

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

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**RESPONSE TO CITIZENS' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO FPC**

Pursuant to § 350.0611(1), Fla. Stat. (2000), Fla. Admin. Code R. 28-106.206, and Fla. R. Civ. P.1.350, Florida Power Corporation, ("FPC") responds to Florida's Citizens ("Citizens") Third Set of Requests for Production of Documents and states as follows:

**GENERAL OBJECTIONS**

FPC objects to the request that documents be produced at the Office of Public Counsel, Claude Pepper Building, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400. FPC is required only to produce documents at a reasonable time, place and manner.

FPC objects to any request that calls for the production of documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time the response is first made to these requests or is later determined to be applicable based on the discovery of documents, investigation or analysis. FPC in no way intends to waive any such privilege or protection.

In certain circumstances, FPC may determine upon investigation and analysis that documents that respond to certain requests to which objections are not otherwise asserted are

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confidential and proprietary and should be produced only under an appropriate confidentiality agreement and protective order, if at all. By agreeing to produce documents in response to this request, FPC is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement and protective order. FPC hereby asserts its right to require such protection of any and all documents that may qualify for protection under the Florida Rules of Civil Procedure and other applicable statutes, rules and legal principles.

FPC further objects to these requests and any definitions or instructions that purport to expand FPC's obligations under applicable law.

FPC objects to any request that requires the production of "all" or "each" as it cannot give assurances, even after a good faith and reasonably diligent attempt, that "all" or "each" responsive document will be found. Indeed, it may well be impossible to assure compliance with the exercise of reasonable diligence.

FPC incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though pleaded therein.

Moreover, to the extent documents responsive to the requests have been previously produced, FPC will not be reproducing these documents but will attempt to make appropriate cross-references between and amongst the various requests.

### **SPECIFIC OBJECTIONS**

#### **Definitions**

FPC objects to the definition of "FPC", "you", "your" or the "Company" as including Florida Progress Corporation, Progress Energy, Inc., and Progress Energy Service Company, LLC. FPC does not have an obligation under the rules to produce materials in the hands of these companies, but FPC agrees to do so in any event to expedite discovery, to the extent such

documents are relevant to the issues in this case. FPC reserves the right to decline to produce any materials that are not pertinent to the issues in the case. FPC further objects to the definition of “FPC”, “you”, “your” or the “Company” to the extent it includes third parties whose documents are not within its possession, custody, or control.

FPC objects to the definition of the term “management” or “manager” as overbroad and ambiguous. FPC will attribute the usual and customary meaning of this word to its use in these requests.

### **Instructions**

FPC objects to the instructions calling upon FPC to provide designated information regarding any documents withheld from production to the extent it purports to expand FPC’s obligations under the applicable rules of procedure. FPC will comply with its obligations under applicable rules of procedure.

FPC objects to the instruction to produce “originals” to the extent it purports to expand FPC’s obligations under the Uniform Rules and Florida Rule of Civil Procedure 1.350. FPC will comply with all applicable rules.

### **DOCUMENTS REQUESTED**

**29. Please provide any service quality benchmarks and/or goals that Progress Energy has set for the period 2001 through 2004 and the most recently available planning period.**

FPC is seeking an extension of time to respond to this request. FPC objects to this request as it relates to Progress Energy, Inc. as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, FPC will produce documents, if any, responsive to this request for FPC.

**30. Please provide each document in your possession, custody or control provided to any member of the South Carolina Commission, its staff, or the public staff related to the merger.**

No documents were provided to the South Carolina Commission or its Staff.

**31. Please provide the FERC Form 1s for CP&L for the years 1998, 1999, and 2000.**

FPC objects to this request as irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, FPC states that FERC Form 1's are generally available at FERC's public internet Web site.

**32. Please provide a copy of the FERC Form 1 for Florida Power Corporation for the years 1998, 1999, and 2000.**

FPC directs Citizens to FERC's public internet Web site.

**33. Please provide a copy of the Florida Power Corporation's Annual Report for the years 1998 and 1999.**

FPC does not have an Annual Report to shareholders.

