

Dorothy Menasco

From: O'Neal, Barbara [boneal@carltonfields.com]
Sent: Monday, April 27, 2009 3:50 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; jlavia@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: PEF Object to FIPUG 1st Interrogatories.pdf



PEF Object to
IPUG 1st Interr.

- * Matthew R. Bernier, Carlton Fields, P.A., 215 South Monroe Street, Ste. 500, Tallahassee, FL 32301, mbernier@carltonfields.com is the person responsible for this electronic filing;
- * The filing is to be made in Docket 0900 7 9-EI, In re: Petition for rate increase in rates by Progress Energy Florida, Inc.;
- * The total number of pages is 7;
- * The attached document is Progress Energy Florida, Inc.'s Objections to Florida Industrial Power Users Group's First Interrogatories (Nos. 1-13).

Thank you.

Barbara O'Neal
Legal Administrative Assistant
CARLTON FIELDS
Attorneys At Law
215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301-1866

direct 850.425.3388
fax 850.222.0398
boneal@carltonfields.com
www.carltonfields.com

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 27, 2009

PEF'S OBJECTIONS TO FIPUG'S FIRST INTERROGATORIES (NOS. 1-13)

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 Florida Industrial Power Users Group's ("FIPUG") First Interrogatories (Nos.1-13) 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 FIPUG for purposes of inspection, copying, or handling of the responsive documents.

With respect to any "Definitions" and "Instructions" in FIPUG's 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 FIPUG'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 FIPUG's requests 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 FIPUG'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. 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 "Rules"), the Order, and all other applicable statutes, rules and legal principles.

PEF generally objects to FIPUG's Interrogatories to the extent that they call for the identification and/or 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 FIPUG’s Interrogatories 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 request that calls for projected data or information beyond the year 2010 because such data or information is wholly 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 a request does not specify a timeframe for which data or information is sought, PEF will interpret such request as calling only for data and information relevant to the years 2006-2010.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to FIPUG’s discovery at the time PEF’s response is due under the Rules 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 1: PEF objects to FIPUG’s interrogatory number 1 to the extent that it seeks identification of “all” documents that PEF witness William Slusser reviewed in making his recommendations. PEF will make a good-faith reasonably diligent effort to identify any such documents, but it is not practical to identify “all” such documents. PEF reserves the right to supplement its response should any additional responsive documents be identified subsequent to PEF’s response to these interrogatories.

Request 2: PEF objects to FIPUG's interrogatory number 2 because it seeks to require PEF to additional work and research, presumably at PEF's cost, that has not been done by or for PEF and that PEF is therefore not required to do under the Rules or the Order. PEF further objects to this interrogatory to the extent that it seeks "all Florida Commission orders" that approve the use of methodologies employed by PEF in these proceedings as it is not practical for PEF to unequivocally state that it has identified "all" such orders.

Request 3: PEF objects to FIPUG's interrogatory number 3 because it seeks to require PEF to additional work and research, presumably at PEF's cost, that has not been done by or for PEF and that PEF is therefore not required to do under the Rules or the Order. PEF further objects to this interrogatory to the extent that it seeks "all regulatory commission orders" that approve the use of methodologies employed by PEF in these proceedings as it is not practical for PEF to unequivocally state that it has identified "all" such orders.

Request 4: PEF objects to FIPUG's interrogatory number 4 because it seeks identification of "all utilities that utilize a 50% or higher energy weighting for production capacity cost responsibility." It is not practical for PEF to unequivocally state that it has identified "all" utilities that utilize such a weighting scheme, nor is PEF required by the Rules or the Order to perform the necessary research, presumably at PEF's cost, to identify "all" such utilities. Further, PEF objects to the scope of the interrogatory because a literal reading of "all utilities" would encompass all utilities worldwide, whether regulated or not, and therefore the interrogatory seeks information that is irrelevant to these proceedings. PEF will respond to this interrogatory by identifying the specific utilities referenced in Mr. Slusser's testimony.

Request 5: PEF objects to FIPUG's interrogatory number 5 to the extent that it requires PEF to perform work and research, presumably at PEF's cost, that has not been done by or for PEF and that PEF is therefore not required to perform under the Rules or the Order.

Request 6: PEF objects to FIPUG's interrogatory number 6 because it seeks identification of "all utilities that utilize a 'Probability of Dispatch' or Base-Intermediate-Peaking' methodology." It is not practical or possible for PEF to unequivocally state that it has identified "all" utilities that utilize such methodologies. PEF further objects to this interrogatory because it attempts to require PEF to perform work and research for FIPUG that has not been done by or for PEF; PEF is not required by the Rules or the Order to perform the necessary research, presumably at PEF's cost, to identify "all" such utilities.

Request 7: PEF objects to FIPUG's interrogatory number 7 to the extent that it requires PEF to perform work and research, presumably at PEF's cost, that has not been done by or for PEF and that PEF is therefore not required to perform under the Rules or the Order.

Respectfully submitted,



James Michael Walls
mwalls@carltonfields.com
Florida Bar No. 0706242
Dianne M. Triplett
dtriplett@carltonfields.com
Florida Bar No. 0872431
Matthew Bernier
mbernier@carltonfields.com
Florida Bar No. 0059886
Carlton Fields
4221 W. Boy Scout Boulevard
P.O. Box 3239
Tampa, Florida 33607-5736
(813) 223-7000 / (813) 229-4133 (fax)


R. Alexander Glenn
alex.glenn@pgnmail.com
John T. Burnett
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)

Paul Lewis, Jr.
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
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 27th 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, 8th Fl
Washington, D.C. 20007

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