

## Eric Fryson

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**Subject:** Filing Docket 100437-EI  
**Attachments:** Docket 100437 PEF Objections to OPC 7th Interrogatories Nos. 87-110.pdf; Docket 100437 PEF Objections to OPC 8th Req for Prodd Nos. 67-87.pdf

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

Attached for filing and service are the following documents:

1. Progress Energy Florida, Inc.'s Objections to Citizens' Eighth Set of Requests for Production of Documents (Nos. 67-68) [14 pages]; and
2. Progress Energy Florida, Inc.'s Objections to Citizens' Seventh Set of Interrogatories (Nos. 87-110) [10 pages].

These documents are being filed on behalf of Progress Energy Florida by

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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Docket No. 100437-EI

Filed: March 1, 2013

**PROGRESS ENERGY FLORIDA, INC.'S OBJECTIONS TO  
CITIZENS' SEVENTH SET OF INTERROGATORIES (NOS. 87-110)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rules 1.280 and 1.340 of the Florida Rules of Civil Procedure, and the Second Revised Order Establishing Procedure, Order No. PSC-13-0084-PCO-EI, issued February 13, 2013 (the "Order"), in this matter, Progress Energy Florida, Inc. ("PEF" or the "Company") hereby makes its objections to the Office of Public Counsel's ("Citizens" or "OPC") Seventh Set of Interrogatories (Nos. 87-110) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in OPC's Seventh Set of Interrogatories 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" and "Instructions" in OPC's Seventh Set of Interrogatories:

PEF generally objects to OPC'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 within a reasonable time or as may be agreed to by the parties to the extent that a 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 interrogatories 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 also generally objects to OPC's Seventh 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 interrogatories if PEF cannot produce documents immediately due to their magnitude and the work required aggregating them, or if PEF later discovers additional responsive documents in the course of this proceeding.

In addition, PEF object to OPC's Definitions, in particular, OPC Definitions Numbers i, ii, iii, iv, vi, and vii, to the extent they seek to encompass documents or information from persons or

entities other than PEF who are not parties to this Docket, who are not otherwise subject to discovery under the applicable rules and law, and to the extent these definitions request documents outside of PEF's possession, custody, or control. Furthermore, PEF objects to any interrogatory that calls for PEF to create documents that it otherwise does not have because there is no such requirement under applicable law.

PEF further objects to OPC's Instructions and Definitions to the extent that they seek to impose requirements on the responses to the Interrogatories beyond the requirements of the Florida Rules of Civil Procedure. PEF will respond to all OPC Interrogatories consistent with the requirements of the Florida Rules of Civil Procedure, and not some inconsistent and additional requirement under OPC's Instructions and Definitions.

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**

#### **OPC Interrogatory Number 87:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. PEF objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Policies. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See*

N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements."). PEF further objects to this interrogatory because it is an improper question. The interrogatory assumes facts that are incorrect and it is vague and ambiguous and, therefore, the interrogatory cannot be answered as framed.

**OPC Interrogatory Number 90:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. PEF further objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Policies. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

**OPC Interrogatory Number 91:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. PEF further objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Polices. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

**OPC Interrogatory Number 92:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. PEF further objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Polices. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408,

Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

**OPC Interrogatory Number 100:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. PEF objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Policies. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

**OPC Interrogatory Number 101:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it calls for information that is irrelevant to the issues in this proceeding and not reasonably likely to lead to the discovery of admissible evidence. PEF objects to this interrogatory to the extent it seeks information conveyed or created during the course of, or in furtherance of, mediation of the issue of insurance coverage related to the NEIL Policies. Such information is protected from discovery and rendered inadmissible by the mediation privilege created by section 44.401, Florida Statutes, *et seq.*, and inadmissible under the Florida evidence code, section 90.408, Florida Statutes, and New York law, which governed the construction and interpretation of the NEIL Policies. *See* N.Y. C.P.L.R. § 4547. These statutes indicate the applicable public policy protecting the content of mediation and settlement communications made in furtherance of settling claims, consistent with the Commission's policy preference for settlement. *See, e.g., In re: Allied Universal Corp.*, Order No. PSC-04-1115-FOF-EI (Nov. 9, 2004) (noting the "Commission's longstanding commitment to the support and encouragement of negotiated settlements.").

**OPC Interrogatory Number 102:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it is a narrative request that asks PEF to explain why the NEIL settlement was reasonable and prudent. PEF will provide this information through its testimony and exhibits in this proceeding in accordance with the Order of Procedure established by the Commission. Subject to and without waiving this objection, PEF will provide an appropriate response to this interrogatory.

**OPC Interrogatory Number 103:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it is a narrative request that asks PEF to explain why the NEIL settlement was reasonable and prudent. PEF will



provide this information through its testimony and exhibits in this proceeding in accordance with the Order of Procedure established by the Commission. Subject to and without waiving this objection, PEF will provide an appropriate response to this interrogatory.

**OPC Interrogatory Number 104:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory because it is a narrative request that asks PEF to explain why the NEIL settlement was reasonable and prudent. PEF will provide this information through its testimony and exhibits in this proceeding in accordance with the Order of Procedure established by the Commission. Subject to and without waiving this objection, PEF will provide an appropriate response to this interrogatory.

**OPC Interrogatory Number 105:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory to the extent it seeks identification of “all documents” including emails and attachments. PEF further objects to this interrogatory to the extent it seeks information protected by the attorney-client and/or work product privileges. To the extent responsive, non-privileged documents exist, PEF will produce the requested documents pursuant to Florida Rule of Civil Procedure 1.340(c).

**OPC Interrogatory Number 106:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory to the extent it seeks identification of “all documents” including emails and attachments. PEF further objects to this interrogatory to the extent it seeks information protected by the attorney-client and/or work product privileges. To the extent responsive, non-privileged documents exist, PEF will produce the requested documents pursuant to Florida Rule of Civil Procedure 1.340(c).

**OPC Interrogatory Number 107:**

**SPECIFIC OBJECTION:** PEF objects to this interrogatory to the extent it seeks identification of "all documents" including emails and attachments. PEF further objects to this interrogatory to the extent it seeks information protected by the attorney-client and/or work product privileges. To the extent responsive, non-privileged documents exist, PEF will produce the requested documents pursuant to Florida Rule of Civil Procedure 1.340(c).

Respectfully submitted,

s/ Blaise N. Gamba

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 1st day of March, 2013.

s/ Blaise N. Gamba

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