

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO.: 100437-EI

Filed: May 21, 2013

**DUKE ENERGY FLORIDA, INC.'S RESPONSE IN OPPOSITION TO THE CITIZENS OF FLORIDA'S MOTION TO COMPEL DISCOVERY AND REQUEST FOR IN CAMERA REVIEW OF DOCUMENTS**

Duke Energy Florida, Inc. ("DEF" or the "Company") responds in opposition to the Citizens of Florida's ("OPC") Motion to Compel Discovery and Request for In Camera Review of Documents. OPC's motion should be denied because DEF has provided ample evidence supporting the absolutely privileged nature of the documents identified in its privilege log, negating OPC's wrongly claimed "right" to an in camera review of all privileged documents simply because OPC requests it.

Moreover, as demonstrated below, the numerous principles relating to Florida's privilege law espoused by OPC are incorrect, completely irrelevant, or by OPC's own admission, premature. Indeed, at the heart of OPC's motion is OPC's speculation that DEF will rely on what DEF has repeatedly and categorically denied – that DEF settled its insurance claims with the Nuclear Electric Insurance Limited ("NEIL") on advice of counsel. OPC continues to ignore that DEF will present testimony of what it actually based its decision on, which was the independent judgment of Company management. Thus, at page 24, footnote 20 of its motion, OPC "reserves" the right to put the Commission and the parties through this exercise all over again, after DEF files its testimony. The Commission should deny OPC's motion as premature and legally incorrect and further rule that it will be unnecessary for the Commission to consider any aspect of OPC's motion later when DEF files its testimony.

## **I. BACKGROUND**

DEF has produced thousands of pages of documents in response to OPC's requests for production of documents purportedly related to its challenge to the prudence of DEF's settlement with NEIL, including request numbers 64, 65, and 66 that are the subject of OPC's motion to compel. At issue here is a small part of that response where DEF identified and described 31 documents withheld because they are protected by the attorney-client and work product privileges. Notwithstanding DEF's already-voluminous production, OPC submitted a 42-page memorandum on the attorney-client and work product privileges in Florida, which as noted above, is full of assertions that are not only premature, but also legally inaccurate and irrelevant. As set forth more fully below, OPC's motion should be denied.

## **II. ARGUMENT**

### **A. DEF's Objections Are Legally Sufficient To Demonstrate Privilege.**

When asserting a claim of privilege to a discovery request, Florida Rule of Civil Procedure 1.280(b)(5) requires the party withholding information to "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, *without revealing the information itself privileged or protected*, will enable other parties to assess the applicability of the privilege or protection." (emphasis added). That is precisely what DEF did here. Had DEF provided more information, it would have revealed the privileged material.

The attorney-client privilege is an absolute privilege that applies to any communication between lawyer and client in furtherance of the rendition of legal services to the client. § 90.502(c), Fla. Stat.; *Genovese v. Provident Life & Acc. Ins. Co.*, 74 So. 3d 1064 (Fla. 2011). As OPC concedes, a "client" includes a corporation, and the privilege applies to both in-house and outside counsel. § 90.502(1)(b), Fla. Stat.

The work product privilege protects documents and papers of an attorney or a party

prepared in anticipation of litigation, regardless of whether they pertain to confidential conversations between attorney and client. Fla. R. Civ. P. 1.280(b); *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). “Fact” work product encompasses factual information pertaining to the client’s case and prepared or gathered in connection therewith. *Acevedo v. Doctor’s Hosp., Inc.*, 68 So. 3d 949 (Fla. 3d DCA 2011). It can be discovered only upon a showing of the need for the materials to prepare the requesting party’s case and of the requesting party’s inability to obtain the substantial equivalent of the materials by other means without undue hardship. *Id.* Again, OPC concedes this point and admits it has not met its burden in this regard and that its motion is premature. *See* OPC Mot. at 24 n.20.

