

Eric Fryson

From: Woods, Monica <WOODS.MONICA@leg.state.fl.us>
Sent: Monday, May 06, 2013 4:59 PM
To: Filings@psc.state.fl.us
Cc: Rehwinkel, Charles; Kelly, JR; Sayler, Erik; Blaise Huhta; Cecilia Bradley; F. Alvin Taylor; George Cavros; J. Burnett; Jay Brew; John Moyle ; K. Torain; Keino Young; Lisa Bennett; Matthew Bernier; Paul Lewis; Randy Miller; Vicki Kaufman
Subject: OPC's Motion for Reconsideration of Commission Order No. PSC-13-0175-PCO-EI
Attachments: OPC's Motion for Reconsideration.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Charles J. Rehwinkel, Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
REHWINKEL.CHARLES@leg.state.fl.us

b. 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.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 18 pages.

e. The document attached for electronic filing is: OFFICE OF PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION OF COMMISSION ORDER NO. PSC-13-0175-PCO-EI.

Thank you for your attention and cooperation to this request.

Monica R. Woods
Administrative Assistant to Charles J. Rehwinkel
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

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: May 6, 2013

OFFICE OF PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION OF COMMISSION ORDER NO. PSC-13-0175-PCO-EI

The Office of Public Counsel (OPC) pursuant to 25-22.0376. Florida Administrative Code seeks review and reconsideration of the Third Order Establishing Procedure (Third OEP) Order No. PSC-13-0175, issued April 26, 2013. Specifically, the OPC requests the Commission review and revise the controlling dates set out on page 2 of the Third OEP, which calls for Duke Direct Testimony to be filed on June 17, 2013, Intervenor Direct Testimony on September 9, 2013, Duke Rebuttal Testimony on October 1, 2013 and discovery to end on October 14. A three day hearing would be held beginning October 21, just seven days later. These dates are *per se* inadequate for the processing of a case that encompass a dispute of at least \$750 million and involves several subject matters never before addressed by this Commission – i.e. the premature loss of a nuclear power plant by accident and the adequacy of the utility's efforts to collect insurance for that accidental loss. Intervenors due process rights will be impermissibly impaired if the schedule is not reconsidered and revised.

Standard of Review

The standard of review for an order establishing the hearing dates and the resulting procedural posture of the case by a Commissioner other than the Chairman should be *de novo* inasmuch as the establishment of the commission calendar has been traditionally the prerogative of the Chairman. The Public Counsel has understood this to be the case for many years and

represents based on information and belief that this practice is contained in the administrative rules of the Commission pursuant to and consistent with Section 350.01(5), Florida Statutes.

To the extent that a matter such as the establishment of the controlling dates are driven by the hearing dates established by the Chairman, the OPC seeks a formal review and determination by the full commission that, based on the facts and argument set forth herein, hearings in this docket be set no sooner than the first quarter of 2014. This is a request for a determination *de novo* and reconsideration based on that determination.

To the extent that the Prehearing Officer was delegated the authority to establish the hearing dates and the controlling dates for testimony and discovery deadlines, the OPC seeks reconsideration based on the standard utilized by the Commission of a misapprehension mistake of fact or law. The standard of review for a motion for reconsideration of a Prehearing Officer's order is whether the motion identifies a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Order. See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted 'based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review. *Steward Bonded Warehouse, Inc. v. Bevis* See, e.g. In Re: Tampa Electric Company, Order No. PSC-04-0251-PCO-EI, issued March 8, 2004. In the Tampa Electric order the Commission made it clear that errors in fact must be identified with specificity. That is what the instant motion does.

Summary of Argument

The basis for the Public Counsel's reconsideration is that the Prehearing Officer appears to have erred or misapprehended the nature of certain essential facts and accordingly relied on certain incorrect assumptions about the status of the docket and certain events, the nature of the issues before the Commission and the looming difficulty regarding the scope of privilege, as it will impact the ability of OPC and other Intervenors to put on their case, cross examine witnesses and otherwise test Duke Energy Florida's (Duke's) expected claim that it acted prudently in settling for only \$835 million against policy limits of \$2.7 billion.

Background

This case began in February 2013. It is effectively a separate and distinct aspect of an existing docket or the equivalent of a brand new docket involving a distinct new subject matter that has not been the subject of litigation or resolution in any other portion of this or any other Commission docket.

