

Ruth Nettles

090009-EI

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Sent: Monday, August 24, 2009 4:30 PM
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Subject: Electronic Filings in Docket No. 090009
Attachments: PEF Object to Citizens 9th Req for Production.pdf; PEF Object to Citizens 8th Interrogatories.pdf

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The filings are to be made in Docket 090009-EI, In re: Nuclear Cost Recovery Clause;

The attached documents are: PEF's Objections to Citizens' Ninth Request for Production of Documents (No. 117); PEF's Objections to Citizens' Eighth Set of Interrogatories (Nos. 74-75).

Thank you.

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FPSC-COMMISSION CLERK

8/24/2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR COST
RECOVERY CLAUSE

Docket No. 090009-EI
Submitted for filing: August 24, 2009

**PEF'S OBJECTIONS TO CITIZENS' NINTH REQUEST FOR
PRODUCTION OF DOCUMENTS (NO. 117)**

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" or "Citizens") Ninth Request for Production of Documents (No. 117) 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 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 Citizens' 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.

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 117: PEF objects to Citizens’ request number 117 in its entirety. The Order *Establishing Procedure entered by the Prehearing Officer in this docket* (Order No. PSC-09-0137-PCO-EI, entered March 6, 2009) states that “[u]nless subsequently modified by the Prehearing Officer . . . Discovery shall be completed by August 17, 2009.” See Order No. PSC-09-0137-PCO-EI, at 2. PEF concedes that Section VIII the Order also states that the “Last Day to Conduct Discovery” is August 21, 2009, see id. at 8, and as such there may be some confusion as to the Discovery cut-off date; however, any such confusion is now a moot point. The *Prehearing Officer* has issued no order modifying the Discovery cut-off date, thus the last day to file a Discovery request that would have allowed a party the full 20-days to respond was Friday, July 21st, 2009 (assuming, without conceding, that the latter cut-off date controls). As such, OPC’s Ninth Request for Production of Documents, filed August 12, 2009, does not allow PEF the full 20 days in which to respond (regardless of whether August 17th or August 21st is

determined to be the actual discovery cut-off date) and is therefore in violation of the Order. As such, PEF objects to this discovery in its entirety and will not file a response thereto.

Respectfully submitted,

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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 24th day of August, 2009.



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