On the other hand, “opinion” work product – work product reflecting the attorney’s mental impressions, conclusions, opinions, or theories concerning the client’s case – is given greater protection. Fla. R. Civ. P. 1.280(b)(3); *Gen. Motors Corp. v. McGee*, 837 So. 2d 1010 (Fla. 4th DCA 2012). Opinion work product is absolutely privileged and not discoverable under any circumstances. *Ford Motor Co. v. Hall-Edwards*, 997 So. 2d 1148 (Fla. 3d DCA 2006). Despite established law to the contrary, OPC nonetheless asserts that a document containing the mental impressions of *corporate* attorneys is treated differently and not subject to the same treatment as documents containing the mental impressions of attorneys not in the corporate context. The law does not support OPC’s position and, not surprisingly, OPC cites none.

Each document DEF described in its privilege log demonstrates, on the face of the privilege log, why the document is privileged by both the attorney-client and opinion work product privileges. The log reflects that the documents were prepared by or for counsel for DEF and that they consist of reports, memoranda, presentation materials, and email or written communications setting forth the analyses, mental impressions, theories, and conclusions of DEF’s lawyers or DEF staff prepared for consideration by DEF’s lawyers concerning the CR3

steam generator replacement project and coverage available under the NEIL Policies. Indeed, OPC acknowledges as much when it suggests that oral arguments “on the individual documents” may be premature at this time. OPC Mot. at 15-17.

The attached affidavit of Alex Glenn makes the legal sufficiency of DEF’s privilege log clear. *See* Glenn Aff. (Exhibit A). Mr. Glenn is currently the President of Duke Energy Florida. From 2008 to December 2012, he was the Company’s general counsel and oversaw all legal and regulatory functions of the company, including oversight of the NEIL claims process. *Id.* at ¶ 3. Mr. Glenn states, under oath, that he has reviewed each and every document identified in the privilege log and, indeed, was the author or recipient of almost half of the documents. *Id.* He explains that all of these documents were prepared at his direction or the direction of his counterpart for the purpose of providing legal advice to DEF with respect to various aspects of DEF’s disputed insurance claims with NEIL and were prepared in connection with the proceedings relating to those claims. Furthermore, Mr. Glenn affirms that the documents were not prepared for routine business matters, nor were they disseminated beyond persons who needed to know their contents. *Id.* at ¶ 7. These are all of the criteria the Florida Supreme Court identified as relevant when considering whether a privilege applies. *See Deason*, 632 So. 2d at 1383.

DEF’s privilege log and Mr. Glenn’s affidavit, together, provide ample evidence that the documents identified therein are communications between lawyer and client and prepared in the foreseeable event of litigation. *See Anchor Nat’l Fin. Servs., Inc. v. Smeltz*, 546 So. 2d 760, 760-61 (Fla. 1989) (citations omitted) (relying in part on affidavit supporting claim that materials were privileged); *Marshalls of Ma, Inc. v. Minsal*, 932 So. 2d 444, 448 (Fla. 3d DCA 2006) (proponent of privilege met burden of establishing privilege through affidavits specifically stating reports were prepared in anticipation of litigation); *Nat’l Union Fire Ins. Co. of*

*Pittsburgh, Pa. v. Fla. Constr. Commerce & Indus. Self Insurers Fund*, 720 So. 2d 535, 537 (Fla. 2d DCA 1998) (same).

**B. An In Camera Review Of The Documents Identified In The Privilege Log Is Neither Required Nor Necessary.**

OPC asserts that, when any party asserts a privilege, the Commission is *required* to conduct an in camera review of every single document for which that party claims privilege. A review of every document, however, is not necessary where the privilege is clear on the face of the privilege log. This makes eminent sense and is precisely how the Commission has ruled in the past. *See* Order No. PSC-04-0498-PCO-EI (Fla. PSC May 13, 2004) (upholding privilege for documents that were clearly privileged on their face without conducting an in camera review). If OPC were correct, an in camera review would be required in every case where a privilege is asserted, notwithstanding the obvious applicability of the privilege.