The facts giving rise to the announcement of the CR3 retirement and the acceptance of the NEIL settlement are essentially as follows with respect to what the Intervenors could have acted upon. A representative of Intervenors was advised during the Christmas/New Years 2012 holiday season that a \$530 million proposal from NEIL was on the table in some form. On or about January 3, 2013, a meeting was held by conference call with the Intervenors during which Duke advised the Intervenors of the NEIL settlement proposal and asked for the Intervenor response, ostensibly pursuant to the advice and consultation provision of Paragraph 10.b of the Settlement (Settlement approved in Order No. PSC-12-0104-FOF-EI. On January 29, 2013 the Intervenors provided their written response¹ pursuant to paragraph 10.b. The Commission

¹ That document is confidential pursuant to the provisions of the Settlement

should assume for the purposes of this Motion that by the posture of this docket that the Intervenor obviously objected to the \$530 million as final resolution of the NEIL claim(s).

On February 5, 2013 Duke announced it had accepted the offer and that NEIL had done the same. On February 8, 2013, Duke sought to lift the stay (on all then pending matters not resolved in the Settlement approved on February 22, 2012) imposed on this Docket by Order No. PSC-12-0115-PCO-EI, issued March 14, 2012. Pursuant to an agreed motion filed on February 8, 2013 Order No. PSC-13-0080-PCO-EI was issued on February 13, 2013 lifting that stay. On February 18, 2013, the OPC served its Seventh Request for Productions of Documents and on February 25, 2013 the Intervenor filed a Joint Petition seeking an adjudication of the prudence of Duke's pursuit of NEIL insurance proceeds recovery and a determination of the CR3 Regulatory Asset and the impact that Duke's actions, or lack thereof, in seeking the insurance proceeds will have on that asset. Thus, the only relevant facts that should be the basis for setting the schedule in this matter transpired between February 5, 2013 and February 25, 2013. As discussed below, nothing that occurred prior to the initiation of what is a brand new matter should have been a consideration in establishing the schedule for this docket.

Factual Basis for Reconsideration

The OPC contends on statements made at the April 30, 2013 Oral Argument indicate that the Prehearing Officer believed that the quarterly meeting process established in the Settlement Agreement (Settlement) provided a meeting process that should have streamlined the process and shortened the need for hearing. Further the Prehearing Officer indicated that the quantitatively small number of issues and their magnitude supported a schedule that would assume a hearing in October 2013. Additionally, the pending duration of the overall Docket No. 100437-EI and departure of a number of Duke personnel was provided as a rationale for setting the controlling

dates and adhering to the October 21-23, 2013 hearing dates. In this regard, the Prehearing Officer seemed to indicate that customers and investors were entitled to a decision sooner rather than later and that they had been waiting for this to be resolved. It is not apparent that the Prehearing Officer considered the privilege-based discovery dispute that is looming when he reaffirmed adherence to the dates in the Third OEP.

The OPC submits that each of these factual assumptions are in error and the erroneous bases are addressed separately below.

- A. *The quarterly meeting process was not a basis for resolving or minimizing the issues in this aspect of Docket No. 100437-EI nor any of the information that was shared by Duke with the Intervenors could be used in this hearing.***

At page 68 of the April 30, 2013 proceeding transcript, (Attachment A), the Prehearing Officer states the following:

But one of the unique aspects of this case, which is, I think, a good thing, is that the settlement agreement established a procedure for all of the parties to have an unprecedented coordination and free flow of information once that settlement agreement was agreed to on certain issues. At each of the status conferences I asked each one of the parties as to how that process was working, how the information was flowing, and if it was a good process. Each time I asked that, each party indicated that it was working very well. And I'd anticipated as the status conferences were going on that it would make the hearing process easier.

April 30, 2013 Oral Argument transcript, p. 68.

While the facts are true as stated, the conclusion drawn from them was in error because the Prehearing Officer misapprehended the quality of the information shared in the quarterly meetings and the useable purpose of the quarterly meetings. The quarterly meeting process was indeed followed as set out in the Settlement. See Paragraph 10.b of the Settlement. However, the quarterly meeting process was never intended to provide a forum for resolving the potential dispute that now is before the Commission. Specifically, the quarterly meetings were intended to

(and did) provide updates to the Intervenors relating to the repair cost estimates, any decision relative to retirement and the status of the NEIL insurance claim.