**34. Please provide a copy of the CP&L Annual Report for the years 1998 and 1999.**

FPC will make documents responsive to this request available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**35. Provide the SEC Order approving the merger of CP&L and FPC.**

FPC will make documents responsive to this request available for review at the offices of

Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**36. Please provide all correspondence and other documents that have been submitted, formally or informally, to the FPC Board of Directors and/or the CP&L Board of Directors associated with the proposed merger, including the minutes of all boards of directors meetings.**

FPC is seeking an extension of time to respond to this request. FPC has previously provided documents responsive to this request in response to request number 18.

**37. Please provide all correspondence and other documents which review, analyze, assess or examine other potential acquisition and/or merger opportunities for Progress Energy.**

FPC objects to this request as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

**38. Please provide all agreements, correspondence or other documents related to the selection and retention of executive officers of CP&L and FPC by Progress Energy.**

FPC objects to this request as irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

**39. Please provide all contracts, agreements or documents relating to the employment or proposed employment of FPC and CP&L executives by Progress Energy.**

FPC objects to this request as irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

**40. Please provide all correspondence and documents related to post employment benefits, severance packages, "golden parachutes" or similar benefits to any executive of FPC or CP&L or any of the respective affiliates, who within 18 months of the**

**effective date of the merger, will not be employed by Progress Energy.**

FPC objects to this request to the extent it relates to CP&L and/or other affiliates of Progress Energy, Inc. The only severance costs included in FPC's merger transition costs are those related to FPC employees. FPC further objects to providing documents regarding individual packages as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, FPC will produce the proxy statement issued which contains information responsive to this request. FPC further directs Citizens to its response to Interrogatory number 28.

**41. Please provide all documents which address or discuss announced lay offs or terminations of personnel as a result of the merger.**

FPC is seeking an extension of time to respond to this request. FPC objects to this request to the extent it includes affiliates, subsidiaries, or divisions of Progress Energy, Inc. other than FPC. Without waiving these objection, FPC will produce documents responsive to this request for FPC, making the documents, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**42. Please provide all correspondence and documents associated with the merger that have been submitted, formally or informally, to the SEC.**

As to documents filed with the SEC, FPC directs Citizens to the SEC public internet Web site. FPC is seeking an extension of time to respond to the remainder of this request. FPC will make documents responsive to this request available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**43. Please provide all credit rating agencies reports on Progress Energy, CP&L and/or FPC, that address the issue of the merger and its implications for the companies involved.**

FPC will make documents responsive to this request available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**44. Please provide any and all correspondence and documents that provide benchmarks of the performance of CP&L and FPC relative to other utility companies. Please provide all comparative statistics reflecting the merging companies' operations as compared to one another and the industry as a whole.**

FPC will produce documents responsive to this request relating to FPC's performance compared to other utilities. FPC objects to producing documents relating to CP&L as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, FPC will produce documents responsive to this request for FPC, making the documents, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**45. Please provide both pre-merger and post merger organization charts for Progress Energy, CP&L, and FPC, and all other subsidiaries of Progress Energy.**

FPC has previously provided documents responsive to this request in response to Request number 18.

**46. Please provide copies of any written contracts governing purchase power agreements that have been entered into or are anticipated to be entered into between CP&L and FPC.**

FPC objects to this request as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. FPC's purchased power costs are not recovered through base rates.

