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**From:** O'Neal, Barbara [boneal@carltonfields.com]  
**Sent:** Wednesday, April 29, 2009 4:27 PM  
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**Subject:** Electronic Filing Docket No. 090079  
**Attachments:** PEF Object to OPC 4th Prod of Documents.pdf



PEF Object to  
PC 4th Prod of .

- \* Matthew R. Bernier, Carlton Fields, P.A., 215 South Monroe Street, Ste. 500, Tallahassee, FL 32301, mbernier@carltonfields.com is the person responsible for this electronic filing;
- \* The filing is to be made in Docket 090079-EI, In re: Petition for rate increase in rates by Progress Energy Florida, Inc.;
- \* The total number of pages is 5;
- \* The attached document is Progress Energy Florida, Inc.'s Objections to OPC's Fourth Request for Production of Documents (No. 122).

Thank you.

BARBARA O'NEAL  
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DOCUMENT NUMBER-DATE  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Petition for Increase in Rates  
by Progress Energy Florida, Inc.

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Docket No. 090079-EI  
Submitted for filing: April 29, 2009

**PEF'S OBJECTIONS TO OPC'S FOURTH REQUEST FOR PRODUCTION OF  
DOCUMENTS (NO. 122)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.350 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure in this matter, Progress Energy Florida, Inc. ("PEF") hereby serves its objections to the Office of Public Counsel's ("OPC") Fourth Request for Production of Documents (No. 122) and states as follows:

**GENERAL OBJECTIONS**

PEF will make all responsive documents available for inspection and copying at the offices of PEF, 106 E. College Ave., Suite 800, Tallahassee, Florida, 32301 at a mutually-convenient time, or will produce the documents in some other manner or at some other place that is mutually convenient to both PEF and OPC for purposes of inspection, copying, or handling of the responsive documents.

With respect to any "Definitions" and "Instructions" in OPC's Requests for Production, PEF objects to any definitions or instructions that are inconsistent with PEF's discovery obligations under applicable rules. If some question arises as to PEF's discovery obligations, PEF will comply with applicable rules and not with any of OPC's definitions or instructions that are inconsistent with those rules. Furthermore, PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. No responses to the requests will be made on behalf of persons or

entities other than PEF. PEF also objects to OPC's request that PEF provide documents in a specific electronic format. Furthermore, PEF objects to any request that calls for PEF to create documents that it otherwise does not have because there is no such requirement under the applicable rules and law.

Additionally, PEF generally objects to OPC's request to the extent that it calls for 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. PEF will provide a privilege log in accordance with the applicable law or as may be agreed to by the parties to the extent, if at all, that any document request calls for the production of privileged or protected documents.

Further, in certain circumstances, PEF may determine upon investigation and analysis that documents responsive to certain requests to which objections are not otherwise asserted are confidential and proprietary and should be produced only under an appropriate confidentiality agreement and protective order, if at all. By agreeing to provide such information in response to such a request, PEF is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement, protective order, or the procedures otherwise provided by law or in the Order Establishing Procedure ("Order"). PEF hereby asserts its right to require such protection of any and all information that may qualify for protection under the Florida Rules of Civil Procedure, the Order, and all other applicable statutes, rules and legal principles.

PEF generally objects to OPC's Requests for Production to the extent that they call for the production of "all" documents of any nature, including, every copy of every document responsive to the requests. PEF will make a good faith, reasonably diligent attempt to identify

and obtain responsive documents when no objection has been asserted to the production of such documents, but it is not practicable or even possible to identify, obtain, and produce “all” documents. In addition, PEF reserves the right to supplement any of its responses to OPC’s Requests for Production if PEF cannot produce documents immediately due to their magnitude and the work required to aggregate them, or if PEF later discovers additional responsive documents in the course of this proceeding.

PEF also objects to any request that calls for projected data or information beyond the year 2010 because such data or information is wholly irrelevant to this case and has no bearing on this proceeding, nor is such data or information likely to lead to the discovery of admissible evidence. Furthermore, if a request does not specify a timeframe for which data or information is sought, PEF will interpret such request as calling only for data and information relevant to the years 2006-2010.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to OPC’s discovery at the time PEF’s response is due under the Florida Rules of Civil Procedure and the Order. PEF provides these general objections at this time to comply with the intent of the Order to reduce the delay in identifying and resolving any potential discovery disputes.


### **SPECIFIC OBJECTIONS**

**Request 122:** PEF objects to OPC’s request number 122 to the extent that it seeks documents “discussing, analyzing, evaluating, or otherwise relating” to possible impacts on PEF’s base rates and earnings for 2011 and 2012. If any such documents exist, they would be irrelevant to this case and have no bearing on these proceedings, nor would any such documents be reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to

OPC's request that "all documents" within the broadly worded class be produced, as it is practically impossible to definitively state that "all documents" have been located and produced. Subject to the objection to the production of any such documents that may exist pertaining to 2011 and 2012, PEF will perform a good-faith, reasonably diligent search for responsive documents, and reserves the right to supplement its response with any responsive documents located after the date set for response to OPC's request.

Respectfully submitted this <sup>at</sup> 29 day of April, 2009.

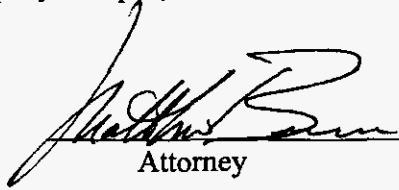
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 22<sup>nd</sup> day of April, 2009 to all counsel of record as indicated below.

  
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Attorney

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