While the repair estimate development was quite involved and included several detailed meetings with the Intervenors' experts and Duke's experts, the NEIL briefings were status reports, including information that mediation was going to be pursued.² In no sense were the quarterly meetings ever contemplated for, or used as, a vehicle for the parties to limit or streamline the need for the litigation currently before the Commission. If anything those meetings were based on an assumption that the total NEIL payment number would be an input to the decision to repair or retire. The Intervenors were entirely in a "waiting mode" to hear what transpired regarding the private Duke/NEIL discussions. It is true that the quarterly meetings were under the umbrella of "settlement purposes" as provided for in Paragraph 10.f of the Settlement. However, the agreement expressly prohibits the use of the information gleaned from the quarterly meeting process in the hearing or being subject to discovery. This fact appears to have been overlooked by the Prehearing Officer. This oversight is material and requires reconsideration. The Settlement expressly provides that:

Any discussion during any meetings (or record of such discussions) shall be confidential, for ongoing settlement purposes only, and not subject to discovery by any means or method or admissible in any such Commission or judicial proceeding.

Settlement Paragraph 10.f, page 13. What this means is that the quarterly meetings neither were useful in narrowing the issues nor were the facts gleaned from the settlement discussions in the meetings legally available to the parties to use in a hearing or to expedite any hearing that might result.

² The Intervenors sought, but were denied, the ability to observe the mediation.

Furthermore, during the entire time that the parties were negotiating the Settlement in earnest (December 7, 2011 until execution on January 20, 2012) no discovery occurred except Duke's following through with providing the Late Filed Deposition Exhibits (relating to issues of fault and causation of the October 2, 2009 delamination) requested at the depositions of Jon Franke and Garry Miller during the week November 28 – December 2, 2011.³ After the filing and approval of the Settlement, discovery would not have been allowed under the Intervenor's interpretation of the Settlement. All parties were in a wait-and-see mode while Duke conducted engineering, economic, and legal/regulatory analyses while pursuing the NEIL claim at its chosen pace. There was no litigation pending and no discovery would have been deemed relevant to a pending matter. The remaining phases not resolved by the Settlement had been stayed by Commission Order PSC-12-0115-PCO-EI. Under these circumstances there were no activities that would have contributed in any way to shortening the amount of time needed for a full and fair litigation of the issues related to Duke's pursuit of the NEIL claims.

The assumption that the Hearing process could be held in an expedited time frame as set out in the third OEP, based on the quarterly meetings, is thus an error of fact that requires the Commission to reconsider and revise the entire schedule.

B. The number of issues remaining are factually complex and novel and the relatively small number does not support the shortened hearing and testimony schedule.

The Prehearing Officer also made the following statement in support of the current schedule:

³ Discovery that was undertaken during 2011 consisted of depositions of over a dozen individuals, -- mostly engineers -- and was focused entirely on the issue of causation and fault of the October 2, 2009 delamination. None of this discovery was directed to Duke's pursuit of the NEIL claims.

It is clear from the proposed issues, the briefs, the reply briefs, the oral arguments here today, and, in fact, even, Mr. Rehwinkel, your comments, there's not much left.

In contrast, recent billion dollar rate cases had up to 192 issues, ranging from liability insurance all the way up to return on equity. Those are issues this Commission is used to dealing with, those are complex issues that we're used to dealing with, and all the parties here today are used to dealing with.

April 30, 2013 Oral Argument transcript, pp. 68-69.

It is simply incorrect to assume that the number of issues or the fact that the settlement resolved certain issues means that there is nothing much left to litigate. This is a mistake of fact that cannot be left unaddressed. The issues left to litigate involve hundreds of millions of dollars in insurance coverage (or imputed shareholder contribution) that will reduced the cost of the CR3 Regulatory asset dollar-for-dollar if the Intervenors prevail. Additionally there are significant accounting and other issues that involve the assets included in the CR3 Asset that also amount to hundreds of millions of dollars. These non-NEIL issues are not currently involved in discovery or scope of issue disputes among the parties, but are nevertheless significant points of contention between the parties. Moreover the parties are not the typical issues that are the subject of base rate cases normally considered by the Commission, but entail completely new evidentiary aspects never reviewed by the Commission

Unless the schedule is substantially revised, the Commission will, purely by default have unfairly pre-judged the merits of a highly complex case. The parties resolved extremely complex engineering and construction management prudence issues in the 2012 Settlement. That did not mean that the remaining aspects of this case became simple. It just meant that an extremely complex case had been broken into three elements: (1)the prudence of Duke's management in the engineering , construction, and repair of the SGR and delamination projects, (2) the pursuit and recovery of the NEIL insurance proceeds and (3) the determination and

calculation of the CR3 Regulatory Asset. The first element was resolved by the Settlement. Significant discovery remains. The facts bearing on the remaining two matters are complex and extensive, and occur over nearly three years and still lie almost entirely within the possession of Duke.

