

Ruth Nettles

From: O'Neal, Barbara [boneal@carltonfields.com]
Sent: Monday, May 11, 2009 4:48 PM
To: Filings@psc.state.fl.us
Cc: alex.glenn@pgnmail.com; Bernier, Matthew R.; Bill.mccollum@myfloridalegal.com; Caroline Klancke; cecilia.bradley@myfloridalegal.com; Charles Rehwinkel; Costello, Jeanne; ataylor@bbrslaw.com; jbrew@bbrslaw.com; John.Burnett@pgnmail.com; jlavie@yvlaw.net; JMoyle@kagmlaw.com; KSTorain@potashcorp.com; Katherine Fleming; Keino Young; Lisa.Stright@pgnmail.com; paul.lewisjr@pgnmail.com; Rick@rmelsonlaw.com; swright@yvlaw.net; Triplett, Dianne; VKaufman@kagmlaw.com; Walls, J. Michael
Subject: Electronic Filing Docket No. 090079
Attachments: PEF Object to OPC 7th Req for Prod of Documents.pdf

* 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 8;

* The attached document is Progress Energy Florida, Inc.'s Objections to OPC's Seventh Set of Requests for Production of Documents (Nos. 174-201).

Thank you.

CARLTON FIELDS
ATTORNEYS AT LAW

Barbara O'Neal

Legal Administrative Assistant

215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301-1866

direct 850.425.3388
fax 850.222.0398
boneal@carltonfields.com
www.carltonfields.com

5/11/2009

DOCUMENT NUMBER-DATE

04541 MAY 11 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 090079-EI
Submitted for filing: May 11, 2009

**PEF'S OBJECTIONS TO OPC'S SEVENTH SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 174-201)**

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 Office of Public Counsel's ("OPC") Seventh Set of Requests for Production of Documents (Nos. 174-201) 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

DOCUMENT NUMBER-DATE

04541 MAY 11 8

FPSC-COMMISSION CLERK

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 Requests to the extent that they call 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 (the "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 175: PEF objects to OPC’s request number 175 to the extent it seeks documents that have already been produced to OPC in response to OPC’s Third Request for Production of Documents, number 120.

Request 179: PEF objects to OPC's request number 179 to the extent it seeks documents that have already been produced to OPC in response to OPC's Third Request for Production of Documents, number 120.

Request 180: PEF objects to OPC's request number 180 because that request seeks proprietary business information of PEF's third-party consultants. The "other studies" provided for other entities are subject to confidentiality agreements between Burns & McDonnell and the parties for which the estimates were performed. This information will be provided only to the extent that production would be consistent with the terms and obligations contained in those third party confidentiality agreements.

Request 181: PEF objects to OPC's request number 181 because that request seeks proprietary business information of PEF's third-party consultants. The "in-house database of plant equipment quantities" references proprietary information owned and maintained by Burns & McDonnell. The data and sources contained within the database include the confidential information from studies provided to other clients referenced in the response to POD #180. The data is proprietary in nature and critical to maintaining Burns & McDonnell's consulting operations. This information cannot be provided.

Request 182: PEF objects to OPC's request number 182 to the extent that it seeks to require PEF to perform additional studies and legal research on OPC's behalf that PEF is not required to perform by the Rules or the Order, presumably at PEF's expense. PEF will respond by providing copies of all responsive documents in PEF's knowledge or possession.

Request 183: PEF objects to OPC's request number 183 to the extent that it seeks to require PEF to perform additional studies and legal research on OPC's behalf that PEF is not

required to perform by the Rules or the Order, presumably at PEF's expense. PEF will respond by providing copies of all responsive documents in PEF's knowledge or possession.

Request 190: PEF objects to OPC's request number 190 because it is vague and ambiguous. Read literally, the request seeks "all documents relating to the demolition of the Turner plant" – however, such an interpretation could lead to the production of large amounts of documents having no relevance to the present proceeding, i.e. each and every email, memorandum etc., that tangentially relates to the demolition of the plant. PEF is willing to work with OPC to narrow the request to attempt to include any relevant information OPC is seeking and to avoid the unnecessary production of irrelevant documents and the resulting waste of time and resources.

