

**Marguerite McLean**

---

**From:** Costello, Jeanne [jcostello@carltonfields.com]  
**Sent:** Tuesday, May 31, 2011 4:38 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Bryan.Anderson@fpl.com; mbernier@carltonfields.com; jbrew@bbrslaw.com; john.burnett@pgnmail.com; jessica.cano@fpl.com; mfeil@gunster.com; alex.glenn@pgnmail.com; bhuhata@carltonfields.com; vkaufman@kagmlaw.com; paul.lewisjr@pgnmail.com; RMiller@pcsposphate.com; jmoyle@kagmlaw.com; Charles Rehwinkel; sayler.erik@leg.state.fl.us; ataylor@bbrslaw.com; mwalls@carltonfields.com; karen.white@tyndall.af.mil; Anna Williams; Keino Young  
**Subject:** Docket 110009 Filing  
**Attachments:** Docket 110009 PEF Objections to Citizens Fourth Interrogatories.pdf; Docket 110009 PEF Objections to Citizens Fourth Req for Production.pdf



*Docket Docket*

*' PEF Objec' PEF Objec'*

*Docket 110009*

*In re: Nuclear Cost Recovery Clause*

1. *The attached documents are being filed on behalf of Progress Energy Florida, Inc.*
2. *The filing includes 2 documents:  
Progress Energy Florida, Inc.'s Objections to Citizens' Fourth Set of Interrogatories (Nos. 33-60) [ 8 pages]; and  
Progress Energy Florida, Inc.'s Objections to Citizens' Fourth Request for Production of Documents (Nos. 20-26) [6 pages].*
3. *This filing is being made by*

*Jeanne Costello on behalf of Blaise N. Huhta Carlton Fields, P.A.  
4221 W. Boy Scout Boulevard, Suite 1000  
Tampa, Florida 33607-5780*

*Direct: 813.229.4917  
Fax: 813.229.4133  
jcostello@carltonfields.com  
www.carltonfields.com*

*Thank you for your assistance in this regard.*

DOCUMENT NUMBER-DATE

03778 MAY 31 =

FPSC-COMMISSION CLERK



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

---

In re: Nuclear Cost Recovery  
Clause

Docket No. 110009-EI  
Submitted for filing: May 31, 2011

---

**PROGRESS ENERGY FLORIDA, INC.'S OBJECTIONS TO CITIZENS' FOURTH  
SET OF INTERROGATORIES (NOS. 33-60)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rules 1.340, 1.350, and 1.280 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure in this matter, Progress Energy Florida, Inc. ("PEF" or the "Company") hereby serves its objections to Office of Public Counsel's ("Citizens" or "OPC") Fourth Set of Interrogatories (Nos. 33-60) and states as follows:

**GENERAL OBJECTIONS**

If any interrogatory is to be answered through production of documents pursuant to Florida Rule of Civil Procedure 1.340(c), 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 the "Definitions" and "Instructions" in OPC's Fourth Set of Interrogatories, PEF objects to any definitions or instructions that are inconsistent with PEF's discovery obligations under applicable rules. If a question arises as to PEF's discovery obligations, PEF will comply with the applicable rules of the Florida Rules of Civil Procedure and of the Florida Public Service Commission ("Commission") and not with any of OPC's definitions or instructions that are inconsistent with those rules.

PEF objects to any definition or interrogatory 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 interrogatories will be made on behalf of persons or entities other than PEF.

If any interrogatory is to be answered by producing responsive documents, PEF objects to providing documents in a specific electronic format. As OPC admits in its request for production of documents, there is no requirement under the Florida Rules of Civil Procedure or Commission rules that PEF provide responses in a searchable electronic format. Thus, PEF reserves the right to provide documents in electronic format at its discretion. Further, PEF objects to any interrogatory 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. PEF also objects to any interrogatory that purports to require PEF or its experts to prepare studies, analyses, or to do work for OPC that has not been done for PEF, presumably at PEF's cost.

PEF objects to OPC's instructions to the extent that no time period is provided. The prudence of the Company's nuclear operations prior to January 1, 2009 (for the CR3 Uprate) and January 1, 2010 (for the LNP) has been reviewed by the Commission in previous dockets and those activities are not at issue in this docket. PEF will respond using those relevant time frames. PEF also objects to OPC's interrogatories to the extent they request documents or information which have been previously produced to OPC as duplicative and overly burdensome to PEF to require it to make a duplicative production of documents or to duplicate previous narrative responses.

PEF generally objects to OPC's interrogatories to the extent that they call for documents or information 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 interrogatory calls for privileged or protected documents or information.