The cases OPC cites are consistent with DEF's position and not OPC's. In those cases, the trial court ordered the disclosure of documents claimed to be privileged without ever having looked at them, and the appellate courts held that was error without first reviewing the documents in camera to ensure they were not privileged. *See, e.g., Hamilton v. Ramos*, 796 So. 2d 1269 (Fla. 4th DCA 2001) (quashing order compelling discovery and remanding for court to conduct in camera review); *Snyder v. Value Rent-a-Car*, 736 So. 2d 780 (Fla. 4th DCA 1999) (same). These cases do not hold that a tribunal must undertake the potentially enormous burden of reviewing every document claimed to be privileged by a party.

To the extent, however, that any doubt exists as to the privileged nature of any of the documents identified on the privilege log, DEF requests that an in camera inspection be conducted by an independent special master who will not be a fact-finder in this case.

**C. The Privilege Applies To Materials Prepared In Anticipation Of Arbitration.**

OPC contends that, since under the NEIL policies any materials relating to NEIL coverage issues would have been litigated in arbitration, the work product doctrine does not apply because they were not prepared in anticipation of “litigation.” OPC is wrong for at least two reasons.

First, DEF has asserted that both the attorney-client and work product privileges apply to the documents identified in the privilege log. For purposes of the attorney-client privilege, OPC’s argument is irrelevant.

Moreover, while Florida courts have not directly addressed the issue, several federal courts construing the virtually identical federal work product rule have expressly rejected OPC’s argument. Those cases directly hold that arbitrations are adversarial in nature and can be fairly characterized as “litigation”; thus, materials prepared in anticipation of arbitration are protected by the work product privilege. *See Amobi v. D.C. Dep’t of Corr.*, 262 F.R.D. 45 (D.C. Cir. 2009); *Jumper v. Yellow Corp.*, 176 F.R.D. 282, 286 (N.D. Ill. 1997); *Samuels v. Mitchell*, 155 F.R.D. 195, 200 (N.D. Cal. 1994); *see also Miami Area Local, Am. Postal Workers Union v. U.S. Postal Serv.*, 173 F. Supp. 2d 1322 (S.D. Fla. 2001).

OPC acknowledges one of the cases cited above, but asserts the principle should not be considered persuasive here since it is a federal district court case. *See OPC Mot. at 20 n.17.* That is not how Florida courts view the issue. Because Florida’s rules of civil procedure were patterned after the federal rules, Florida courts routinely rely on decisions of the federal courts when construing our rules. *See, e.g., Savage v. Rowell Distr. Corp.*, 95 So. 2d 415 (Fla. 1957); *TIG Ins. Corp. of Am. v. Johnson*, 799 So. 2d 339, 341-42 (Fla. 4th DCA 2001). As the First District has made clear, when a federal rule is nearly identical to the Florida rule, “federal case law in which the rule is interpreted is pertinent and *highly persuasive.*” *Smith v. S. Baptist Hosp.*

*of Fla., Inc.*, 564 So. 2d 1115, 1116 n. 2 (Fla. 1st DCA 1990) (emphasis added).

OPC provides no reason why the Commission should not find these federal cases “highly persuasive” here. Florida courts construe the phrase “anticipation of litigation” very broadly. C. Ehrhardt, Florida Evidence § 502.9 (2012 Edition) (citing *Upjohn Co. v. United States*, 449 U.S. 383 (1981)). Indeed, just last week, the Florida Supreme Court held that Florida’s statute of limitations applies to arbitration proceedings because arbitration proceedings are within the statutory term “civil action or proceeding.” *Raymond James Fin. Servs. v. Phillips*, No. SC11-2513, 2013 WL 2096252 (Fla. May 16, 2013). There is no reason to believe Florida’s courts would not apply the same reasoning as the federal courts above and conclude that the work product privilege applies to arbitration proceedings.

