

## Ruth Nettles

---

**From:** O'Neal, Barbara [boneal@carltonfields.com]  
**Sent:** Wednesday, April 22, 2009 5:00 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** alex.glenn@pgnmail.com; Bernier, Matthew R.; Bill.mccollum@myfloridalegal.com; Caroline Klancke; cecilia.bradley@myfloridalegal.com; Charles Rehwinkel; Costello, Jeanne; ataylor@bbrslaw.com; jbrew@bbrslaw.com; John.Burnett@pgnmail.com; jlavie@yvlaw.net; JMoyle@kagmlaw.com; KSTorain@potashcorp.com; Katherine Fleming; Keino Young; Lisa.Stright@pgnmail.com; paul.lewisjr@pgnmail.com; Rick@rmelsonlaw.com; swright@yvlaw.net; Triplett, Dianne; VKaufman@kagmlaw.com; Walls, J. Michael  
**Subject:** Electronic Filing Docket No. 090079-EI  
**Attachments:** PE Motion 1st Motion for Protective order.pdf

1. Matthew R. Bernier, Carlton Fields, P.A., 215 South Monroe Street, Ste. 500, Tallahassee, FL 32301, [mbernier@carltonfields.com](mailto:mbernier@carltonfields.com) is the person responsible for this electronic filing;
2. The filing is to be made in Docket 090079-EI, In re: Petition for rate increase in Rates by Progress Energy Florida, Inc.;
3. The total number of pages is 5
4. The attached document is Progress Energy Florida, Inc.'s First Motion for Temporary Protective Order

**CARLTON FIELDS**  
ATTORNEYS AT LAW

### Barbara O'Neal

Legal Administrative Assistant

215 S. Monroe Street, Suite 500  
Tallahassee, Florida 32301-1866

direct 850.425.3388  
fax 850.222.0398  
[boneal@carltonfields.com](mailto:boneal@carltonfields.com)  
[www.carltonfields.com](http://www.carltonfields.com)

4/23/2009

DOCUMENT NUMBER-DATE  
03763 APR 23 8  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

---

In re: Petition for Increase in Rates by  
Progress Energy Florida, Inc.

Docket No. 090079-EI  
Submitted for filing: April 22, 2009

---

**PROGRESS ENERGY FLORIDA, INC.'S FIRST  
MOTION FOR TEMPORARY PROTECTIVE ORDER**

Progress Energy Florida, Inc. ("PEF"), by and through undersigned counsel, hereby moves pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, for entry of a temporary protective order covering confidential documents and information sought in discovery by the Office of Public Counsel ("OPC") and as grounds therefore states as follows:

1. In its First, Second, and Third Requests for Production of Documents (Nos. 1-68, 69-78, and 79-121, respectively, and collectively as the "Requests") OPC has requested the discovery of confidential information, including but not limited to, contractual information which PEF is contractually obligated to and does treat as proprietary and confidential, internal audit reports, and other confidential information the disclosure of which could harm PEF's competitive business interests.

2. Specifically, the requested documents contain information related to existing and proposed contracts, which PEF and the vendors consider confidential. PEF has obligations to maintain the confidentiality of the vendor-supplied information. Disclosure of the confidential contractual information would provide competitors insight into PEF's and/or the vendors' contractual agreements and business practices, which in turn would harm PEF's and the vendors'

competitive interests and impair PEF's ability to contract for goods and services on favorable terms, to the detriment of PEF and its customers. *See* § 366.093(3) (d) and (e), Fla. Stat.

3. The requested documents also include PEF's internal auditing controls and internal audit reports and workpapers. Public disclosure of the documents and information in question would compromise PEF's ability to effectively audit the Company's major projects. If the Company were to know that its internal auditing controls and process were subject to public disclosure, it may not be as thorough while conducting such audits. In addition, such information and documents are specifically defined by Section 366.093(3)(b) as proprietary confidential business information that is entitled to confidential status.

