

**Ruth Nettles**

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**From:** O'Neal, Barbara [boneal@carltonfields.com]  
**Sent:** Wednesday, May 20, 2009 4:00 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; jlvia@yvlaw.net; JMoyle@kagmlaw.com; Katherine Fleming; Keino Young; paul.lewisjr@pgnmail.com; Rick@rmelsonlaw.com; swright@yvlaw.net; Triplett, Dianne; VKaufman@kagmlaw.com; Walls, J. Michael  
**Subject:** Electronic Filing Docket No. 090079-EI  
**Attachments:** PEF 6th Motion for Temp Protective Order.pdf

Matthew R. Bernier, Carlton Fields, P.A., 215 South Monroe Street, Ste. 500, Tallahassee, FL 32301, [mbernier@carltonfields.com](mailto: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 4;

The attached document is Progress Energy Florida, Inc.'s Sixth Motion for Temporary Protective Order.

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](mailto:boneal@carltonfields.com)  
[www.carltonfields.com](http://www.carltonfields.com)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**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: May 20, 2009

**PROGRESS ENERGY FLORIDA, INC.'S SIXTH  
MOTION FOR TEMPORARY PROTECTIVE ORDER**

Progress Energy Florida, Inc. ("PEF"), by and through undersigned counsel, hereby moves pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, for entry of a Temporary Protective Order covering confidential documents and information sought in discovery by the Office of Public Counsel ("OPC") and as grounds therefore states as follows:

1. In its Seventh Set of Requests for Production of Documents (Nos. 174-201), specifically numbers 189, 190 and 196, OPC has requested the discovery of confidential information the disclosure of which could harm PEF's competitive business interests and would violate contractual confidentiality provisions.

2. Specifically, the responses to requests 189 and 190 include information related to the Higgins and Turner Plant Dismantlement Projects, respectively, including contractual terms and agreements, including the scope of work, pricing arrangements and contractor responsibilities. Such information, if made available to the public, could place PEF at a competitive disadvantage with respect to competitors when attempting to contract for like services, as well as parties with which PEF would hope to contract in the future. If market participants possessed PEF's confidential information they would be able to adjust their behavior in the market place by changing the prices at which PEF is able to contract for such services.

See § 366.093(3)(d) & (e), Fla. Stat. Furthermore, these documents are subject to contractual confidentiality agreements, requiring that all parties to the contracts maintain the confidentiality of all documents and information pertaining thereto. The release of this information to the general public would violate those agreements, and seriously impair PEF's ability to contract for goods and services in the future. Additionally, the information produced in response to request number 196 contains confidential competitive business information relating to the production life of the company's combined cycle generating units. Such information, if made available to the public, could place PEF at a competitive disadvantage when attempting to contract for necessary replacement parts and/or maintenance services by allowing market participants to adjust their behavior accordingly. See § 366.093(3)(e), Fla. Stat.

5. Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, direct that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by Public Counsel as confidential and shall be exempt from the public records law, Section 119.07(1), Florida Statutes. PEF, by this motion, is seeking protection of all confidential information that PEF will produce to OPC in this matter pursuant to OPC's Seventh Set of Requests for Production of Documents (Nos. 174-201), as more specifically stated above. PEF has recorded the appropriate objections to providing such confidential, proprietary business information, and will provide documents and information responsive to these requests marked as confidential subject to this motion, the law, Commission rules, and PEF's objections. By following this procedure and producing this information, PEF is not waiving its right to seek further relief as necessary to make certain that its confidential, proprietary, business information is not publicly disclosed.

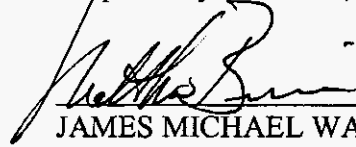
6. PEF further requests that in connection with the entry of a temporary protective order, the Commission also require Public Counsel to provide PEF with notice of its intent to use such confidential information in connection with the hearing in this matter.

WHEREFORE, PEF requests that the Commission enter an Order granting its Motion for Temporary Protective Order relating to information identified as confidential and produced in response to OPC's Seventh Set of Requests for Production of Documents (Nos. 174-201), specifically numbers 189, 190 and 196, instructing Public Counsel to continue to treat it as confidential, and requiring Public Counsel to provide PEF with notice of its intent to use such confidential information in connection with the hearing in accord with the prehearing order governing procedure.

R. ALEXANDER GLENN  
[alex.glenn@pgnmail.com](mailto:alex.glenn@pgnmail.com)  
JOHN T. BURNETT  
[john.burnett@pgnmail.com](mailto: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](mailto: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)

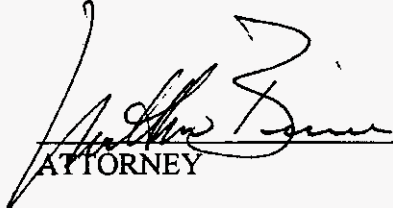
Respectfully submitted,

  
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JAMES MICHAEL WALLS  
[mwalls@carltonfields.com](mailto:mwalls@carltonfields.com)  
Florida Bar No. 0706242  
DIANNE M. TRIPLETT  
[dtriplett@carltonfields.com](mailto:dtriplett@carltonfields.com)  
Florida Bar No. 0872431  
MATTHEW BERNIER  
[mbernier@carltonfields.com](mailto:mbernier@carltonfields.com)  
Florida Bar No. 0059886  
Carlton Fields  
4221 W. Boy Scout Boulevard  
P.O. Box 3239  
Tampa, Florida 33607-5736  
(813) 223-7000 / (813) 229-4133 (fax)

RICHARD MELSON  
[rick@rmelsonlaw.com](mailto: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 20<sup>th</sup> 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, 8<sup>th</sup> Fl  
Washington, D.C. 20007

R. SCHEFFEL WRIGHT / JOHN T. LAVIA  
Young Law Firm  
225 South Adams Street, Ste. 200  
Tallahassee, FL 32301