**D. The Attorney-Client and Work Product Privileges Survive The End Of The Matter.**

OPC asserts that the work product privilege should not apply to the materials on DEF’s privilege log because the proceeding between DEF and NEIL was settled and this is a separate administrative proceeding. Again, Florida law is directly to the contrary. As the First District has made clear: “The weight of modern authority clearly provides that *work product retains its qualified immunity after the original litigation terminates, regardless of whether or not the subsequent litigation is related.*” *Alachua Gen. Hosp., Inc. v. Zimmer USA, Inc.*, 403 So. 2d 1087, 1088-89 (Fla. 1st DCA 1981) (emphasis added) (citation omitted). Citing *Hickman v. Taylor*, 329 U.S. 495 (1947), the First District went on to explain:

The primary purpose of the work product privilege is to insure that an attorney is not inhibited in his representation of his client by the fear that his files will be opened to scrutiny upon demand of the opposing party. Counsel should be allowed to amass data and commit his opinions and thought processes to writing free of the concern that, at some later date, an opposing party may be entitled to secure any relevant work product documents merely on request and use them against his client. The work product privilege would be attenuated if it were limited to documents that were prepared in the case for which discovery is sought.

*Alachua Gen. Hosp.*, 403 So .2d at 1089 (other citations omitted); *see also Toward v. Cooper*, 634 So. 2d 760 (Fla. 4th DCA 1994) (same).

OPC asserts these directly on-point decisions do not apply here because this proceeding is not in “a court of law.” OPC Mot. at 22 n.18. Absolutely nothing supports OPC’s attempt to disregard decisions from Florida courts simply because this case is proceeding in an administrative tribunal. Indeed, Florida Administrative Code Rule 28-106.206 – which applies to this proceeding, *see* Order No. PSC-13-0084-PCO-EI – explicitly provides that Florida Rule of Civil Procedure 1.280 applies. Of course, if Florida’s rules of civil procedure apply here, so too do the decisions of Florida’s courts construing them.

OPC further asserts, without any supporting authority, that this case should be analogized to an insurance bad faith case, and consequently, DEF’s privileged materials should be discoverable just as an insurer’s claims file is discoverable in a bad faith case. Not so. While certain documents in an insurer’s claims file relating to the insurer’s denial of the insured’s claim are discoverable in a bad faith action, that principle in no way eviscerates the attorney-client privilege in bad faith cases. *See State Farm Fla. Ins. Co. v. Puig*, 62 So. 3d 23 (Fla. 3d DCA 2011). Rather, “every district court of appeal has held” that the attorney-client privilege continues to exist and be available to insurers that are defending statutory bad faith claims. *Id.* at 26 (citing cases).

**E. The Sword And Shield Doctrine Does Not Apply.**

OPC contends that DEF cannot carry its burden to establish that it was prudent in settling with NEIL without relying on the materials identified in its privilege log and therefore, under the sword and shield doctrine, DEF has waived any claim of privilege with respect to those materials. OPC Mot. at 26. Again, not so.



The sword and shield doctrine applies where a party claiming privilege has raised an issue that *necessarily* requires introduction of the privileged material to prove its claim. See *Genovese v. Provident Life & Acc. Ins. Co.*, 74 So. 3d 1064 (Fla. 2011); *Jenney v. Airdata Wiman, Inc.*, 846 So. 2d 664 (Fla. 2d DCA 2003). As Alex Glenn’s affidavit affirms, DEF’s request for a prudence determination will in no way require proof by way of privileged communications. Although DEF not surprisingly consulted with its attorneys regarding settlement options and related issues, its decision to settle was made for business reasons and will be proven without divulging privileged communications of any kind.

Simply put, under OPC’s argument, DEF would be required to waive its right to privilege merely because it has asked the Commission to review the prudence of its actions. That is not, and never has been, the law. See *Long v. Murphy*, 663 So. 2d 1370, 1372 (Fla. 5th DCA 1995) (“The fact that privileged communications occur in the course of a transaction that is later litigated does not eliminate or waive the privilege.”); *Lee v. Progressive Exp. Ins. Co.*, 909 So. 2d 475, 477 (Fla. 4th DCA 2005) (“the attorney-client privilege is not waived by bringing or defending a lawsuit”). Moreover, OPC’s supposed “need” for these documents is not the controlling issue. The attorney-client privilege is not waived where the *opposing* party claims a need for the privileged information. See *Genovese, supra*.