The establishment of the accelerated schedule, if left undisturbed based on incorrect factual assumptions, will result in certain victory for Duke on the matters at hand. The Prehearing Officer characterized the modifications from the Second OEP to the Third OEP as affording the parties “an additional six months.”⁴ This is a misunderstanding of the posture of the case. The then “existing” schedule had become unworkable long before the Company made its February announcements.

When the dispute materialized in February, it spawned a brand new case requiring a full opportunity for procedural due process rights and case preparation. Within 20 days of the NEIL/CR3 retirement announcement, the OPC and Florida Retail Federation filed a Joint Petition asking for a prudence determination. The Intervenors recognized that an entirely new case existed and asked in the Joint Petition on February 25, 2013 for the NEIL claim and the CR3 asset determination matter to be treated as commencing a separate proceeding.⁵ That petition also raised two other entirely new matters (NEIL claims pursuit and recovery prudence and, CR3 Regulatory Asset Determination), neither of which was mentioned nor contemplated in the three phases of the August 23, 2011 OEP which predated the settlement.

By setting the schedule to allow only 84 days to secure an expert(s) who can respond to the (as yet unknown) case Duke will file, conduct meaningful discovery and prepare expert

⁴ April 30, 2013 Oral Argument Transcript at 70.

⁵ Petition for an order investigating the prudence of [Duke's] efforts to obtain NEIL Insurance proceeds, establishing that customers have no responsibility for costs of certain abandoned CR3 uprate costs that are no longer subject to the nuclear cost recovery mechanism, and delineating parameters of CR3 “regulatory asset.”

testimony on a case of first impression before this agency, the Commission has doomed the customers to having no effective representation in a case of staggering dollar value and rate impact. The assumption that the issues are small and that there is nothing much left to litigate is an error requiring reconsideration to the extent that it provided a basis for adhering to the controlling dates in the Third OEP.

The Commission should avoid the inclination to try to handicap the cases yet to be filed by either side and to make a determination on schedule based on what kind of case it believes the parties may try to put on. This case will be complicated and will take time to process even without the expected discovery disputes. The customers' expectations are quite the opposite of the Prehearing Officer's characterization. They want it done deliberately and done right; they do not want it rushed and they have no expectations that it will be heard in 2013 at the expense of a fair and reasonable opportunity to put their case on.

It is likely that Duke believes that it can put on a case that casts its actions and the end result in a favorable light and makes little or no use of privileged information. However, Duke's burden of proof is not met by a mere recitation of facts that it will likely select out of all of the facts in its possession – and at this point all of the facts are in Duke's possession – to present its view of prudence. The Commission is required to hear both sides and determine whether Duke's actions are prudent based on all the facts and circumstances and not based simply on Duke's claim that the result is the best they could get or that it is a really large dollar value. Instead, once discovery is had, the Commission may theoretically receive from the Intervenors fact and expert opinion evidence including, but not limited to, the following regarding:

1. The policies that Duke had in place before undertaking any modification of the CR3 plant, including the Extended Uprates, refueling and Life Extension efforts and any modifications to that insurance coverage;

2. The terms and conditions of the policies insuring Duke against business losses and the customers against higher fuel costs and property damage;
3. The applicable law governing the policies and the proper interpretation thereof;
4. Duke's judgment in evaluating and executing the pursuit of the NEIL claim based on the terms and conditions, facts and governing law and the relevant legal analysis of the provisions of the policies;
5. NEIL's positions and interpretations of the policies
6. Duke's corporate objectives and motivation to vigorously pursue (or not pursue) the claim(s) against NEIL based on possible competing corporate objectives;
7. Duke's corporate objectives and motivation to seek settlement with NEIL based on competing corporate objectives and business relationships with NEIL and member owners of NEIL; and
8. Duke's overall execution of the pursuit of the claim, including the handling of the accounting and submission of required information.

