

**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' EIGHTH SET OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS (NOS. 67-87)**

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 (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") Eighth Set of Requests for Production of Documents (Nos. 67-87) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in OPC's Eighth 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 OPC for purposes of inspection, copying, or handling of the responsive documents.

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

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 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 OPC's Eighth 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. 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 aggregating them, or if PEF later discovers additional responsive documents in the course of this proceeding.

In addition, PEF objects to OPC's Instructions and Definitions, in particular OPC Definitions Numbers 2, 3, 4, and 5, 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.

Finally, PEF objects to OPC Instruction Number 2 as overbroad, and not relevant or reasonably calculated to lead to the discovery of admissible evidence relative to the issues in this Docket to the extent the instruction extends OPC's request for documents prior to 2009. Subject to its general and specific objections, PEF will produce responsive documents to the extent they exist.

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 Request Number 69:**

**SPECIFIC OBJECTION:** PEF objects to this request to the extent it requires PEF to create documents that do not otherwise exist. PEF has no obligation under the Florida Rules of Civil Procedure to create documents that do not otherwise exist in response to discovery requests. PEF will produce responsive documents to the extent that responsive documents exist.

**OPC Request Number 70:**

**SPECIFIC OBJECTION:** PEF objects to this request to the extent it requires PEF to create documents that do not otherwise exist. PEF has no obligation under the Florida Rules of Civil Procedure to create documents that do not otherwise exist in response to discovery requests. PEF will produce responsive documents to the extent that responsive documents exist.

**OPC Request Number 71:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and 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.").

**OPC Request Number 72:**

**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.").

**OPC Request Number 73:**

**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.").

**OPC Request Number 74:**

**SPECIFIC OBJECTION:** PEF objects to this request to the extent it seeks information protected by the attorney-client privilege and litigation work product doctrine. 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.").

**OPC Request Number 75:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to this request because it seeks documents in the possession, custody, and control of third parties and because it seeks documents 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 Request Number 76:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to this request because it seeks documents in the possession, custody, and control of third parties and because it seeks documents 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 Request Number 77:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents provided to NEIL and third parties by the mediator. PEF further objects to this request because it seeks documents in the possession, custody, and control of third parties and because it seeks documents conveyed 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 Request Number 78:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF objects to this request because it seeks documents 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 Request Number 79:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF objects to this request because it seeks documents in the possession, custody, and control of third parties and because it seeks documents 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 Request Number 80:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF objects to this request because it seeks documents 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 Request Number 81:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF objects to this request to the extent it seeks information protected by the attorney-client privilege and litigation work product doctrine. PEF further objects to this request because it seeks documents 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 Request Number 82:**

**SPECIFIC OBJECTION:** PEF objects to this request to the extent that it requests information protected by the attorney/client privilege and/or work product doctrine. PEF further objects to this request to the extent it seeks documents 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 Request Number 83:**

**SPECIFIC OBJECTION:** PEF objects to this request because it seeks information that is irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and is not reasonably calculated to lead to the discovery of admissible evidence. PEF objects to this request because it seeks documents 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 Request Number 84:**

**SPECIFIC OBJECTION:** PEF objects to this request to the extent it seeks information protected by the attorney-client privilege and litigation work product doctrine. PEF further objects to this request to the extent it seeks documents 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 Request Number 85:**

**SPECIFIC OBJECTION:** PEF incorporates by reference as if fully stated herein its objections to OPC's Interrogatories Nos. 87-110.

**OPC Request Number 86:**

**SPECIFIC OBJECTION:** PEF objects to this request to the extent it seeks documents that are irrelevant to the issues in phases 2 and 3 of this docket under the Settlement and that are not reasonably calculated to lead to the discovery of admissible evidence. PEF will provide any responsive documents regarding CR3 and/or NEIL related issues that are within the scope of the issues in this docket.

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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