The remainder of OPC’s arguments goes to the merits of this case – whether DEF’s settlement is prudent – and are prematurely raised at this time. Furthermore, the portion of OPC’s motion suggesting that it needs these materials and cannot obtain them elsewhere is purely speculative and also premature at this time. Counsel’s bare assertions, unsupported by evidence, are inadequate to show the “need” and “undue hardship” required for production of fact work product and cannot justify compelled discovery. *Metric Eng’g, Inc. v. Small*, 861 So. 2d 1248, 1250 (Fla. 1st DCA 2003). “To show ‘need,’ a party must present testimony or

evidence demonstrating the material requested is critical to the theory of the requestor's case, or to some significant aspect of the case." *Id.* OPC has done none of that here.

**F. OPC's Request for Oral Argument.**

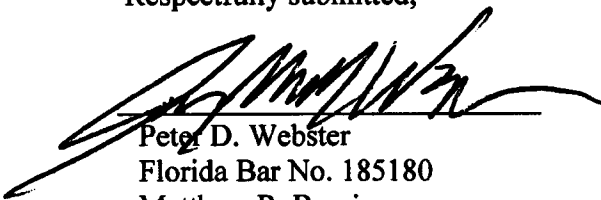
DEF disagrees with OPC's reasons for requesting oral argument on its motion, but DEF agrees oral argument on the issues raised by the motion and DEF's response may aid the Prehearing Officer in deciding the motion. DEF, therefore, agrees oral argument is appropriate. DEF further agrees to the thirty minutes for each side that OPC requests for oral argument.

**III. CONCLUSION**

For all of the reasons provided above, OPC's motion to compel should be denied, and DEF should not be required to produce materials that are subject to an absolute privilege from disclosure.

Respectfully submitted,

John T. Burnett  
Deputy General Counsel  
Dianne M. Triplett  
Associate General Counsel  
DUKE ENERGY FLORIDA, INC.  
Post Office Box 14042  
St. Petersburg, FL 33733  
Telephone: (727) 820-5587  
Facsimile: (727) 820-5519



Peter D. Webster  
Florida Bar No. 185180  
Matthew R. Bernier  
Florida Bar No. 59886  
CARLTON FIELDS, P.A.  
215 S. Monroe St., Suite 500  
Tallahassee, FL 32301  
Telephone: (850) 224-1585  
Facsimile: (850) 222-0398  
Email: [pwebster@carltonfields.com](mailto:pwebster@carltonfields.com)  
[mbernier@carltonfields.com](mailto:mbernier@carltonfields.com)

James Michael Walls  
Florida Bar No. 706242  
Blaise N. Gamba  
Florida Bar No. 27942  
CARLTON FIELDS, P.A.  
P. O. Box 3239  
Tampa, FL 33601-3239  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133  
Email: [mwalls@carltonfields.com](mailto:mwalls@carltonfields.com)  
[bgamba@carltonfields.com](mailto:bgamba@carltonfields.com)

**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 21st day of May, 2013.

Keino Young  
Theresa Lee Eng Tan  
Michael Lawson  
Florida Public Service Commission Staff  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Phone: (850) 413-6218  
Facsimile: (850) 413-6184  
Email: [kyoung@psc.state.fl.us](mailto:kyoung@psc.state.fl.us)  
[ltan@psc.state.fl.us](mailto:ltan@psc.state.fl.us)  
[mlawson@psc.state.fl.us](mailto:mlawson@psc.state.fl.us)

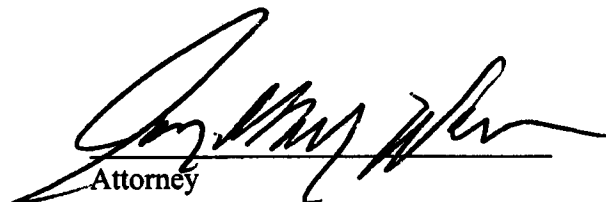
Charles Rehwinkel  
Associate Counsel  
Erik Sayler  
Associate Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
Phone: (850) 488-9330  
Email: [rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)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