Further, in certain circumstances, PEF may determine upon investigation and analysis that documents or information responsive to certain interrogatories 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 an interrogatory, 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 No. PSC-11-0179-PCO-EI, issued March 29, 2011 (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 interrogatories to the extent that they call for the production of "all" documents or information of any nature. PEF will make a good faith, reasonably diligent attempt to identify and obtain responsive information when no objection has been asserted, but it is not practicable or even possible to identify "all" documents or information. In addition, PEF reserves the right to supplement any of its responses to OPC's interrogatories if PEF cannot produce documents or information immediately due to the magnitude and the work required to aggregate them, or if PEF later discovers additional responsive documents or information in the course of this proceeding.

Finally, PEF objects to any attempt by OPC to evade the numerical limitations set on interrogatories in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts.

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 objections at this time to comply with the intent of the Order to reduce the delay in identifying and resolving any potential discovery disputes. In addition, PEF provides the following specific objections.

#### **SPECIFIC OBJECTIONS**

**Interrogatory No. 33:** PEF objects to OPC interrogatory number 33 because it requests information related to future contract negotiations and the Company's strategy and likely negotiation positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage and may even prevent PEF from being able to achieve an amendment to its Engineering, Procurement, and Construction ("EPC") agreement. PEF also objects because this interrogatory is requesting information on future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket. Subject to these objections, and without waiving same, if practicable at this time, PEF will provide a response to this question based on the non-proprietary information it has available to date.

**Interrogatory No. 38:** PEF objects to OPC interrogatory number 38 because it requires PEF to speculate about future events and to present an opinion based on mere speculation and conjecture. Pursuant to Rule 1.340(b), Florida Rules of Civil Procedure, an interrogatory can request an opinion or contention that relates to fact, not speculation or conjecture regarding PEF's position in this docket with respect to some unknown, speculative, and undefined determination in the future. In addition, PEF objects because responding to this question would require PEF to perform additional analysis which it has not previously performed which it is not required to do.

**Interrogatory No. 39:** PEF objects to OPC interrogatory number 39 because it requires PEF to speculate about unknown future events and to present an opinion based on mere speculation and conjecture. PEF also objects because PEF has not performed this analysis and pursuant to the Florida Rules of Civil Procedure PEF is not required to create documents or information that has not been performed by or for PEF previously.

**Interrogatory No. 40:** PEF objects to OPC interrogatory number 40 because it requires PEF to speculate about unknown future events and to present an opinion based on mere speculation and conjecture. PEF also objects because PEF has not performed this analysis and pursuant to the Florida Rules of Civil Procedure PEF is not required to create documents or information that has not been performed by or for PEF previously.

**Interrogatory No. 44:** PEF objects to OPC interrogatory number 44 because it requires PEF to perform work for OPC to provide information in a particular format. Pursuant to the Florida Rules of Civil Procedure, PEF is not required to create documents or information or to perform comparisons for OPC at PEF's cost that has not been performed by or for PEF previously. Subject to these objections and without waiving same, PEF will provide a response to the extent the documents currently exist.

**Interrogatory No. 45:** PEF objects to the second part of OPC interrogatory number 45 because it requires PEF to perform work for OPC to provide information in a particular format. Pursuant to the Florida Rules of Civil Procedure, PEF is not required to create documents or information or to perform analysis for OPC at PEF's cost that has not been performed by or for PEF previously. More specifically, OPC is asking PEF to perform additional analysis it has not performed previously and PEF is under no obligation to do so. Subject to these objections and without waiving same, PEF will provide a response to the first part of this interrogatory.

**Interrogatory No. 47:** PEF objects to the second part of OPC interrogatory number 47 because it requires PEF to speculate about unknown future events and to present an opinion based on mere speculation and conjecture. PEF also objects because it requires PEF to perform work for OPC that PEF has not previously performed. Pursuant to the Florida Rules of Civil Procedure, PEF is not required to create documents or to perform analysis for OPC at PEF's cost that has not been performed by or for PEF previously. More specifically, OPC is asking PEF to perform additional feasibility analysis it has not performed previously and PEF is under no obligation to do so. Subject to these objections and without waiving same, PEF will provide a response to the first part of this interrogatory.

**Interrogatory No. 51:** PEF objects to OPC interrogatory number 51 because it does not define what is meant by "probability" and "foreseeable future" in the interrogatory and is therefore vague, unclear, and ambiguous. PEF further objects to OPC interrogatory number 51 because it requires PEF to assume certain facts (i.e., "the probability of low fuel and no carbon costs for the foreseeable future") have been established when they have not been established, and as such is an improper question. In addition, PEF objects because it requires PEF to present an opinion based on speculation and conjecture. Pursuant to Rule 1.340(b), Florida Rules of Civil Procedure, an interrogatory can request an opinion or contention that relates to fact, not speculation or conjecture. As such, this interrogatory is also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 56:** PEF objects to OPC interrogatory number 56 because it requests information related to future contract negotiations and the Company's strategy and likely negotiation positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations and what PEF ultimately would like to obtain from these

negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage and may even prevent PEF from being able to achieve an amendment to the its Engineering, Procurement, and Construction (“EPC”) agreement. PEF also objects because this interrogatory is requesting information on future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket.

