Ruth Nettles

From: Tibbetts, Arlene [Arlene.Tibbetts@pgnmail.com]
Sent: Monday, December 15, 2008 10:25 AM
To: Filings@psc.state.fl.us
Cc: mcglothlin.joseph@leg.state.fl.us; Kelly.JR@leg.state.fl.us; Lisa Bennett; Keino Young
Subject: Docket 070703 Filing: PEF's Objections to OPC's 5th Request for Production of Documents (Nos. 52-60)
Attachments: Objections to OPC's 5th PODs (52-60).pdf

This electronic filing is made by:

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Docket: 070703-EI

In re: Review of coal costs for Progress Energy Florida's Crystal River Units 4 and 5 for 2006 and 2007

On behalf of Progress Energy Florida

Consisting of 5 pages

The attached document for filing is PEF's Objections to OPC's Fifth Request for Production of Documents (Nos. 52-60)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of coal costs for Progress Energy Florida's Crystal River Units 4 and 5 for 2006 and 2007

Docket No. 070703-EI

December 15, 2008

PEF'S OBJECTIONS TO OPC'S FIFTH REQUEST TO PRODUCE DOCUMENTS (Nos. 52-60)

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 the Office of Public Counsel's ("OPC's") Fifth Request to Produce Documents (Nos. 52-60) and states as follows:

GENERAL OBJECTIONS

PEF generally objects to the time and place of production requirement in OPC's Fifth Request to Produce Documents and will make all responsive documents available for inspection and copying at the offices of Progress 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 PEF and OPC for purposes of inspection, copying, or handling of the responsive documents.

With respect to the "Definitions" in OPC's Fifth Request to Produce Documents, 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. 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 that are otherwise not subject to discovery. 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. 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 generally objects to OPC's Fifth Request to Produce Documents 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. 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.

PEF also objects to any Interrogatory or Request for Production that purports to require PEF or its experts to prepare studies, analyses, or to do work for OPC that has not been done for PEF, presumably at PEF's cost.

PEF also objects to any attempt by OPC to evade the numerical limitations set on document requests in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts.

Finally, PEF objects to OPC's instructions that direct PEF to encompass responsive documents created on or after January 1, 2004 to the extent that such documents have no bearing or relevance on coal for Crystal River Units 4 and 5 in 2006 and 2007.

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 52: PEF objects to this request to the extent that it attempts to elicit information regarding the possibility of delivering coal to Crystal River prior to the year 2006, since such information is not relevant or material to any issue in this proceeding. PEF also objects to this request to the extent it attempts to elicit information regarding coal deliveries to Crystal River for units other than Crystal River Units 4 and 5. Subject to and without waiving these objections or

any of PEF's general objections, PEF will produce any responsive documents that relate to coal delivered to Crystal River Units 4 and 5 in 2006 and 2007.

Request 53: PEF objects to this request to the extent that it attempts to elicit documents prepared by PEF personnel that relate to coal delivered to Crystal River Units 4 and 5 prior to the year 2006, since such information is not relevant or material to any issue in this proceeding. Subject to and without waiving these objections or any of PEF's general objections, PEF will produce any responsive documents that relate to coal for Crystal River Units 4 and 5 in 2006 and 2007.

Request 57: PEF objects to this request to the extent it attempts to elicit information regarding telephone conversations with producers or vendors of coal prior to the year 2006, since such information is not relevant or material to any issue in this proceeding. Subject to and without waiving this objection, or PEF's objection to Interrogatory No. 24, or any of PEF's general objections, PEF will provide documents that relate to coal for Crystal River Units 4 and 5 in 2006 and 2007, if any.

Request 58: PEF objects to this request to the extent it attempts to elicit information regarding PEF employees or representatives prior to the year 2006, since such information is not relevant or material to any issue in this proceeding. Subject to and without waiving this objection, or PEF's objection to Interrogatory No. 25, or any of PEF's general objections, PEF will provide documents that relate to PRB coal usage for Crystal River Units 4 and 5 in 2006 and 2007, if any.

Request 59: PEF objects to this request to the extent it attempts to elicit informational materials acquired by PEF that relate to possible usage prior to the year 2006, since such information is not relevant or material to any issue in this proceeding. Subject to and without waiving this objection, or PEF's objection to Interrogatory No. 26, or any of PEF's general

objections, PEF will provide documents that relate to informational materials acquired by PEF relating to possible coal usage for Crystal River Units 4 and 5 in 2006 and 2007, if any.

Request 60: PEF objects to this request to the extent it attempts to elicit information regarding consultants or experts engaged by PEF prior to the year 2006, since such information is not relevant or material to any issue in this proceeding. Subject to and without waiving this objection, or PEF's objection to Interrogatory No. 27, any of PEF's general objections, and notwithstanding Rod Hatt's engagement in Docket 060658-EI in which all such information has been produced, PEF will provide documents that relate to experts or consultants engaged by PEF for possible coal usage for Crystal River Units 4 and 5 in 2006 and 2007, if any.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Progress Energy Florida, Inc.'s Objections to Citizens Fifth Request for Production (Nos. 52-60), in Docket No. 070703-EI has been furnished by regular U.S. mail to the following this 15th day of December, 2008.

Attorney

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