At this time, however, Duke still has sole possession of the vast majority of the relevant facts in its possession. The privilege logs⁶ indicate that Duke possesses extensive evaluation of the coverage available and analyses related to the strengths and weaknesses of its position in any dispute with NEIL. To the extent that information bears upon Duke's action it must be made available to the Commission through the adversarial process, meaning via testimony and cross-examination by Intervenors.

⁶ See Attachment B, which is Duke's revised privilege log containing descriptions of documents for which the OPC will seek an *in camera* inspection and determination from the Commission through Motion(s) to Compel to be filed shortly.

- C. *The customers do not expect a quick resolution. They expect a deliberate resolution and adequate preparation and discovery time. There is no reason to expedite the hearing to the disadvantage of the customer for the benefit of the customers. Investor expectations are an improper basis to hold a quick hearing. There has been no delay caused by the OPC or Intervenors or the Commission. This means that no expedited hearing process should be granted based on a concern about the duration of the docket.***

An additional basis for adhering to the accelerated schedule was voiced by the Prehearing Officer as follows:

In fact, one of the justifications to review and approve that settlement expeditiously was, and I'll quote, the speedy approval -- the parties recognize that the continued uncertainty related to the issues addressed in this agreement adversely affects the utility and the customers.

These issues are ripe for hearing. The customers and investors cannot afford for this uncertainty to continue any more than it has.

April 30, 2013 Oral Argument transcript, pp. 68-69.

The OPC submits that the assumption that customers want, or that investors deserve an expedited hearing is in error as providing a basis for adhering to the Third OEP controlling dates requires reconsideration. The customers desperately need additional time to secure the appropriate expertise once they see the Duke testimonies and understand Duke's case. OPC also respectfully submit that the Commission should give zero weight to investor expectations inasmuch as the timing of the NEIL/CR3 retirement resolution was entirely within the control of Duke shareholders and only became public within the past 60 days. The Commission has no duty to investors to manage their expectations -- at the expense of the customers' right to a fair hearing -- based on actions or delay that are entirely of Duke's creation. Furthermore, this is a case that has no "time crunch," since rates cannot change due to the amortization of the CR3 asset (and any resulting NEIL proceeds impact) until January 1, 2017. There is no compelling reason -- or any good reason, for that matter -- to force the hearing process into an eight month

(February 25 (petition date) to October 23 (hearing conclusion date)) time schedule when there are no statutory or other legal timeframe to meet.

The February 5 announcement by Duke was the very first time that the parties and the Commission knew about the retirement and insurance and regulatory asset issues in a way that could be publicly acted upon. The Intervenors were powerless to act upon any inferences they might have drawn from Duke's communications in any quarterly meeting discussions. Nothing the Intervenors knew (or about which they could conjecture) could be acted upon and Duke will confirm that the Intervenors were bound by confidentiality and honored that obligation – with respect to information learned in quarterly meeting discussions and in any discussions that may have been undertaken outside the quarterly meeting process.

In short, there was no delay or uncertainty that gives rise to a need to provide quick relief to customers or any other interested group like investors. As discussed above, there was no “running start” or pre-petition streamlining or information flow that was available to the parties to make the hearing process go faster or need less time. Discovery must start anew with respect to information generated after January 2011 relating to the NEIL claims process.

Due to the posture of the case and the phases that were ripe for determination and the lengthy negotiations in 2011 that yielded the Settlement, discovery on the NEIL claims was simply not undertaken from January 2011 forward. This was not a deficiency in the process or a contributor to delay but a logical preservation of resources since discovery would have been disruptive to Duke's repair and insurance proceeds pursuit efforts and would have been wasteful in that the overall prudence effort can only be measured by the totality of facts and the final result taken as a whole. Discovery on that aspect of this case only became ripe on February 5,

2013 at the soonest.⁷

This case, despite the docket title being the same, was a brand new case beginning with any of the three milestone dates in February – whether the 5th, 23rd or 25th. The fairness of the hearing schedule and the ability of the customers to reasonably and fairly prepare their case must be measured against that starting point and the complete lack of a legal limitation other than perhaps the need to prepare a filing in 2015 for a 2016 hearing process that will yield rates in 2017. There is not any compelling reason to have a hearing in 2013.