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

Robert Scheffel Wright  
John T. LaVia  
c/o Gardner Law Firm  
1300 Thomaswood Dr  
Tallahassee, FL 32308  
Phone: (850) 385-0070  
Facsimile: (850) 385-5416  
Email: [schef@gbwlegal.com](mailto:schef@gbwlegal.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)

  
\_\_\_\_\_  
Attorney

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO.: 100437-EI

Filed: May 21, 2013

**AFFIDAVIT OF ALEX GLENN IN SUPPORT OF DUKE ENERGY FLORIDA, INC.'S RESPONSE TO THE OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL DISCOVERY AND REQUEST FOR IN CAMERA REVIEW OF DOCUMENTS**

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority duly authorized to administer oaths, personally appeared Alex Glenn, who being first duly sworn, on oath, deposes and says that:

1. My name is Alex Glenn. I am employed by Duke Energy Florida, Inc. ("DEF" or the "Company") and I currently serve as the Company's president. I am over the age of 18, and I have been authorized by the Company to provide this affidavit in the above-styled proceeding on the Company's behalf and in response to the Office of Public Counsel's ("OPC") Motion to Compel Discovery and Request for In Camera Review of Documents.

2. The facts attested to in my affidavit are based upon my personal knowledge.

3. As the Company President, I am responsible for achieving the Company's financial and operational goals, advancing the Company's rate and regulatory initiatives, and overseeing state and local regulatory and governmental relations, economic development, and community affairs. Prior to my appointment as the Company President, I was employed as the Company's General Counsel from 2008 to December 1, 2012. In that role, I oversaw all Legal and Regulatory Affairs functions for the Company. My responsibilities as General Counsel for the Company included oversight of the claims process with Nuclear Electric Insurance Limited

EXHIBIT A

("NEIL") related to the Company's Steam Generator Replacement ("SGR") project and the subsequent delaminations and repairs at the Company's Crystal River Unit 3 ("CR3") nuclear power plant. In August 2012, I was named the Company's President prior to fully assuming the role of Company President on December 1, 2012. Between August 2012 and December 2012, I had responsibilities with respect to both positions. In my role as Company President, my responsibilities included leading the Company's evaluation of whether to repair or retire CR3 and the evaluation of the decision to settle the Company's claims with NEIL.

4. The Company is a wholly owned subsidiary of Duke Energy Corporation ("Duke Energy"). Prior to the merger between Duke Energy and Progress Energy, Inc., in July 2012, the Company was a wholly owned subsidiary of Progress Energy, Inc. Prior to and after the merger, legal advice and assistance for Company matters, including all matters related to the SGR project, delaminations, and repairs at CR3 such as the NEIL insurance claims, was provided by the legal department for the parent company, which included the legal department for the Company. In this Affidavit, I will refer to the in-house counsel for the parent company and the Company collectively as the legal department.

5. Attached to my affidavit as Exhibit A is the Company's revised privilege log to OPC's seventh request for production of documents to the Company. I have reviewed OPC's motion to compel, and I understand that OPC is challenging the Company's assertion of privilege to all 31 documents listed on the Company's revised privilege log.

6. I am personally familiar with all 31 documents contained in the privilege log, and all of them were prepared at my request or direction, or at the request or direction of my counterparts in the legal department. In addition, all of these documents either were prepared by lawyers within the legal department or retained by the legal department to provide legal advice,

or were distributed to lawyers within the legal department or to senior executives who requested legal advice from the lawyers who authored the documents. None of these documents were requested or prepared solely for business purposes or routine business matters and none were disseminated beyond those persons who, because of the corporate structure, needed to know their contents.


7. Furthermore, all of these documents were prepared for the purpose of providing legal advice to or for the Company with respect to various aspects of the Company's disputed insurance claims with NEIL related to the SGR project, the delaminations, and subsequent repairs. There was no reason to request the legal advice contained in these documents but for the fact that NEIL disputed the Company's insurance claims under the Company's NEIL policies. All of these documents represent the legal advice of the attorneys who prepared the documents and work product material under the work product doctrine.

8. Finally, the Company has no intention of using any of its privileged communications or materials to prove its claims in this proceeding.

