

**Dorothy Menasco**

---

**From:** Clark, Eileen [Eileen.Clark@pgnmail.com]  
**Sent:** Thursday, June 09, 2011 1:45 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Keino Young; Lisa Bennett; 'jbrew@bbrslaw.com'; 'ataylor@bbrslaw.com'; 'vkaufman@kagmlaw.com'; 'jmoyle@kagmlaw.com'; 'kelly.jr@leg.state.fl.us'; Charles Rehwinkel; 'sayler.eric@leg.state.fl.us'  
**Subject:** Docket No.: 100437-EI  
**Attachments:** PEF's Objections to OPC's 4th Set of Rogs (Nos. 42-50).pdf; PEF's Objections to OPC's 4th PODs (Nos. 36-40).pdf

This electronic filing is made by:

John T. Burnett  
299 First Avenue No.  
PEF151  
St. Petersburg, FL 33701  
727-820-5184  
[John.Burnett@pgnmail.com](mailto:John.Burnett@pgnmail.com)

Docket No.: 100437-EI

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

The attached documents for filing:

1. PEF's Objections to OPC's Fourth Set of Interrogatories (Nos. 42-50) (consisting of 7 pages)
2. PEF's Objections to OPC's Fourth set of Requests for Production of Documents (Nos. 36-40) (consisting of 8 pages)

6/9/2011

DOCUMENT NUMBER-DATE

03996 JUN-9 =

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

Docket No. 100437-EI

Filed: June 9, 2011

**PEF'S OBJECTIONS TO OPC'S FOURTH SET OF  
INTERROGATORIES (Nos. 42-50)**

Pursuant to Fla. Admin. Code R. 28-106.206, and Rule 1.340 of the Florida Rules of Civil Procedure, Progress Energy Florida, Inc. ("PEF" or the "Company") hereby serves its objections to OPC's Fourth Set Interrogatories (Nos. 42-50) and states as follows:

**GENERAL OBJECTIONS**

With respect to the "Definitions" and "Instructions" in OPC's Fourth 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. 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. 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, and all other applicable statutes, rules, and legal principles.

PEF generally objects to OPC's Fourth Set of Interrogatories 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 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.

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.

### **SPECIFIC OBJECTIONS**

**Interrogatory No. 43:** In addition to, and without waiving the general objections outlined above, PEF objects to OPC's Interrogatory number 43 because the question does not comport with the Florida Rules of Civil Procedure. PEF is not required by the Florida Rules of Civil Procedure to create or maintain a "data map" for the retrieved documents. Specifically, Florida Rule of Civil Procedure 1.350, which provides for, among other things, the production of documents, "was derived from Federal Rule of Civil Procedure 34 as amended in 1970." Fla. R. Civ. P. 1.350, adv. comm. note (1972 adoption). Notably, in 2006 Congress amended Federal Rule of Civil Procedure 34 to address the procedures for requesting and producing electronically stored information ("ESI"). *See, e.g.,* Fed.R.Civ.P. 34(b)(1)(C). However, no such amendments have been adopted to the Florida Rules. Therefore, the Florida Rules do not include a provision that grants the requesting party the right, privilege or authority to request the production of information in any specific format, including the production of a data map of the information.

**Interrogatory No. 44:** In addition to, and without waiving the general objections outlined above, PEF objects to OPC's Interrogatory number 44 to the extent it requests an explanation as to whether all the documents previously made available for viewing and copying in PEF's Tallahassee office are available "in their 'native file format' with all metadata intact."

There are hundreds of types of metadata that exist and many can be altered or destroyed by everyday functions as simple as opening a document. It is impossible for PEF, or anyone, to definitively state that “all metadata” for each of the thousands of documents that have been produced remains “intact.” Furthermore, it is unclear what OPC means by the term “intact.” The question could be understood to ask whether the metadata remains in existence, or whether it remains in the same form as it existed at some undefined point in the past. As discussed above, due to the very nature of metadata, it would be impossible for PEF to definitively answer under either of the two possibilities; nonetheless, the interrogatory is unclear and therefore PEF must object.

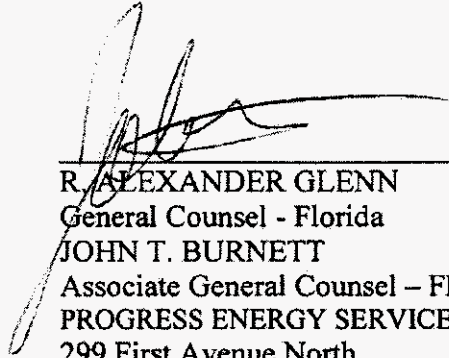
PEF also objects to OPC’s Interrogatory number 44 because the question does not comport with the Florida Rules of Civil Procedure. PEF is not required by the Florida Rules of Civil Procedure to provide its responses in a native file format. Specifically, Florida Rule of Civil Procedure 1.350, which provides for, among other things, the production of documents, “was derived from Federal Rule of Civil Procedure 34 as amended in 1970.” Fla. R. Civ. P. 1.350, adv. comm. note (1972 adoption). Notably, in 2006 Congress amended Federal Rule of Civil Procedure 34 to address the procedures for requesting and producing electronically stored information (“ESI”). *See, e.g.*, Fed.R.Civ.P. 34(b)(1)(C). However, no such amendments have been adopted to the Florida Rules. Therefore, the Florida Rules do not include a provision that grants the requesting party the right, privilege or authority to request the production of information in any specific format.