Since Duke has yet to reveal its case, Intervenor will be handicapped in fully preparing their case until the filing of Duke's direct testimony (scheduled now for June 17, 2013). Given the sequencing of depositions to be scheduled and the reasonable needs to prepare and consult with a yet to be determined expert or experts, the Intervenor cannot be expected to put on an adequate case if hamstrung by being allowed to conduct vital and significant deposition discovery only after the deposition of Mr. Glenn at which time Duke is willing to discuss a time and place for the deposition of at least four witnesses employed or compensated by Duke, including one named by the Prehearing Officer as having information that may bear on the outcome of the case. See Attachment E, paragraphs 11, 12, 20, 21. This expedited schedule may well be fair to Duke and not impact Duke's case; however, it will leave the OPC and other Intervenor in dire straits and assuredly unable to put on even the minimally proficient case that the ratepaying public expects.

⁷ The OPC was under the impression that no discovery whatsoever was even available until after February 13, 2013 when Order No. PSC-13-0080-E1 was issued lifting the stay (assumedly the stay applied to discovery as well since the stay made discovery objectionable based on relevance) or even February 25, when the petition was filed. OPC served post settlement discovery on February 02, 2013 after Duke filed its February 8, 2013 agreed motion to lift the stay.

D. The intervenors are taking steps to preserve testimony and will depose or seek to depose principal actors in the Duke/Neil dispute. The departure of Duke personnel is not a basis to penalize the OPC or Intervenors with an unreasonable schedule.

While not disagreeing with the Prehearing Officer that the preservation of evidence is important,⁸ none of the facts that were cited for needing to hurry the hearing occurred after the announcement of the CR3 retirement and the NEIL settlement. Mr. Rogers is expected to leave by the end of 2013, OPC has requested his deposition and Duke is objecting to providing him before July – if at all. The OPC is doing its best to acquire and preserve witness testimony through deposition and subpoena where needed. The reasons cited by the Prehearing Officer are within Duke’s control and should not be a basis for penalizing the OPC and Intervenors with an unrealistically rushed hearing.

E. The Prehearing Officer did not consider the nature of impending privilege related discovery disputes which will further delay the access to vital information and impair Intervenors’ ability to put their case on.

The foregoing consideration does not even consider the thorny privilege issues that are bound up in pending or soon-to-be pending motions to compel discovery related to Duke’s claims of privilege.⁹ Determinations on those will likely need some level of judicial review regardless of the outcome and stay of the process will be required. For this reason the establishment of the rushed October hearing – driven schedule will require significant resources of all the parties to be focused on preparing testimony and conducting discovery on a furious

⁸ At pages 69-70 of the April 30th oral argument, the Prehearing Officer listed several personnel changes that have occurred as a result of the Duke/Progress merger and other events. These events were 100% in the control of Duke and should not be the basis for the Intervenors being punished for an inadequate hearing schedule. As shown in Attachments C-E the OPC and Duke have initiated a process to begin to preserve this testimony. As also shown in those documents, the deposition and subpoena process for at least 22 individuals may take some time and will not be easy or speedy. Duke is not eager to make its CEO available until early July at the earliest it would appear. Nor will it be possible in the time between now and the Hearing. This is not the OPC’s doing and the OPC should not be penalized as a result.

⁹ See Attachment B

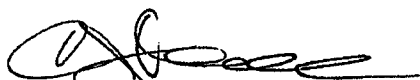
pace while also litigating the discovery issues – including the first-time assertion of mediation privilege. Already, 6 weeks have been successfully devoted to issue establishment, streamlining and the process of resolving the hearing scope. This time has been fruitful for that purpose; however, it has displaced other efforts such as discovery and case preparation.

Conclusion

For the reasons stated herein, the OPC respectfully urges that the Commission reconsider the controlling dates set out in the Third OEP and establish a minimum of 150 days between Duke's direct testimony and the Intervenors' responsive direct testimony. Additionally, the time between the filing of Duke's rebuttal testimony and the discovery cut off (only 13 days) must be revised to a reasonable time (e.g. 60 days), given the novelty and complexity of the issues and the likelihood that significant testimony will be filed on Rebuttal. Given the magnitude and importance of the issues, the lack of any legal time limits arising before December 31, 2016, the fact that the issue has only become ripe for Commission determination in February 2013 and the fact that the Intervenors had no legal or reasonable basis for pursuing discovery or other preliminary streamlining activities before February 2013, the schedule should be amended to accommodate the reasonable need of all the parties. This request and Motion assumes no complications that would further impact the schedule in the area of discovery disputes. The Intervenors believe that it is more likely than not the resolution of privilege-based discovery disputes will require further delay – especially in the event interlocutory relief is sought by a disappointed party.

