

ORIGINAL

JAMES E. "JIM" KING, JR.
President

JOHNNIE BYRD
Speaker

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL



C/O THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
850-488-9330

Harold McLean
Public Counsel

Robert D. Vandiver
Associate Public Counsel

April 6, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RECEIVED-FPSC
04 APR - 6 PM 3:51
COMMISSION
CLERK

RE: Docket No. 031057-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens First Motion to Compel Answers to Interrogatories and Joint Motion for Extension of Time to File Testimony for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

RECEIVED & FILED


FPSC-BUREAU OF RECORDS


Robert Vandiver
Associate Public Counsel

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Progress Energy)
Florida, Inc.'s benchmark for)
Waterborne transportation)
Transactions with Progress Fuels)
_____)

DOCKET NO. 031057-EI

ISSUED: April 6, 2004

**CITIZENS FIRST MOTION TO COMPEL ANSWERS TO INTERROGATORIES
AND JOINT MOTION WITH THE FLORIDA INDUSTRIAL POWER USERS
GROUP FOR AN EXTENSION OF TIME TO FILE TESTIMONY**

The Citizens of the State of Florida (Citizens), pursuant to Rule 28.106.204, Florida Administrative Code, and Rule 1.280, Florida Rules of Civil Procedure request the Prehearing Officer to enter an Order to Compel Answers to Interrogatories. The Citizens, in conjunction with the Florida Industrial Power Users Group (FIPUG) also request an extension of time to file testimony in this docket. In support thereof, Citizens state:

1. On March 18, 2004, Citizens served upon Progress Energy Florida (Progress) Citizens' Third Set of Interrogatories (Nos. 14-19). Progress responded to Interrogatory No. 14, but declined to respond to Nos. 15-19, which relate to questions concerning Progress backhaul cargo and associated revenue. The responses appear as Attachment I.

2. Progress' rationale for not providing the information is that "customers no longer support these vessels" under the Commission's adoption of the market price proxy beginning in 1993. Thus the affiliate record statute is not implicated, due to Progress' claim that there is no subsidy of nonutility activities. There are several problems with the Progress rationale. First and foremost, ratepayers are paying the cost of getting coal to

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FPSC-COMMISSION CLERK

Crystal River in any case, whether through the proxy methodology or a cost-based system. Ratepayers “support,” “fund,” “foot the bill,” “pay the freight” for every lump of coal that enters the Crystal River facility. Moreover, in Order No. PSC-03-1461-FOF-EI, issued December 22, 2003, the Commission specifically declared the proxy method of recovery ended. *Id.* At 23. This docket concerns a replacement methodology for the proxy system. That replacement methodology could be any system permitted by law, including a cost-based approach.

3. This leads to the proper standard at issue here, which is the broad discovery standard. See Rule 1.280 Florida Rules of Civil Procedure. The scope of discovery goes to “any matter, not privileged, that is relevant to the subject matter of the pending action.” Section 366.093(2), Florida Statutes, provides that in any proceeding where the utility’s rates or cost of service are at issue, information which affects those rates or costs of service shall be considered relevant for discovery purposes. Certainly the Citizens are entitled to look at possible offsets to the costs of transporting the coal to the Crystal River Plants such as backhaul. In a closely related docket, in Order PSC-04-0118-PCO-EI, issued January 30, 2004, ORDER GRANTING MOTION TO COMPEL PRODUCTION OF DOCUMENTS, the Prehearing Officer held:

The information sought by OPC relates to TECO Transport’s costs to provide coal transportation service, and, thus, may lead to the discovery of admissible evidence on the issues in this proceeding noted above. Precluding discovery on this matter could effectively preclude parties from pursuing, if they choose, a cost-based alternative to the current benchmark mechanism or looking at cost as a basis for determining the reasonableness of the new contract rate. *Id.* At page 5.

As noted in Order PSC-04-0118-PCO-EI, mentioned above, the information sought in the Tampa Electric related to balance sheet and income statement of the affiliate, but the principle is the same – Citizens may pursue a cost theory here as well and are entitled to discovery on this point. Citizens incorporate all pleadings and arguments in connection with the original Motion to Compel. This Order was the subject of an appeal by Tampa Electric, but counsel's understanding is that appeal is or is about to be withdrawn, making Order PSC-04-0118-PCO-EI a final order. See Order PSC-04-0289-PCO-EI issued March 15, 2004, Approving Stipulation on Procedural Matters.