**47. Please provide all due diligence studies conducted by CP&L in connection with the purchase of FPC.**

FPC previously produced documents responsive to this request in response to Request number 18. FPC will make any additional documents responsive to this request available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**48. Please provide all due diligence studies conducted by FPC in connection with the acquisition by CP&L.**

FPC will make documents responsive to this request available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**49. Please provide copies of all contracts between Progress Energy Service, LLC and each of Progress Energy's affiliates for which it provides any services.**

FPC objects to this request to the extent it includes affiliates, subsidiaries, or divisions of Progress Energy, Inc. other than FPC. Without waiving this objections, FPC will produce contracts responsive to this request between FPC and Progress Energy Service, LLC, making the documents, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**50. Please provide copies of all contracts between Progress Energy Service, LLC and each non-affiliated company for which it provides any services.**

FPC objects to this request as irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

**51. Provide Progress Energy's and its subsidiaries five-year construction budget.**

FPC objects to this request as irrelevant, immaterial, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, FPC states that it no longer produces a 5 year construction budget. FPC will produce its current construction budget by making it available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**52. For purposes of this request, please refer to page 44 of Section F of the MFRs. Under Note 2 it states, "...the Company began the implementation of a plan to combine operation of the companies resulting in a non-executive involuntary termination cost accrual of approximately \$52.2 million. Approximately \$41.8 million attributable to Florida Power employees and has been reflected as part of the purchase price allocation." Please provide all work papers showing how this amount was reflected as part of the purchase price allocation.**

- FPC refers Citizens to the testimony of Mark Myers – MAM-1. See response to Interrogatory number 30.

**53. Please provide the agreements that set forth the terms of the internal money pools used by the utilities. (See page 47, Note 5, of Section F of the MFRs.)**

FPC will make the documents responsive to this request available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**54. Please provide an electronic copy of the responses to OPC's First and Second Set of Interrogatories.**

FPC will as a courtesy produce an electronic copy of these responses.

**55. Please provide copies of all documents that analyze, discuss, or evaluate the reliability initiatives discussed on page 9 of Mr. Myers' testimony.**

FPC is seeking an extension of time to respond to this request.

**56. (a) Please provide copies of all documents that analyze, discuss, or evaluate the improved outage response and associated 1-800 outage reporting number discussed on page 9 of Mr. Myers' testimony.**

FPC is seeking an extension of time to respond to this request.

**(b) Please provide all documents that analyze, discuss, or evaluate the outage response processes used by CP&L.**

FPC is seeking an extension of time to respond to this request.

**57. Please provide copies of all documents that analyze, discuss or evaluate the planned purchase of new energy delivery vehicles described on page 10 of Mr. Myers' testimony.**

FPC is seeking an extension of time to respond to this request.

**58. Please provide copies of all documents that analyze, discuss or evaluate the new dispatch radio system described on page 10 of Mr. Myers' testimony.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**59. Please provide copies of all documents that analyze, discuss or evaluate the new Regional Transmission Maintenance Organization described on page 11 of Mr. Myers' testimony.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**60. Please provide copies of all documents that analyze, discuss or evaluate the additional Operating Centers described on page 11 of Mr. Myers' testimony.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**61. Please provide copies of all documents that analyze, discuss or evaluate the planned implementation of automated meter reading capability described on page 12 of Mr. Myers' testimony.**

FPC does not have any documents responsive to this request. FPC refers Citizens to its response to interrogatory number 37.

**62. Please provide copies of all documents that analyze, discuss or evaluate the new payment locations described on page 12 of Mr. Myers' testimony.**

FPC is seeking an extension of time to respond to this request.

**63. Please provide copies of all documents that analyze, discuss or evaluate the phasing out of the 33 business offices discussed on page 12 of Mr. Myers' testimony.**

FPC is seeking an extension of time to respond to this request.

**64. Please provide copies of all documents that analyze, discuss or evaluate the new software and increased web enablement described on page 13 of Mr. Myers' testimony.**

See response to request number 65 below.

**65. Please provide copies of all documents that analyze, discuss or evaluate the Combined Customer Service organization described on page 13 of Mr. Myers' testimony.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**66. Please provide an organizational chart of the combined CP&L and FPC Customer Service organization as discussed on page 13 of Mr. Myers' testimony.**

See response to Citizens' Request for Production number 45.

**67. Please provide copies of all documents that analyze, discuss or evaluate the new organization Progress Energy Service, LLC described on page 15 of Mr. Myers' testimony.**

See response to Citizens' First Set of Requests for Production of Documents to FPC Question number 13. Also see excerpts from Merger U-1 with SEC available on the SEC's public internet Web site.

