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Subject: Filing Docket 100437
Attachments: Duke Energy Florida, Inc.'s Objections to Citizens' Ninth Set of Interrogatories (Nos. 123-146)_1.pdf

Docket 100437-EI

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

1. Duke Energy Florida, Inc.'s Objections to Citizens' Ninth Set of Interrogatories (Nos. 123-146) is attached for filing.
2. This document contains 12 pages.
3. This document is being filed on behalf of Duke Energy Florida, Inc.
4. This document is being filed by

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FPSC-COMMISSION CLERK

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 Duke Energy Florida, Inc.

Docket No. 100437-EI

Filed: May 9, 2013

**DUKE ENERGY FLORIDA, INC.'S OBJECTIONS TO
CITIZENS' NINTH SET OF INTERROGATORIES (NOS. 123-146)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, and the Third Order Establishing Procedure, Order No. PSC-13-0175-PCO-EI, issued April 26, 2013 (the "Order"), in this matter, Duke Energy Florida, Inc. ("DEF" or the "Company") hereby makes its objections to the Office of Public Counsel's ("Citizens" or "OPC") Ninth Set of Interrogatories (Nos. 123-146) 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), DEF generally objects to the time and place of production requirement in OPC's Ninth Set of Interrogatories and will make all responsive documents available for inspection and copying at the offices of Duke Energy Florida, Inc., 106 E. College Ave., 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 DEF and OPC for purposes of inspection, copying, or handling of the responsive documents.

With respect to the "Definitions" and "Instructions" in OPC's Ninth Set of Interrogatories:

DEF generally objects to OPC's interrogatories 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. DEF will provide a privilege log within a reasonable time or as may be agreed to by the parties to the extent that a document request calls for the production of privileged or protected documents.

Further, in certain circumstances, DEF may determine upon investigation and analysis that documents 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 such a request, DEF 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. DEF 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, and all other applicable statutes, rules, and legal principles.

DEF also generally objects to OPC's Ninth Set of Interrogatories to the extent that it calls for the production of "all" documents of any nature, including, every copy of every document responsive to the requests. DEF 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, DEF reserves the right to supplement any of its responses to OPC's interrogatories if DEF cannot produce documents immediately due to their magnitude and the work required aggregating them, or if DEF later discovers additional responsive documents in the course of this proceeding.

In addition, DEF objects to OPC's Definitions, in particular, OPC Definitions Numbers i, ii, iii, iv, vi, and vii, to the extent they seek to encompass documents or information from persons or entities other than DEF who are not parties to this Docket, who are not otherwise subject to discovery under the applicable rules and law, and to the extent these definitions request documents outside of DEF's possession, custody, or control. Furthermore, DEF objects to any interrogatory that calls for DEF to create documents that it otherwise does not have because there is no such requirement under applicable law.

DEF further objects to OPC's Instructions and Definitions to the extent that they seek to impose requirements on the responses to the Interrogatories beyond the requirements of the Florida Rules of Civil Procedure. DEF will respond to all OPC Interrogatories consistent with the requirements of the Florida Rules of Civil Procedure, and not some inconsistent and additional requirement under OPC's Instructions and Definitions.

By making these general objections at this time, DEF does not waive or relinquish its right to assert additional general and specific objections to OPC's discovery at the time DEF's response is due under the Florida Rules of Civil Procedure.

SPECIFIC OBJECTIONS

OPC Interrogatory Number 123a:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to "anyone from Duke" who contacted NEIL. As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Subject to, and without waiving this

objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 123b:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Duke” who was contacted by NEIL. As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 124a:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Duke” who contacted the NRC, its Staff, or “any other” NRC employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 124b:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Duke” who was contacted by the NRC, its Staff, or “any

other” NRC employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 125a:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Progress Energy” who contacted the NRC, its Staff, or “any other” NRC employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Moreover, by its terms the interrogatory is not limited to any specific time frame prior to the closing of the merger on July 2, 2012, and therefore it seeks information that is irrelevant to the issues to be decided in this proceeding and not reasonably calculated to lead to the discovery of relevant information. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers after October 2009 to the extent any exist that have not been produced previously.

OPC Interrogatory Number 125b:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Progress Energy” who was contacted by the NRC, its Staff, or “any other” NRC employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may

include information that is irrelevant to the issues to be decided in this proceeding. Moreover, by its terms the interrogatory is not limited to any specific time frame prior to the closing of the merger on July 2, 2012, and therefore it seeks information that is irrelevant to the issues to be decided in this proceeding and not reasonably calculated to lead to the discovery of relevant information. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers after October 2009 to the extent any exist that have not been produced previously.

OPC Interrogatory Number 126a:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Duke” who contacted the NRC, its Staff, or “any other” NRC employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 126b:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from Duke” who was contacted by the NRC, its Staff, or “any other” NRC employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Subject to, and

without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 127a:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from the NRC” who contacted NEIL or “any other” NEIL employees or contractors “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Moreover, DEF objects to this interrogatory to the extent it seeks information that is not in DEF’s possession, custody, or control. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 127b:

SPECIFIC OBJECTION: DEF objects to this interrogatory as overbroad and not reasonably calculated to lead to the discovery of admissible evidence to the extent it calls for information related to “anyone from NEIL” who was contacted by the NRC “related to anything with respect to CR3.” As phrased, the breadth of this interrogatory makes it practically impossible to fully answer and may include information that is irrelevant to the issues to be decided in this proceeding. Moreover, DEF objects to this interrogatory to the extent it seeks information that is not in DEF’s possession, custody, or control. Subject to, and without waiving this objection, DEF will produce relevant, responsive answers to the extent any exist that have not been produced previously.

OPC Interrogatory Number 130a:

SPECIFIC OBJECTION: DEF objects to this interrogatory to the extent it seeks information that is irrelevant to the issues to be decided in this proceeding and it is not reasonably calculated to lead to the discovery of relevant information. Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 130b:

SPECIFIC OBJECTION: DEF objects to this interrogatory to the extent it seeks information that is irrelevant to the issues to be decided in this proceeding and it is not reasonably calculated to lead to the discovery of relevant information. Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 130c:

SPECIFIC OBJECTION: DEF objects to this interrogatory to the extent it seeks information that is irrelevant to the issues to be decided in this proceeding and it is not reasonably calculated to lead to the discovery of relevant information. Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 132:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. DEF objects to this interrogatory because it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Polices. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and

New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

OPC Interrogatory Number 133:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. DEF objects to this interrogatory because it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Policies. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

OPC Interrogatory Number 134b:

SPECIFIC OBJECTION: DEF objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue

of insurance coverage related to the NEIL Policies. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements."). Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 137:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it is an improper question because it assumes facts that are incorrect and not in evidence. Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 139:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it is an improper question because it assumes facts that are incorrect and not in evidence. Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 141:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it is an improper question because it assumes facts that are incorrect and not in evidence. Subject to, and without waiving this objection, DEF will provide an appropriate response.

OPC Interrogatory Number 145a:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it seeks information that is irrelevant to the issues to be decided in this docket and it is not reasonably calculated to lead to the discovery of relevant information.

OPC Interrogatory Number 145b:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it seeks information that is irrelevant to the issues to be decided in this docket and it is not reasonably calculated to lead to the discovery of relevant information. DEF also objects to this interrogatory because it is an improper hypothetical involving an impossible set of facts and, therefore, an improper interrogatory.

OPC Interrogatory Number 145c:

SPECIFIC OBJECTION: DEF objects to this interrogatory because it seeks information that is irrelevant to the issues to be decided in this docket and it is not reasonably calculated to lead to the discovery of relevant information.

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 9th day of May, 2013.



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