

Matilda Sanders

**From:** Costello, Jeanne [JCostello@CarltonFields.com]  
**Sent:** Thursday, June 23, 2005 2:37 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** miketwomey@talstar.com; tperry@mac-law.com; jmcwhirter@mac-law.com; Jennifer Brubaker; Mclean.harold@leg.state.fl.us; daniel.frank@sablaw.com; everett.boyd@sablaw.com; james.bushee@sablaw.com; KSTorain@potashcorp.com; richzambo@aol.com; mcglothlin.joseph@leg.state.fl.us; swright@landersandparsons.com; Andrew.soto@sablaw.com; Jennifer Rodan  
**Subject:** Docket No. 050078 Documents for Filing  
**Attachments:** PEF Objections to OPC 7th Interr.pdf



PEF  
ns to OPC 7

Attached for filing and e-service on behalf of Progress Energy Florida are PEF's Objections to OPC's Seventh Set of Interrogatories (Nos. 226-258).

Jeanne Costello  
 Legal Administrative Assistant  
 Gary L. Sasso / James Michael Walls / John T. Burnett Carlton Fields  
 4221 W. Boy Scout Blvd.  
 Tampa, FL 33607  
 Email: jcostello@carltonfields.com  
 Phone: (813) 223-7000  
 Fax: (813) 229-4133  
 www.carltonfields.com

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC   j
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

05994 JUN 23 05

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

---

In re: Petition for rate increase by  
Progress Energy Florida, Inc.

---

Docket No. 050078-E1  
Submitted for filing:  
June 23, 2005

**PEF'S OBJECTIONS TO OPC'S SEVENTH SET OF  
INTERROGATORIES (NOS. 226-258)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.340 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 the Office of Public Counsel's ("OPC") Seventh Set of Interrogatories to PEF, Nos. 226-258, and states as follows:

**GENERAL OBJECTIONS**

PEF objects to OPC's Seventh Set of Interrogatories to the extent that to the extent that it calls for PEF to produce workpapers along with its answer to the interrogatory. Such a request is more akin to a request for production of documents rather than an interrogatory. In its discretion, PEF may elect to produce documents in response to an interrogatory pursuant to Rule 1.340(c), but PEF has no obligation to do so. Additionally, with respect to the "Definitions" and "Instructions" in OPC's Seventh Set of Interrogatories, 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. For example, PEF objects to definition "(v)" given that there is no requirement in the applicable rules for PEF to perform any of the tasks set forth in the definition of the word "identify"

therein. Furthermore, PEF objects to any interrogatory that calls for PEF to create data or information that it otherwise does not have because there is no such requirement under the applicable rules and law.

PEF objects to OPC's definition "(i)" given that it includes "affiliates" in the definition of "PEF," and 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.

PEF must also object to OPC's Seventh Set of Interrogatories to PEF to the extent that they require PEF or PEF's retained experts to develop information or create material for OPC, presumably at PEF's expense. The purpose of discovery, of course, is to obtain information that already exists, not to require the other side to create information or material for the requesting party. PEF, therefore, is not obligated to incur the expense of performing or having its experts perform work for OPC to create information or material that OPC seeks in these interrogatories.

Additionally, PEF generally objects to OPC's interrogatories to the extent that they call for data 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. Further, in certain circumstances, PEF may determine upon investigation and analysis that 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

such 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. 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 Establishing Procedure, and all other applicable statutes, rules and legal principles.

PEF also objects to any interrogatory that calls for projected data or information beyond the year 2006 or prior to 2004 because such data or information is irrelevant to this case and has no bearing on this proceeding, nor is such data or information likely to lead to the discovery of admissible evidence. Furthermore, if an interrogatory does not specify a timeframe for which data or information is sought, PEF will interpret such interrogatory as calling only for data and information relevant to the years 2004-2006.

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 Establishing Procedure. PEF provides these general objections at this time to comply with the intent of the Order Establishing Procedure to reduce the delay in identifying and resolving any potential discovery disputes.


**SPECIFIC OBJECTIONS**

**Request 234:** Given the fact that in subparts “a” and “b,” OPC refers to the year 2004, PEF interprets OPC’s use of the term “prior” in subpart “e” to refer to years before 2004. Using this interpretation, PEF objects to subpart “e” because information related to years prior to 2004 is necessarily irrelevant to this proceeding, and not likely to lead to the discovery of admissible evidence.

**Request 241:** PEF objects to OPC’s interrogatory number 241 to the extent that it calls for PEF to produce documents as if it were a request for production of documents rather than an interrogatory. In its discretion, PEF may elect to produce documents in response to an interrogatory pursuant to Rule 1.340(c), but PEF has no obligation to do so.

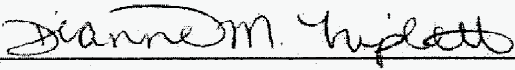
Respectfully submitted,

R. ALEXANDER GLENN  
Deputy General Counsel – Florida  
PROGRESS ENERGY SERVICE  
COMPANY, LLC  
100 Central Avenue, Ste. 1D  
St. Petersburg, FL 33701  
Telephone: (727) 820-5587  
Facsimile: (727) 820-5519

  
GARY L. SASSO  
Florida Bar No. 622575  
JAMES MICHAEL WALLS  
Florida Bar No. 0706272  
JOHN T. BURNETT  
Florida Bar No. 173304  
DIANNE M. TRIPLETT  
Florida Bar No. 0872431  
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 that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 23<sup>rd</sup> day of June, 2005 to all counsel of record as indicated below.

  
Attorney

Jennifer Brubaker Felicia Banks Jennifer Rodan <b>Office of the General Counsel</b> Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850	John W. McWhirter, Jr. McWhirter, Reeves, Davidson, Kaufman & Arnold, P.A. 400 North Tampa Street, Ste. 2450 Tampa, FL 33601-3350 -and- Timothy J. Perry McWhirter, Reeves, Davidson, Kaufman & Arnold, P.A. 117 South Gadsden Street Tallahassee, FL 32301 <b>Counsel for Florida Industrial Power Users Group</b>
Harold McLean <b>Office of the Public Counsel</b> c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400	C. Everett Boyd, Jr. Sutherland Asbill & Brennan LLP 2282 Killearn Center Blvd. Tallahassee, FL 32309
Mike B. Twomey P.O. Box 5256 Tallahassee, FL 32314-5256 <b>Counsel for AARP</b>	James M. Bushee Daniel E. Frank Andrew K. Soto Sutherland Asbill & Brennan LLP 1275 Pennsylvania Avenue, N.W. Washington, DC 20004-2415
Robert Scheffel Wright, John T. LaVia, III, Landers & Parsons, P.A. 310 West College Avenue (ZIP 32301) Post Office Box 271 Tallahassee, Florida 32302 <b>Counsel for Florida Retail Federation</b>	Richard A. Zambo Richard A. Zambo, P.A. 2336 S.E. Ocean Boulevard, #309 Stuart, Florida 34996

	<p>-and-</p> <p>Karin S. Torain PCS Administration, (USA), Inc. Suite 400 Skokie blvd. Northbrook, IL 60062</p> <p><b>Counsel for White Springs</b></p>
--	---