**68. Please provide copies of all documents that discuss, analyze, or evaluate the changes to Power Operations and Transmission and Distribution discussed on page 16 of Mr. Myers' testimony.**

See documents produced in response to Citizens Production Request number 4. FPC will make additional responsive documents, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**69. Please provide copies of all documents that discuss, analyze, or evaluate the changes to CP&L and FPC's Nuclear Operations as discussed on page 17 of Mr. Myers' testimony.**

See documents produced in response to Citizens Production Request number 4.

**70. Please provide copies of all documents that discuss, analyze, or evaluate the changes to Energy Ventures as discussed on page 17 of Mr. Myers' testimony.**

FPC is seeking an extension of time to respond to this request.

**71. Please provide copies of all documents that discuss, analyze, or evaluate the transfer of employees between the Carolinas and Florida as discussed on page 19 of Mr. Myers' testimony.**

FPC does not believe it has any documents responsive to this request.

**72. Provide the System Integration Agreement between CP&L and FPC.**

FPC will make documents responsive to this request available at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**73. For purposes of this request, please refer to Exhibit MAM-1 of Mr. Myer's testimony.**

**(a) Please provide all work papers and all other source documents used in the calculation/quantification of these synergies. This includes but is not limited to the 15-year period covered in the analysis and a detailed breakdown of the synergy savings.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**(b) Please provide the work papers and all other documents which show how the synergies were allocated or otherwise distributed between CP&L and FPC and each of their respective subsidiaries and/or affiliates. This includes but is not limited to the 15-year period covered in the analysis and a detailed breakdown of the synergy savings.**

See response to Production Request 73(a) above.

**(c) Please provide all work papers and all other source documents used in the calculation/quantification of merger transition costs and acquisition premium. This includes but is not limited to the 15-year period covered in the analysis and a detailed breakdown of the merger transition costs and acquisition premium.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**(d) Please provide the work papers and all other documents which show how the merger transition costs and acquisition premium were allocated or otherwise distributed between CP&L and FPC and each of their respective subsidiaries and/or affiliates. This includes but is not limited to the 15-year period covered in the analysis and a detailed breakdown of the merger transition costs and acquisition premium.**

See Exhibit MAM-1 to Mr. Myers testimony. FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**(e) Provide electronic copies of the work papers provided in response to (a) through (d) above.**

FPC will produce electronic copies to the extent they exist in electronic form.

**74. For purposes of this request, please refer to Exhibits CJC-2 through CJC-11 of Mr. Cicchetti's testimony.**

**(a) Please provide, on disk if available, all detailed spreadsheet models used to develop these Exhibits. These spreadsheets should include all references, documentation, calculations, and assumptions that were used in the course of developing the work papers.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**(b) Please provide all source documents used to create the Exhibits.**

FPC will make the documents responsive to this request, if any, available for review at the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**75. Provide all direct, rebuttal, and sir rebuttal testimony filed by Mr. Cicchetti in connection with mergers, merger savings, and merger costs to achieve filed within the last five years.**

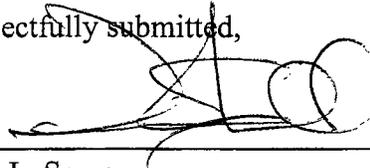
FPC will make the documents responsive to this request, if any, available for review at

the offices of Carlton Fields in St. Petersburg, Florida at a time convenient to the parties.

**76. Please provide all documents identified or asked to be identified in response to Citizens' second set of interrogatories.**

See FPC's response to Citizens' Second Set of Interrogatories.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of foregoing has been furnished via U.S.

Mail to the following this 1<sup>st</sup> day of November, 2001.

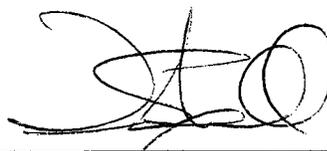
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A handwritten signature in black ink, appearing to read 'RSK', is written over a horizontal line.

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