



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

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May 1, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 991779-EI

Dear Ms. Bayo:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Motion to Strike or Prohibit Entry of Evidence.

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

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

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DOCUMENT NUMBER-DATE

05327 MAY-18

FPSC-RECORDS, REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the appropriate application)
of incentives to wholesale power sales by)
investor-owned electric utilities.)
_____ /

DOCKET NO. 991779-EI
FILED: May 1, 2000

MOTION TO STRIKE OR PROHIBIT ENTRY OF EVIDENCE

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Rule 28-106.303, Florida Administration Code, hereby file this motion to strike or prohibit certain portions of Exhibit No. ____ (WLB-2) attached to the rebuttal testimony of Tampa Electric witness W. Lynn Brown. The Citizens submit:

1. On March 29, 2000, David E. Dismukes, Ph.D., filed testimony in this docket on behalf of the Public Counsel, representing the Citizens of the State of Florida. On April 19, 2000, W. Lynn Brown filed testimony on behalf of Tampa Electric Company, purporting to rebut the testimony of Dr. Dismukes. Attached to Mr. Brown's testimony was Exhibit No. ____ (WLB-2), which is a copy of rebuttal testimony filed by Thomas L. Hernandez in Docket No. 990001-EI.

2. For various reasons, the overwhelming majority of Mr. Hernandez' testimony is inadmissible as evidence for presentation in this docket through Mr. Brown. Each objectionable portion of Exhibit No. ____ (WLB-2) will be addressed in turn.

3. Page 1, lines 1 through 17 is a statement of Mr. Hernandez' professional position, which underpins his qualification to render opinion testimony in that Docket No. 990001-EI. Mr. Hernandez' professional position and qualifications are irrelevant in this docket because he is not offering the testimony. Since Mr. Brown is the sponsor of the exhibit, it is only Mr. Brown's qualifications that are relevant.

4. Page 1, line 19 through page 2, line 6, is a statement that the purpose of Mr.

DOCUMENT NUMBER-DATE
05327 MAY-18
FPSC-RECORDS/REPORTING

Hernandez' testimony is to rebut Judy Harlow, David Dismukes and Kent D. Taylor, and to address the FMPA wholesale agreement. Rebuttal of two witnesses who have not testified in the instant docket, and rebuttal of one specified issue which has not been raised in the instant docket, is irrelevant to the instant docket.

5. Page 2, line 9 through page 4, line 24, rebuts the testimony that Ms. Judy Harlow filed in Docket No. 990001-EI. Ms. Harlow has not testified in this docket, so this portion of the exhibit is irrelevant.

6. Page 5, lines 1 through 18, simply repeats almost exactly what Mr. Brown himself states in the body of his own testimony (p. 7, l. 11-23). There is no valid reason for repetition from another witness in another docket to be attached as an exhibit.

7. Page 5, line 20 through page 6, line 4, repeats what Mr. Brown already states in the body of his own testimony (p. 5, l. 9 through p. 6, l. 13). This is unnecessary repetition.

8. Page 6, line 6 through page 7, line 10 purports to rebut a point about heat rates which Dr. Dismukes raised in his testimony in Docket No. 990001-EI. Dr. Dismukes has not raised the issue in this docket, so this portion of the exhibit is not rebuttal and is irrelevant.

9. Page 7, line 12, through page 8, line 9 purports to rebut an "inference" made by Dr. Dismukes in Docket No. 990001-EI. Dr. Dismukes has made no such statement or inference in this docket, so this portion of the exhibit is irrelevant.

10. Page 9, line 10 through the end of the exhibit purports to rebut testimony of FIPUG witness Taylor. Mr. Taylor has not filed testimony in this docket. Accordingly, any effort to rebut Mr. Taylor is not relevant to this docket.

11. The Commission should prohibit all of the testimony identified in the foregoing

paragraphs as inadmissible to this docket.

WHEREFORE, the Citizens of the State of Florida move this Commission to prohibit the entry of those specified portions of Mr. W. Lynn Brown's Exhibit No. ____ (WLB-2) as identified in this motion.

Respectfully submitted,

JACK SHREVE
Public Counsel



Stephen C. Burgess
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

(850) 488-9330

Attorneys for the Citizens of the
State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 991779-EI**

I HEREBY CERTIFY that a true and exact copy of the above and foregoing CITIZENS' MOTION TO STRIKE OR PROHIBIT ENTRY OF EVIDENCE has been furnished by hand-delivery* or U.S. Mail to the following parties of record this 1st day of May, 2000.

Mr. Bill Walker
Florida Power & Light Company
215 South Monroe St., Suite 810
Tallahassee, FL 32301-1859

Florida Industrial Power Users Group
c/o John McWhirter, Jr.
McWhirter Reeves
P.O. Box 3350
Tampa, FL 33601-1859

Ms. Susan D. Ritenour
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Mr. James A. McGee, Esquire
Florida Power Corporation
P.O. Box 14042 (BT15)
St. Petersburg, FL 33733-4042

Ms. Angela Llewellyn
Tampa Electric Company
Regulatory Affairs
P.O. Box 111
Tampa, FL 33601-0111

Vicki Kaufman
McWhirter Law Firm
117 S. Gadsden St.
Tallahassee, FL 32301

James Beasley, Esquire
Ausley & McMullen Law Firm
227 South Calhoun Street
Tallahassee, FL 32301

Matthew M. Childs, Esquire
Steel, Hector & Davis
215 South Monroe St., Suite 601
Tallahassee, FL 32301-1804

William Cochran Keating, Esquire*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370, Gunter Building
Tallahassee, FL 32399-0872

Jeffrey Stone, Esquire
Beggs and Lane Law Firm
P.O. Box 12950
Pensacola, FL 32576-2950



Stephen C. Burgess
Deputy Public Counsel