9. This concludes my affidavit.

Further affiant sayeth not.

Dated this 20<sup>th</sup> day of May, 2013.

  
\_\_\_\_\_  
(Signature)  
Alex Glenn  
President, Duke Energy Florida, Inc.  
299 First Avenue North  
St. Petersburg, Florida 33701

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 20<sup>th</sup> day of May, 2013 by Alex Glenn. He is personally known to me, or has produced his \_\_\_\_\_ driver's license, or his \_\_\_\_\_ as identification.



(AFFIX NOTARIAL SEAL)

Katrina Cleaver Cochran

(Signature)

KATRINA CLEAVER COCHRAN

(Printed Name)

NOTARY PUBLIC, STATE OF FL

2-2-2014

(Commission Expiration Date)

DD 944113

(Serial Number, If Any)

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

Docket No. 100437-EI

PROGRESS ENERGY FLORIDA, INC.'S PRIVILEGE LOG TO  
OPC'S SEVENTH REQUEST FOR PRODUCTION

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production Nos. 64, 65, and 66 (a-c)	8/27-28/2012	Alex Glenn, Esq.	Management	CR3 Review Team Whitepaper (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	7/31/2012	David Fountain, Esq.	Marc Manly, Esq.	Progress Energy v. NEIL CR3 Delamination Repair Case Update powerpoint presentation (prepared at direction of General Counsel; contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	2012	John Burnett, Esq.	Alex Glenn, Esq.	Spreadsheet of possible scenarios (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	7/29/2011	Alex Glenn, Esq.	John Burnett, Esq.	Draft outline of NEIL Coverage Legal Analysis & Recommendations (contains attorney mental impressions)	Attorney Client Communication Work Product

AFFIDAVIT OF ALEX GLENN  
EXHIBIT A



<b>Bates No./ Request</b>	<b>Date</b>	<b>Author</b>	<b>Recipient</b>	<b>Description</b>	<b>Privilege</b>
OPC's Seventh Request for Production No. 65	2012	John Burnett, Esq.	Alex Glenn, Esq.	Timeline/analysis of NEIL coverage (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	1/29/2010	Peter Gillon, Esq., John O'Neill, Esq.	Dave Conley, Esq.	Memorandum re: Crystal River Unit 3, Initial Coverage Analysis (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	5/3/2012	PEF Legal	Alex Glenn, Esq.	Draft CR3 Decommissioning Analysis (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	5/26/2012	David L. Elkind Erin L. Webb (Pillsbury)	John Burnett, Esq.	Memorandum re: Crystal River Nuclear Generating Plant, Unit 3 Coverage Overview – Decommissioning Scenario (contains attorney mental impressions/prepared at the direction of counsel)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	5/28/2012	Mike Walls, Esq.	John Burnett, Esq.	Draft memorandum re: insurance coverage (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	3/21/2011	Gary Little	John Burnett, Esq.	Email re: NEIL Coverage Details and Options (work product obtained pursuant to and prepared at attorney's request)	Attorney Client Communication Work Product

<b>Bates No./ Request</b>	<b>Date</b>	<b>Author</b>	<b>Recipient</b>	<b>Description</b>	<b>Privilege</b>
OPC's Seventh Request for Production No. 65	5/23/2012	Alex Glenn, Esq.	Management	CR3 Retirement Option – Insurance Policy Coverage – Legal Analysis powerpoint presentation (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	6/7/2012	Alex Glenn, Esq.	Management	CR3 Repair Legal Analysis powerpoint presentation (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	5/17/2012	L.D. Simmons II, Esq., L. Quinlan, Esq.	David Fountain, Esq.	Memorandum re: Analysis of Coverage Available under the NEIL Policies in the event Progress elects to decommission CR3 (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	7/17/2012	L.D. Simmons II, Esq.	David Fountain, Esq.	Memorandum re: Progress Energy Florida v. NEIL Proof of loss (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	3/2012	PEF Legal	Management and Alex Glenn, Esq.	Crystal River 3 NEIL Update powerpoint presentation (prepared at request of and for counsel; contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	11/3/2011	L.D. Simmons II, Esq.	David Fountain, Esq.	Memorandum/Legal Analysis re: Crystal River Unit 3 Delamination Claim Against NEIL Master Coverage Analysis (contains attorney mental impressions)	Attorney Client Communication  Work Product

