1, 2003- Order Granting Progress Energy Florida Unopposed Motion for Temporary Protective Order (i.e. Progress Energy has certain documents that contain confidential, proprietary business information that they want protected. If OPC plans to use any of this info., it needs to notify pre-hearing officer and all parties seven days prior to proceeding)

Deadlines:

Staff Recommendation is due on April 24, 2003. It is set for agenda on May 6, 2003.
The Standard Order is May 26, 2003 and Close Docket or revise CASR is July 1, 2003.

History of Case

- Parties entered into a settlement agreement on March 27, 2002, which was approved by Commission in May 2002. The settlement agreement requires Progress Energy Florida (PEF) to make refund to customers if its revenues should exceed certain thresholds during 2002, 2003, 2004, 2005.
- Progress Energy's rate settlement with OPC and other parties includes a "revenue sharing" plan that commenced on May 1, 2002. This revenue sharing plan takes the place of the more traditional practice of using an authorized Return on Equity (ROE) to prevent excess revenues and earnings. In order to determine whether there are any "excess" revenues, it is necessary to compare revenues the Company was projecting with revenues it actually achieves. The whole point of revenue sharing program is to identify excess revenues (revenues that exceed projection in the minimum filing requirements (MFR) which might have triggered a rate review under traditional ROE ratemaking.
- The parties are in dispute about how to treat the transition year 2002. The dispute arises from the fact that the revenue sharing plan commences part way through that year on May 1, 2002.
- Important parts of the settlement agreement/revenue sharing plan are:
 - The retail base rate revenue cap for 2002 is 1,356M. Retail base rate revenue caps for calendar years 2003 and after will be increased by \$37M over the prior year's revenue cap. Note: All retail base rate revenues above the retail base rate revenue cap will be refunded to retail customers on an annual basis.
 - When PEF receives more than the revenues projected the excess revenues are shared on a 1/3 for shareholders and 2/3 for customers basis.
 - For 2002 the parties agreed the sharing threshold would be 1,296 Million in retail base rate revenues. For year 2002 ONLY, the refund to customers was limited to 67.1% (May 1, 2002-December 31, 2002) of the retail base rate revenues exceeding the cap. The retail base revenue caps for calendar year 2003 and each year after will be increased by 37Million over the prior years revenue cap.
 - The parties also agreed to a rate reduction of \$125 million per year (the reduction would be reflected on PE customer bills by reducing all base

rate charges for each rate schedule by 9.25%); beginning May 1, 2002 and a \$35 million refund in 2002 of interim revenues collected during the rate case subject to refund.

Parties Arguments:

Progress Energy is arguing it owes a refund of \$5 M. OPC arguing the required refund for the level of reported revenues is 23M.

OPC Argument

Progress Energy made 3 improper adjustments:

1. It makes a positive adjustment of \$35M to reported revenues for the interim revenue refund. The proper adjustment is 24, 630,000.
2. PE makes a negative adjustment of \$41,625 to annualize the May 1, 2002, rate reduction.
3. Progress Energy includes a negative adjustment of \$9,3338,000 for lighting and service charge revenues.

Bottom Line: There is a total package of specific calculations and allowances for Progress Energy contained in the agreement and PE can't just add additional adjustments. Feels parole evidence rule applies to prohibit the use of parole evidence to modify the agreement.

Progress Energy's Argument:

Progress Energy requested on March 7, 2003 oral argument on the motion to enforce settlement agreement, and, in the alternative, for an evidentiary hearing. PE believes that after oral argument the Commission will be in a position to rule in PE's favor on the current state of the record. If however, the Commission believes it doesn't have sufficient record to rule on the merits, then in the alternative they request an evidentiary hearing to resolve this dispute.

PE wants the order to be a Proposed Agency Action (PAA) instead of a Final Action so they have an opportunity for reconsideration if the result is not in their favor.

1. PE argues that the refund OPC is requesting (23M) is NOT authorized under the settlement agreement and is contrary to the intent of the agreement. The effect of OPCs request for a refund of 23M is to apply the 9.25% rate reduction commencing May 1, 2002 retroactively to the period prior to the effective date of the settlement agreement.

2. OPC has filed a motion asking the PSC to order Progress Energy to share 2002 revenues that Progress Energy projected it would achieve all along in its original rate filings (MFRs). In other words, even if Progress Energy had received exactly the revenues in 2002 that were expected when the settlement was entered into, OPC's interpretation would require the Company to refund over \$18 million. The only way that OPC can reach that result is (1) to take the position that Progress Energy achieved more revenues for 2002 than it would have achieved in comparison to an artificial baseline that assumes that the \$125 million rate cut was in effect for the entire year without making proper adjustments to reflect the fact that the rate reduction went into effect on May 1, 2002, and (2) to treat the \$14.3 million rate increase authorized by the PSC to recover legitimate costs as "excess" revenues subject to revenue sharing.
3. OPC's position is contrary to both the language and the intent of the settlement agreement and the Commission's Order approving that agreement. The intent of the agreement was the implication that adjustments would need to be made. To just look at the four corners of the agreement and not take into account the intent of the parties and the Commission is contrary to the settlement agreement. Certain adjustments needed to be made in revenue to account for the partial rate period of May 1, 2002-December 2002.