4. The requested documents also contain certain forecasting information, budget numbers, strategic planning information, and other confidential information that PEF does not disclose to the public. Such information, if made available to PEF's competitors, could place PEF at a competitive disadvantage with respect to the other companies with which it competes for various goods and services. If they had PEF's confidential information, they may adjust their behavior in the market place with respect to activities such as pricing and the acquisition and provision of goods, materials and services. *See* § 366.093(3)(e), Fla. Stat.

5. Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, direct that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by public counsel as confidential and shall be exempt from the public records law, Section 119.07(1), Florida Statutes. PEF, by this motion, is seeking protection of all confidential information that PEF will produce to OPC in this matter pursuant to OPC's Requests for Production of Documents as more specifically stated above. PEF has recorded the appropriate objections to providing such confidential, proprietary

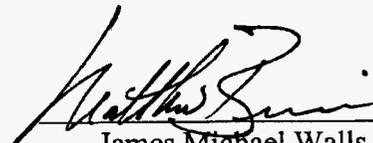
business information, and will provide documents and information responsive to these requests marked as confidential subject to this motion, the law, Commission rules, and PEF's objections. By following this procedure and producing this information, PEF is not waiving its right to seek further relief as necessary to make certain that its confidential, proprietary, business information is not publicly disclosed.

6. PEF further requests that in connection with the entry of a temporary protective order, the Commission also require Public Counsel to provide PEF with notice of its intent to use such confidential information in connection with the hearing in this matter.

WHEREFORE, PEF requests that the Commission enter an Order granting its Motion for Temporary Protective Order relating to information identified as confidential and produced in response to OPC's First, Second and Third Requests for Production of Documents, instructing Public Counsel to continue to treat it as confidential, and requiring Public Counsel to provide PEF with notice of its intent to use such confidential information in connection with the hearing in accord with the prehearing order governing procedure.

Respectfully submitted,

R. Alexander Glenn  
[alex.glenn@pgnmail.com](mailto:alex.glenn@pgnmail.com)  
John T. Burnett  
[john.burnett@pgnmail.com](mailto:john.burnett@pgnmail.com)  
Progress Energy Service Company, LLC  
299 First Avenue North  
P.O.Box 14042 (33733)  
St. Petersburg, Florida 33701  
(727) 820-5184  
(727) 820-5249(fax)

  
James Michael Walls  
[mwalls@carltonfields.com](mailto:mwalls@carltonfields.com)  
Florida Bar No. 0706242  
Dianne M. Triplett  
[dtriplett@carltonfields.com](mailto:dtriplett@carltonfields.com)  
Florida Bar No. 0872431  
Matthew Bernier  
[mbernier@carltonfields.com](mailto:mbernier@carltonfields.com)  
Florida Bar No. 059886  
Carlton Fields  
4221 W. Boy Scout Boulevard  
P.O. Box 3239  
Tampa, Florida 33607-5736

(813) 223-7000 / (813) 229-4133 (fax)

Paul Lewis, Jr.  
[Paul.lewisjr@pgnmail.com](mailto:Paul.lewisjr@pgnmail.com)  
Progress Energy Service Company, LLC  
106 East College Avenue  
Suite 800  
Tallahassee, Florida 32301  
(850) 222-8738 / (850) 222-9768 (fax)

Richard Melson  
[rick@rmelsonlaw.com](mailto:rick@rmelsonlaw.com)  
Florida Bar No. 0201243  
705 Piedmont Drive  
Tallahassee, FL 32312  
(850) 894-1351

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 22<sup>nd</sup> day of April, 2009.

  
Attorney

Katherine Fleming  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, FL 32399

J.R. Kelly/Charles Rehwinkle  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street – Room 812  
Tallahassee, FL 32399-1400

Bill McCollum/Cecilia Bradley  
Office of the Attorney General  
The Capitol – PL01  
Tallahassee, FL 32399-1050

Vicki G. Kaufman/Jon C. Moyle, Jr.  
Keefe Law Firm, The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

James W. Brew/Alvin Taylor  
Brickfield Law Firm  
1025 Thomas Jefferson Street, NW, 8<sup>th</sup> Fl  
Washington, D.C. 20007

R. Scheffel Wright / John T. LaVia  
Young Law Firm  
225 South Adams Street, Ste. 200  
Tallahassee, FL 32301