

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: April 11, 2013

**PROGRESS ENERGY FLORIDA, INC.'S OBJECTIONS TO
FIPUG'S SECOND SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS (NOS. 2-17)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rules 1.280 and 1.350 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, as amended by Order No. PSC-13-0107-PCO-EI, issued March 1, 2013 (the "Order"), in this matter, Progress Energy Florida, Inc. ("PEF" or the "Company") hereby makes its objections to the Florida Industrial Power Users Group's ("FIPUG") Second Set of Requests for Production of Documents (Nos. 2-17) and states as follows:

GENERAL OBJECTIONS

PEF generally objects to the time and place of production requirement in FIPUG's Second Set of Requests for Production of Documents 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 FIPUG for purposes of inspection, copying, or handling of the responsive documents.

With respect to the "Definitions" and "Instructions" in FIPUG's Second Set of Requests for Production of Documents:

DOCUMENT NUMBER-DATE

01882 APR 11 2013

FPSC-COMMISSION CLERK

PEF generally objects to FIPUG'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 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 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 also generally objects to FIPUG's Second Set of Requests for Production of Documents 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. PEF generally objects to the request to the extent they call for information prior to the 2009 time period as that information is irrelevant to the issues to be decided in this proceeding and not reasonably calculated to lead to the discovery of

relevant information. In addition, PEF reserves the right to supplement any of its responses to FIPUG's requests for production 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 objects to FIPUG's Instructions and Definitions 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 request 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 FIPUG'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, and to the extent the definition of "Electronic Format" improperly expands PEF's discovery obligations. PEF will respond to all FIPUG requests consistent with the requirements of the Florida Rules of Civil Procedure, and not some inconsistent and additional requirement under FIPUG'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 FIPUG's discovery at the time PEF's response is due under the Florida Rules of Civil Procedure.

SPECIFIC OBJECTIONS

FIPUG Request Number 3:

SPECIFIC OBJECTION: PEF objects to this request 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.").

FIPUG Request Number 4:

SPECIFIC OBJECTION: PEF objects to this request 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."). Moreover, PEF objects to this request to the extent it seeks documents protected by the attorney-client or work-product privileges.

FIPUG Request Number 5:

SPECIFIC OBJECTION: PEF objects to this request because it seeks information that is irrelevant to the issues in this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FIPUG Request Number 6:

SPECIFIC OBJECTION: PEF objects to this request to the extent it seeks information that is irrelevant to the issues in this docket is not reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to this request 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.").

FIPUG Request Number 7:

SPECIFIC OBJECTION: PEF objects to this request to the extent it seeks information that is irrelevant to the issues in this docket is not reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to this request 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.").

FIPUG Request Number 8:

SPECIFIC OBJECTION: PEF objects to this request 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.").

Moreover, PEF

objects to this request to the extent it seeks documents protected by the attorney-client or work-product privileges.

FIPUG Request Number 9:

SPECIFIC OBJECTION: PEF objects to this request 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."). Moreover, PEF objects to this request to the extent it seeks documents protected by the attorney-client or work-product privileges.

FIPUG Request Number 10:

SPECIFIC OBJECTION: PEF objects to this request because it seeks information that is irrelevant to the issues in this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FIPUG Request Number 11:

SPECIFIC OBJECTION: PEF objects to this request because it seeks information that is irrelevant to the issues in this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FIPUG Request Number 12:

SPECIFIC OBJECTION: PEF objects to this request because it seeks information that is irrelevant to the issues in this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FIPUG Request Number 13:

SPECIFIC OBJECTION: PEF objects to this request because it seeks information that is irrelevant to the issues in this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

FIPUG Request Number 16:

SPECIFIC OBJECTION: PEF objects to this request 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.”). Moreover, PEF objects to this request to the extent it seeks documents protected by the attorney-client or work-product privileges.

FIPUG Request Number 17:

SPECIFIC OBJECTION: PEF incorporates its objection to FIPUG’s First Set of Interrogatories, filed with the Commission on April 11, 2013, as if fully set forth herein.

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 11th day of April, 2013.

s/ Blaise N. Gamba

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