That aspect can be addressed as it arises, yet the fundamental schedule should be addressed now to accommodate the reasonable needs of the customers. The OPC has filed a separate request for oral argument.

Respectfully submitted,



Deputy Public Counsel
Charles J. Rehwinkel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

Attorney for the Citizens of the
State of Florida

CERTIFICATE OF SERVICE

100437-E

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 6th day of May, 2013 to the following:

John T. Burnett
Progress Energy Service Company,
LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042

Jon C. Moyle, Jr.
Moyle Law Firm
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Robert Scheffel Wright, John T.
LaVia
c/o Gardner Bist Wiener Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Ave, Suite 800
Tallahassee, FL 32301-7740

Michael Lawson
Theresa Tan/Keino Young
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

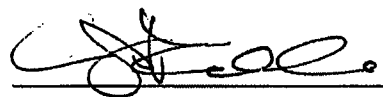
Karin S. Torain
PCS Administration (USA), Inc.
1101 Skokie Boulevard, Suite 400
Northbrook, IL 60062

Matthew Bernier
Carlton Fields Law Firm
215 S. Monroe Street, Ste 500
Tallahassee, FL 32301

George Cavros, Esq.
Southern Alliance for Clean Energy
120 East Oakland Park Blvd, Suite
105
Fort Lauderdale, FL 33334

J. Michael Walls/Blaise N. Huhta
Carlton Fields Law Firm
P.O. Box 3239
Tampa, FL 33607-5736

James W. Brew/F. Alvin Taylor
1025 Thomas Jefferson St. NW, 8th
Flo, West Tower
Washington, DC 20007



Charles J. Rehwinkel
Deputy Public Counsel

Docket No. 100437-EI – Motion for Reconsideration

ATTACHMENT A

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100437-EI

EXAMINATION OF THE OUTAGE AND
REPLACEMENT FUEL/POWER COSTS
ASSOCIATED WITH THE CR3 STEAM
GENERATOR REPLACEMENT PROJECT,
BY PROGRESS ENERGY FLORIDA, INC.

COMMISSION
CLERK

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RECEIVED-FPSC

PROCEEDINGS: ORAL ARGUMENT

COMMISSIONERS
PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS

DATE: Tuesday, April 30, 2013

TIME: Commenced at 10:00 a.m.
Concluded at 11:37 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

1 APPEARANCES:

2 JOHN T. BURNETT, ESQUIRE, Progress Energy
3 Service Company, LLC, Post Office Box 14042, St.
4 Petersburg, Florida 33733-4042, and J. MICHAEL WALLS,
5 ESQUIRE, Carlton Fields Law Firm, Post Office Box 3239,
6 Tampa, Florida 33601-3239, appearing on behalf of
7 Progress Energy Florida, Inc.

8 JON C. MOYLE, JR., ESQUIRE, c/o Moyle Law
9 Firm, The Perkins House, 118 North Gadsden Street,
10 Tallahassee, Florida 32301, appearing on behalf of the
11 Florida Industrial Power Users Group (FIPUG).

12 ROBERT SCHEFFEL WRIGHT, ESQUIRE, c/o Gardner
13 Law Firm, 1300 Thomaswood Drive, Tallahassee, Florida
14 32308, appearing on behalf of the Florida Retail
15 Federation.

16 JAMES W. BREW, ESQUIRE, Brickfield Law Firm,
17 Eighth Floor, West Tower, 1025 Thomas Jefferson Street,
18 NW, Washington, DC 20007, appearing on behalf of White
19 Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate.

20 CHARLES J. REHWINKEL, ESQUIRE, Office of
21 Public Counsel, c/o The Florida Legislature, 111 West
22 Madison Street, Room 812, Tallahassee, Florida
23 32399-1400, appearing on behalf of the Citizens of the
24 State of Florida.

25

1 APPEARANCES (Continued):

2 KEINO YOUNG, MICHAEL LAWSON, LEE ENG TAN, and
3 CAROLINE KLANCKE, ESQUIRES, FPSC General Counsel's
4 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
5 32399-0850, appearing on behalf of the Florida Public
6 Service Commission Staff.

7 CURT KISER, GENERAL COUNSEL, and MARY ANNE
8 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service
9 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
10 Florida 32399-0850, Advisors to the Florida Public
11 Service Commission.