Request 191: PEF objects to OPC's request number 191 because it seeks documents that have already been produced to OPC in response to OPC's Third Request for Production of Documents, number 120. PEF further objects to this request to the extent it requests any responsive documents to be provided in a specific electronic format, regardless of the format in which the information exists. PEF will provide any responsive documents that have not previously been produced in the format in which they are presently maintained.

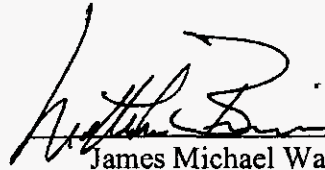
Request 192: PEF objects to OPC's request number 192 because that request seeks proprietary business information of PEF's third-party consultants. Demolition cost estimates provided for other entities are subject to confidentiality agreements between Burns & McDonnell and the parties for which the estimates were performed. This information will be provided only to the extent that production would be consistent with the terms and obligations contained in those third party confidentiality agreements.

Request 193: PEF objects to OPC's request number 193 because that request seeks proprietary business information of PEF's third-party consultants. The documents requested are subject to confidentiality agreements between Burns & McDonnell and the parties for which the estimates were performed. This information will be provided only to the extent that production would be consistent with the terms and obligations contained in those third party confidentiality agreements.

Request 194: PEF objects to OPC's request number 194 because that request seeks proprietary business information of PEF's third-party consultants. The "electric generating demolition projects" provided for other entities are subject to confidentiality agreements between Burns & McDonnell and the parties for which the estimates were performed. This information will be provided only to the extent that production would be consistent with the terms and obligations contained in those third party confidentiality agreements.

Request 195: PEF objects to OPC's request number 195 on the same basis that it objected to OPC's interrogatory number 203, i.e. because it requests that PEF and Burns & McDonnell produce "all related materials and documents relating to each such demolition [of each electric generation unit or station dismantled during the past 10 years that the Company or Burns & McDonnell are aware of]" because it is overbroad and would be overly burdensome to comply with, would yield little to no relevant information, and is not reasonably calculated to lead to the discovery of admissible evidence. Ten years worth of such documents from these two entities could lead to the production of thousands of documents with no relevance to this proceeding.

Respectfully submitted,



James Michael Walls
mwalls@carltonfields.com
Florida Bar No. 0706242
Dianne M. Triplett
dtriplett@carltonfields.com
Florida Bar No. 0872431
Matthew Bernier
mbernier@carltonfields.com
Florida Bar No. 059886
Carlton Fields
4221 W. Boy Scout Boulevard
P.O. Box 3239
Tampa, Florida 33607-5736
(813) 223-7000 / (813) 229-4133 (fax)


R. Alexander Glenn
alex.glenn@pgnmail.com
John T. Burnett
john.burnett@pgnmail.com
Progress Energy Service Company, LLC
299 First Avenue North
P.O.Box 14042 (33733)
St. Petersburg, Florida 33701
(727) 820-5184
(727) 820-5249(fax)

Paul Lewis, Jr.
Paul.lewisjr@pgnmail.com
Progress Energy Service Company, LLC
106 East College Avenue
Suite 800
Tallahassee, Florida 32301
(850) 222-8738 / (850) 222-9768 (fax)

Richard Melson
rick@rmelsonlaw.com
Florida Bar No. 0201243
705 Piedmont Drive
Tallahassee, FL 32312
(850) 894-1351

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 11th day of May, 2009.



Attorney

Katherine Fleming
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399

J.R. Kelly/Charles Rehwinkle
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street – Room 812
Tallahassee, FL 32399-1400

Bill McCollum/Cecilia Bradley
Office of the Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050

Vicki G. Kaufman/Jon C. Moyle, Jr.
Keefe Law Firm, The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

James W. Brew/Alvin Taylor
Brickfield Law Firm
1025 Thomas Jefferson Street, NW, 8th Fl
Washington, D.C. 20007

R. Scheffel Wright / John T. LaVia
Young Law Firm
225 South Adams Street, Ste. 200
Tallahassee, FL 32301