**Interrogatory No. 57:** PEF objects to OPC interrogatory number 57 because it requests information related to future contract negotiations and the Company’s strategy and likely negotiation positions in these future negotiations. In addition, PEF also objects because it requires PEF to perform work for OPC that PEF has not previously performed. Pursuant to the Florida Rules of Civil Procedure, PEF is not required to create documents or to perform analysis for OPC at PEF’s cost that has not been performed by or for PEF previously. Subject to these objections, and without waiving same, PEF will provide information on the expected DCPs.

**Interrogatory No. 60:** PEF objects to OPC interrogatory number 60 because it requests information related to future contract negotiations and the Company’s strategy and likely negotiation positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage. In addition, PEF also objects because it requires PEF to perform work for OPC that PEF has not previously performed. Pursuant to the Florida Rules of Civil Procedure, PEF is not required to create documents or to perform analysis for OPC at PEF’s cost that has not been performed by or for PEF previously.

Respectfully submitted this 31<sup>st</sup> day of May, 2011.

Alexander Glenn  
General Counsel  
John Burnett  
Associate General Counsel  
PROGRESS ENERGY SERVICE  
COMPANY, LLC  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Telephone: (727) 820-5587  
Facsimile: (727) 820-5519



James Michael Walls  
Florida Bar No. 0706242  
Blaise N. Huhta  
Florida Bar No. 0027942  
Matthew R. Bernier  
Florida Bar No. 0059886  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133



CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 31st day of May, 2011.



---

Attorney

Anna Williams  
Keino Young  
Staff Attorney  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee 32399  
Phone: (850) 413-6218  
Facsimile: (850) 413-6184  
Email: [anwillia@psc.fl.state.us](mailto:anwillia@psc.fl.state.us)  
[kyoung@psc.fl.state.us](mailto:kyoung@psc.fl.state.us)

Charles Rehwinkel  
Associate Counsel  
Erik Sayler  
Associate Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400  
Phone: (850) 488-9330  
Email: [rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)  
[Sayler.erik@leg.state.fl.us](mailto:Sayler.erik@leg.state.fl.us)

Vicki G. Kaufman  
Jon C. Moyle, Jr.  
Keefe Law Firm  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: (850) 681-3828  
Fax: (850) 681-8788  
Email: [vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
[jmoyle@kagmlaw.com](mailto:jmoyle@kagmlaw.com)

Bryan S. Anderson  
Jessica Cano  
Florida Power & Light  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
Phone: (561) 691-7101  
Facsimile: (561) 691-7135  
Email: [bryan.anderson@fpl.com](mailto:bryan.anderson@fpl.com)  
[Jessica.cano@fpl.com](mailto:Jessica.cano@fpl.com)

Mr. Paul Lewis, Jr.  
Progress Energy Florida, Inc.  
106 East College Avenue, Ste. 800  
Tallahassee, FL 32301-7740  
Phone: (850) 222-8738  
Facsimile: (850) 222-9768  
Email: [paul.lewisjr@pgnmail.com](mailto:paul.lewisjr@pgnmail.com)

James W. Brew  
F. Alvin Taylor  
Brickfield Burchette Ritts & Stone, PC  
1025 Thomas Jefferson St NW  
8th FL West Tower  
Washington, DC 20007-5201  
Phone: (202) 342-0800  
Fax: (202) 342-0807  
Email: [jbrew@bbrslaw.com](mailto:jbrew@bbrslaw.com)  
[ataylor@bbrslaw.com](mailto:ataylor@bbrslaw.com)

Matthew J. Feil  
Gunster Yoakley & Stewart, P.A.  
215 South Monroe Street, Ste. 601  
Tallahassee, FL 32301  
Phone: (850) 521-1708  
Email: [mfeil@gunster.com](mailto:mfeil@gunster.com)

Randy B. Miller  
White Springs Agricultural Chemicals, Inc.  
PO Box 300  
White Springs, FL 32096  
Email: [RMiller@pscphosphate.com](mailto:RMiller@pscphosphate.com)

Karen S. White  
Staff Attorney  
AFLSA/JACL-ULFSC  
139 Barnes Drive, Ste. 1  
Tyndall AFB, FL 32403-5319  
Phone: (850) 283-6217  
Email: [karen.white@tyndall.af.mil](mailto:karen.white@tyndall.af.mil)