

Ruth Nettles

090079-EI

From: O'Neal, Barbara [boneal@carltonfields.com]
Sent: Monday, September 14, 2009 3:35 PM
To: Filings@psc.state.fl.us
Cc: alex.glenn@pgnmail.com; audrey.VanDyke@navy.mil; Bernier, Matthew R.; Bill.mccollum@myfloridalegal.com; Caroline Klancke; cecilia.bradley@myfloridalegal.com; Charles Rehwinkel; Costello, Jeanne; ataylor@bbrslaw.com; jbrew@bbrslaw.com; JtSelecky@consultbai.com; John.Burnett@pgnmail.com; jlavia@yvlaw.net; JMoyle@kagmlaw.com; Katherine Fleming; Keino Young; Khojasteh.Davoodi@navy.mil; larry.r.allen@navy.mil; paul.lewisjr@pgnmail.com; Rick@rmelsonlaw.com; swright@yvlaw.net; Triplett, Dianne; VKaufman@kagmlaw.com; Walls, J. Michael
Subject: Electronic Filing Docket No. 090079
Attachments: PEF Object to PCS 1st Prod of Documents.pdf

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 090079-EI, In re: Petition for rate increase in rates by Progress Energy Florida, Inc.;

The attached document is PEF's Objections to PCS Phosphate's First Set of Requests for Production of Documents (No. 1).

Thank you.

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
www.carltonfields.com

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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: September 14, 2009

**PEF'S OBJECTIONS TO PCS PHOSPHATE'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS (NO. 1)**

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 White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate -White Springs ("PCS Phosphate") First Set of Requests for Production of Documents (No. 1) 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 PCS Phosphate for purposes of inspection, copying, or handling of the responsive documents.

With respect to any "Definitions" and "Instructions" in PCS Phosphate's Requests for Production, 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 PCS Phosphate'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 any request 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 PCS Phosphate'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 (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 Order, and all other applicable statutes, rules and legal principles.

PEF generally objects to PCS Phosphate's Requests for Production to the extent that they call 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 PCS Phosphate'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 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.

PEF also objects to PCS Phosphate's instruction requiring PEF to respond to the Requests "on or before 20 days fro the date of service" as the Order establishes the time for response to discovery requests as 30 days.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to PCS Phosphate's discovery at the time PEF's response is due under the Florida Rules of Civil Procedure 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 PCS Phosphate's request number 1 in its entirety. The Order Establishing Procedure entered by the Prehearing Officer in this docket (Order No. PSC-Order PSC-09-0190-PCO-EI, entered March 27, 2009) states that "[u]nless subsequently modified by the Prehearing Officer . . . Discovery shall be completed by September 14, 2009." See Order No. PSC-09-0137-PCO-EI, at 2. The Prehearing Officer has issued no order modifying the Discovery cut-off date, thus the last day to file a Discovery request that would have allowed a party the full 20-days to respond was Friday, August 14th, 2009. As such, PCS Phosphate's First Request for Production of Documents, filed August 24th, 2009, does not allow PEF the full 30 days in which to respond and is therefore in violation of the Order. As such, PEF objects to this discovery in its entirety and will not file a response thereto.

Respectfully submitted,

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)



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)

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 14th day of September, 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

KAY DAVOODI
Director, Utility Rates and Studies Office
Naval Facilities Engineering Command
1322 Patterson Avenue SE
Washington Navy Yard, DC 20374-5065

AUDREY VAN DYKE
Litigation Headquarters
Naval Facilities Engineering Command
720 Kennon Street, S.E. Bldg 36, Room 136
Washington Navy Yard, DC 20374-5065