- The final calculation of the Company for 2002 indicates a refund amount of \$5 million. Public Counsel believes this number should be \$23 million
- We have been attempting to resolve this issue with Public Counsel and the FPSC Staff over the last 60-90 days.
- In order to stay on schedule with the settlement agreement, the Company plans to refund the \$5 million to customers during the month of March. If there is a change in the refund amount that will be dealt with later in 2003, or more likely in 2004.
- The dispute arises primarily out of two issues. The Company believes a pro-forma adjustment is appropriate in 2002 due to the fact that the agreement did not begin until May. Therefore the \$125 million annual adjustment should be prorated and the revenues associated with January –April should not be included in the revenue target. This amounts to a difference in our position versus the Public Counsel of \$41.6 million. Applying the formula for 2002 for sharing with this included in revenues equates to a customer share of \$18.7 million. This item is 2002 only, it will not be an issue in years 2003-05.
- The other area of dispute relates to the increase in lighting and service fees, which was covered in a separate part of the agreement. The Company feels we agreed to reduce base rates by \$125 million with the understanding that fees would increase by \$14 million annually, meaning a net revenue reduction to the company of \$111 million. The actual threshold reflects a reduction of \$125 million so the \$14 million must be another pro forma adjustment. Given that 2002 is a partial year we have only adjusted by \$9.4 million. If this applied to the refund the customer would get an additional \$4.2 million.
- These two issues taken together will give you the Public Counsel calculation of approximately \$23 million.
- In an effort to settle the Company offered to add back all of the \$35 million one time refund, even though in the agreement we are only required to add back \$24.6 million. This is the position we filed with the FPSC staff when we submitted final numbers, and will be revisited as part of this discussion. This \$10 million difference is what makes our refund the \$5 million for 2002, after applying the formula. Absent this offer there would not have been any refund to the customers in 2002 after taking our appropriate adjustments.

<u>Item</u>	<u>Company</u>	<u>OPC</u>
2002 Revenues	\$1,323,003,903	\$1,322,836,080
Interim refund attributable to 01	35,000,000	24,630,000
January - April adjustment	(41,625,000)	0
Service Fee/Lighting Adjust	<u>(9,338,000)</u>	<u>0</u>
Total Revenues for 2002	1,307,069,903	1,347,466,080
Threshold for 2002	<u>1,296,000,000</u>	<u>1,296,000,000</u>
Difference	11,069,903	51,466,080
67.1% of amount	7,427,905	34,533,740
Customer 2/3 share	4,954,413	\$23,034,004
Interest	<u>44,077</u>	
Total Refund for 2002	\$4,998,489	

**QUESTIONS ON PROGRESS ENERGY/OPC
RATE SETTLEMENT DISPUTE**

- 1) What are your thoughts on this? Why?
- 2) What are the strongest arguments on either side?
- 3) What are the weakest?
- 4) How do other staff members feel? Why?
- 5) Why do you favor Progress Energy's side/OPC's side?
- 6) Do you think the Commission is required by the law to rule one way or the other on this? Why?
- 7) What do you think the parties really intended? Why?
- 8) Do you think the language of the agreement spells out every detail we need to know?
- 9) Didn't the Commission think some adjustment had to be made at least to reflect the \$35 million refund in 2002? (It said so in its Order approving the agreement.)
- 10) Why are the other issues any different?
- 11) If we don't make an adjustment for the \$9 million rate increase for lighting and service charges, aren't we in effect forcing PEF to refund part of that approved increase?
- 12) If we don't make an adjustment for the fact that the \$125 million rate cut started in May, aren't we in effect asking PEF to share revenues that it was entitled to collect under its old rates?
- 13) Wouldn't that be a retroactive rate cut?
- 14) Aren't we forbidden to order retroactive rate cuts?
- 15) Do you think the parties had any intent to cause a retroactive rate cut?

**QUESTIONS ON PROGRESS ENERGY/OPC
RATE SETTLEMENT DISPUTE**

- 1) What's this all about?
- 2) What are both sides arguing?
- 3) Do you think Progress Energy or OPC's arguments makes any sense? Why?
- 4) What do you think of the other side's argument? Why?
- 5) Which do you think is stronger? Why?
- 6) What do you think Staff's intent was in recommending the settlement?
- 7) What is a revenue sharing plan supposed to do?
- 8) Do you think PEF should be refunding revenues that it needs to cover its costs?
- 9) If not, don't we have to figure out what revenues are greater than what PEF was projecting to recover its costs?
- 10) Wouldn't we have to look at the MFRs to know what that was?
- 11) The agreement talks about a threshold. Isn't that an annualized number?
- 12) Don't we have to make some adjustments for that fact?
- 13) The agreement says share only 67 percent of the difference between the threshold and base rate revenues for 2002. Does that solve the problem?
- 14) Don't we have to get the right amount of "excess" revenues for the whole year right first? Then after we do that, you take only 67 percent of that amount to create a pot for revenue sharing (because revenue sharing starts on May 1)?