<b>Bates No./ Request</b>	<b>Date</b>	<b>Author</b>	<b>Recipient</b>	<b>Description</b>	<b>Privilege</b>
OPC's Seventh Request for Production No. 65	2012	Alex Glenn, Esq.	Management	Slides to powerpoint re: scenarios of retirement of CR3 (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	8/1/2012	David Fountain, Esq. (email); L.D. Simmons, II, Esq., and L. Quinlan, Esq. (memo)	Swati Daji, Garry Little, Keith Bone, Patricia Smith, Esq.	Email attaching 5/17/2012 Memorandum from McGuire Woods re Analysis of Coverage available under the NEIL Policies in the event Progress elects to decommission CR3 (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65		PEF/Duke Legal	Alex Glenn, Esq.	Slides to powerpoint re: scenarios of retirement of CR3 (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	8/7/2012	Swati Daji	Keith Bone, David Fountain, Esq. Patricia C. Smith, Esq., Gary Little	Email re: 8 am meeting and attached presentation of NEIL update including marginalia on email and presentation (containing attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	2/12/2010	Peter Gillon, Esq., John O'Neill, Esq.	Dave Conley, Esq.	Memorandum re: Crystal River Unit 3 Summary of Initial Coverage Analysis (contains attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production No. 65	5/21/2012	L.D. Simmons II, Esq.	Alex Glenn, Esq. David Fountain, Esq.	Email re: Analysis of Available Coverage for Property Damage/Outage in the Event of Decommissioning and attachment (contains attorney mental impressions)	Attorney Client Communication  Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65	5/22/2012	L.D. Simmons II, Esq.	Alex Glenn, Esq.	Email exchange re: RE: CR3 Decommissioning Insurance Coverage Legal Analysis Rev0.pptx and attached draft powerpoint presentation (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	5/22/2012	Lowndes Quinlan, Esq.	Alex Glenn, Esq. L.D. Simmons II, Esq. Joshua Davey, Esq.	Email exchange re: RE: NEIL Drafting History (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	3/26/2012	L.D. Simmons, II, Esq.	David Fountain, Esq. Frank Schiller, Esq. David Elkind	Memorandum re: PEF v. NEIL: Strategy Implications of Outage Policy Coverage (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65	10/22/2012	Paul Newton, Esq.	Diane Wilkinson	Email forwarding Gary Little email re: NEIL policy, NEIL policy containing marginalia and draft notes regarding NEIL policy(containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production Nos. 64, 65	2012	David Fountain, Esq.	Management	Powerpoint re: Other NEIL Defenses (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production Nos. 64, 65	2012	David Fountain, Esq.	Management	Powerpoint re: Progress Energy v. NEIL CR3 Delamination Repair Case Update September 2012 (containing attorney mental impressions)	Attorney Client Communication Work Product

<b>Bates No./ Request</b>	<b>Date</b>	<b>Author</b>	<b>Recipient</b>	<b>Description</b>	<b>Privilege</b>
OPC's Seventh Request for Production Nos. 64, 65, and 66 (a-c)	9/11/2012	Pillsbury (outside counsel)	Management	Progress Energy v. NEIL Pillsbury Briefing Binder (containing attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production Nos. 64, 65, and 66 (a-c)	11/18/2012	McGuire Woods LLP (outside counsel)	Management	Powerpoint, Progress Energy Florida, Inc. v. Nuclear Electric Insurance Limited Mediation (containing attorney mental impressions)	Attorney Client Communication  Work Product
OPC's Seventh Request for Production Nos. 64 and 66 (d)	1/31/2013	Julie Janson, Esq.	Duke Energy Board	PowerPoint, Crystal River 3 Legal Issues (containing attorney mental impressions)	Attorney Client Communication  Work Product