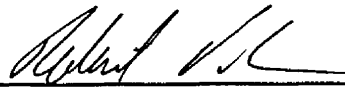
4. Time is of the essence in that Intervenor testimony is due on April 14, 2004 pursuant to an agreed joint motion filed April 2, 2004. Should Citizens pursue a cost-based approach, the backhaul data requested in Interrogatories 15-19 is necessary to file testimony.

This Motion is being filed on April 6, 2004 and served by electronic mail. This would mean Progress response is due on April 13, 2004. See Rule 28-106.204(1), Florida Administrative Code. Assuming the Motion to Compel is granted, Intervenors will need one week after receipt of the information to file testimony. The present testimony due date for Intervenors of April 14, 2004 cannot be met under this timetable. For these reasons, Citizens and FIPUG request an extension of time of one week from receipt of the interrogatory responses pursuant to the Motion to Compel to file testimony.

5. Counsel has contacted counsel for Progress and is authorized to state that Progress opposes the Motion to Compel but, if granted, will not oppose the Motion for Extension of Time to File Testimony if similar time is given to Progress.

Respectfully submitted,

HAROLD MCLEAN
PUBLIC COUNSEL



Robert Vandiver
Associate Public Counsel
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330

**CERTIFICATE OF SERVICE
DOCKET NO. 031057-EI**

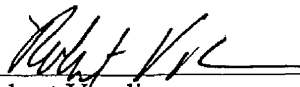
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 6th day of April, 2004, to the following:

James McGee
Progress Energy Service Company
100 Central Avenue
St. Petersburg, Florida 33701-3324

Cochran Keating *
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin, et al.
Post Office Box 3350
Tampa, FL 33602

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin
117 South Calhoun Street
Tallahassee, Florida 32301



Robert Vandiver
Associate Public Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Progress Energy Florida, Inc's Docket No. 031057-EI
benchmark for Waterborne Transportation
Transactions with Progress Fuels. Dated: April 2, 2004

**RESPONSE OF PROGRESS ENERGY FLORIDA TO
CITIZENS' THIRD SET OF INTERROGATORIES (NOS. 14 - 19)**

14. Please state the total tons of coal delivered to the Crystal River Plant for each of the years 2002, 2003 and the forecasted amount for 2004, along with the number of vessel trips that were required to deliver those tonnages to the Crystal River Plant.

Response: Total tons and trips for 2002, 2003 and projected 2004 are as follows:

	<u>Tons</u>	<u>Trips</u>
2002	2,025,980	126
2003	2,080,495	129
2004	2,112,000	132

15. Please state the total tons of corresponding backhaul cargo that originated from the Crystal River Plant for each of the years 2002, 2003 and the forecasted amount of backhaul tonnage for 2004.

Response: Prior to the Commission's adoption of the market price proxy for PFC's waterborne transportation services in 1993, customers supported the entire cost of DFL's vessels that transported coal to Crystal River. Given this cost support, customers were also entitled to any revenues produced by these vessels from third party business, such as backhauls. Since 1993 however, customers no longer support these vessels and their third party business is completely unrelated to any costs paid by customers. As such, the requested backhaul information falls well outside the scope of the affiliated company information utilities are required to make available pursuant to section 366.093, F.S., *i.e.*, "records of the utility's affiliated companies ... regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities." Although Progress Energy has elected not to invoke this provision with respect to other requests regarding DFL's cross-Gulf transportations services provided to directly to the Company through its contract with PFC, Progress Energy is unwilling to risk establishing a precedent that could be argued to result from providing information regarding DFL's unrelated transportation services provided under contracts with unaffiliated third parties.

16. Please state the total revenues for the backhaul cargo referred to in the previous item for each of the years 200, 2003 and the forecasted amount for 2004.

Response: Please see the response to Interrogatory 15 above.

17. Please state the percentage of vessels that deliver coal to the Crystal River Plant that return empty of cargo from Florida for each of the years 2002, 2003 and the projection for 2004.

Response: Please see the response to Interrogatory 15 above.

18. Please state the backhaul tonnage from Crystal River by types of cargo for each of the years 2002, 2003 and the projection for 2004.

Response: Please see the response to Interrogatory 15 above.

19. Please explain how the types of backhaul cargo identified in the previous item are transported to the Crystal River Plant dock.

Response: Please see the response to Interrogatory 15 above.