**Interrogatory No. 45:** In addition to, and without waiving the general objections outlined above, PEF objects to OPC’s Interrogatory number 45 because the question does not comport with the Florida Rules of Civil Procedure. PEF is not required by the Florida Rules of

Civil Procedure to create or maintain a “load file” and index for “all the documents in the Document Production.” Specifically, Florida Rule of Civil Procedure 1.350, which provides for, among other things, the production of documents, “was derived from Federal Rule of Civil Procedure 34 as amended in 1970.” Fla. R. Civ. P. 1.350, adv. comm. note (1972 adoption). Notably, in 2006 Congress amended Federal Rule of Civil Procedure 34 to address the procedures for requesting and producing electronically stored information (“ESI”). *See, e.g.*, Fed.R.Civ.P. 34(b)(1)(C). However, no such amendments have been adopted to the Florida Rules. Therefore, the Florida Rules do not include a provision that grants the requesting party the right, privilege or authority to request the production of information in any specific format, including the production of a load file or index of the information.

**Interrogatory No. 47:** In addition to, and without waiving the general objections outlined above, PEF objects to OPC’s Interrogatory number 47 to the extent it requests PEF “to supply an index of the type of documents or ESI subject to that hold.” First, this is an interrogatory, not a request for production, and PEF has no obligation to produce documents in response to an interrogatory. Even if this question is interpreted as a request for production, PEF is not required by the Florida Rules of Civil Procedure to create or maintain such an index. Specifically, Florida Rule of Civil Procedure 1.350, which provides for, among other things, the production of documents, “was derived from Federal Rule of Civil Procedure 34 as amended in 1970.” Fla. R. Civ. P. 1.350, adv. comm. note (1972 adoption). Notably, in 2006 Congress amended Federal Rule of Civil Procedure 34 to address the procedures for requesting and producing electronically stored information (“ESI”). *See, e.g.*, Fed.R.Civ.P. 34(b)(1)(C). However, no such amendments have been adopted to the Florida Rules. Therefore, the Florida Rules do not include a provision that grants the requesting party the right, privilege or authority

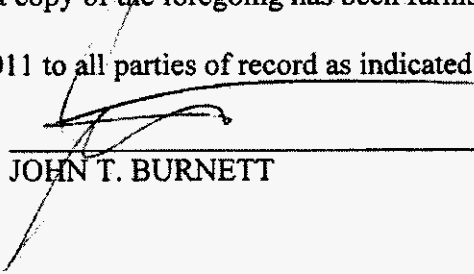
to request the production of information in any specific format, including the production of an index of documents that are subject to the litigation hold but not even produced as responsive to the document request.



R. ALEXANDER GLENN  
General Counsel - Florida  
JOHN T. BURNETT  
Associate General Counsel – Florida  
PROGRESS ENERGY SERVICE COMPANY, LLC  
299 First Avenue North  
St. Petersburg, FL 33701  
Telephone: (727) 820-5184  
Facsimile: (727) 820-5519

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. Mail this 9th day of June, 2011 to all parties of record as indicated below.



JOHN T. BURNETT

Keino Young/Lisa Bennett Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 kyoung@psc.state.fl.us lbennett@psc.state.fl.us	Florida Industrial Power Users Group Vicki Gordon Kaufman John C. Moyle, Jr. Keefe Anchors Gordon & Moyle, PA 118 North Gadsden Street Tallahassee, FL 32301 vkaufman@kagmlaw.com jmoyle@kagmlaw.com
Mr. James W. Brew/F. Alvin Taylor c/o Brickfield Law Firm	J.R.Kelly/Charles Rehwinkel/Eric Sayler Office of Public Counsel

1025 Thomas Jefferson St., NW  
8<sup>th</sup> Floor, West Tower  
Washington, DC 20007  
jbrew@bbrslaw.com  
al.taylor@bbrslaw.com

c/o The Florida Legislature  
111 West Madison Street, #812  
Tallahassee, FL 32399  
Kelly.jr@leg.state.fl.us  
Rehwinkel.charles@leg.state.fl.us  
Sayler.eric@leg.state.fl.us