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1 in a BellSouth case back in the '90s, I believe, when I
2 was working for Chairman Deason at the time, I believe
3 there were some in camera inspections by at least one
4 Commissioner in that process that was undertaken. So
5 there is precedent, we believe, for the Commission to
6 look at privileged information to make an in camera
7 determination. However, we do believe a process needs
8 to be developed because this is a significant issue in
9 the case. And while there is precedent, we, we'd
10 certainly be willing to provide input on, on the right
11 way to do it.

12 **MR. BREW:** Commissioner, I can confirm that
13 PCS will be filing a motion to compel shortly
14 thereafter, too.

15 **COMMISSIONER BALBIS:** Okay. Thank you. And
16 my office will respond to the motions appropriately.

17 Okay. So moving on to the schedule portion of
18 this. In response to concerns by the parties during the
19 issue identification meetings with staff, especially
20 concerning time constraints, I issued a third and final
21 OEP extending the hearing date from April of this year,
22 which was originally requested by Progress, to the end
23 of October of this year. This provides an additional
24 six months of time for the parties to prepare. I also
25 adjusted some of the other controlling dates prior to

1 the hearing to give parties additional time.

2 Please let me know if you have concerns about
3 the controlling dates leading up to and with exception
4 to the hearing. So with that, I'll start with Progress
5 Energy.

6 MR. BURNETT: Thank you, Commissioner.

7 As long as we get a ruling that -- and
8 resolution on what issues I actually have to address in
9 the testimony, we can, we can certainly do the June
10 date, but I just need to figuratively know what I'm
11 shooting at first to get the testimony done. But we can
12 comply with your schedule.

13 COMMISSIONER BALBIS: And by the June date,
14 you're referencing the June 17th where your testimony
15 and exhibits would be due?

16 MR. BURNETT: Yes, sir.

17 COMMISSIONER BALBIS: Okay. Thank you.
18 Office of Public Counsel.

19 MR. REHWINKEL: Yes. Commissioner, it's with
20 a great deal of trepidation that I state to you that
21 these dates are completely unworkable for the Public
22 Counsel. The passage of about two and a half months
23 between seeing for the first time what Progress or Duke
24 says is their basis for settling would be really our
25 opportunity to decide what we need in terms of an expert

1 witness.

2 We have, we have one of the best civil
3 engineering witnesses in the world from MIT, but I'm not
4 sure that those issues will really play a major role in
5 this case. They may play a smaller role and we may need
6 his services.

7 We have two nuclear engineering -- nuclear
8 engineers who may, we may need their expertise in
9 understanding what was undertaken with respect to
10 preparing the, the repair estimates that led to the
11 insurance payouts.

12 But with respect to the insurance policies
13 themselves, we need to, we need to engage an
14 engineering -- an insurance expert that will -- and up
15 until whenever we get a ruling on the scope of this
16 docket and our ability to actually go forward and take a
17 deposition of the appropriate people at, at Duke, we
18 really have not jumped out to try to engage a witness.

19 There are millions of pages of documents
20 conceivably, or at least hundreds of thousands that we
21 expect we will need to look at between now and preparing
22 our case and to bring an expert up to speed.

23 Just, you know, a matter of 70 days just to
24 put on a case once we know what Duke's case is going to
25 be is, is just not enough time for an issue that we've

1 never seen before. This is not like a rate case
2 where -- I mean, when we know a test year letter is
3 coming or is filed, we, we know, because we've had 30,
4 40 years of experience in the office, about what we need
5 to get and who we need to get and where they are and
6 who's going to do depreciation and who's going to do
7 accounting and finance and engineering.

8 But this issue is a novel one, it's a first of
9 its kind, and we really don't know. And I can tell you
10 right now we're not ready to go to hearing that fast.

11 But that's kind of the little big problem that
12 we have, because the biggest problem is, is once we file
13 our case, Progress would then have the opportunity -- or
14 Duke would have the opportunity to file rebuttal on
15 October 1st, and then we would have 13 calendar days to
16 do discovery on what our experience has been is just the
17 nature of the business that we're in, I'm not saying
18 there's anything nefarious about it, is that you find a
19 lot of meaty information and sometimes the real nuts and
20 bolts of the case filed on rebuttal. Having that amount
21 of time to, to schedule depositions and conduct
22 discovery on what could be significant testimony in a
23 case that has no time clock on it is, is of concern to
24 us. And I, you know, feel like we just need to be
25 up-front and tell you that it is a big problem for us.

1 And, you know, not knowing what they're going
2 to file on direct and not knowing what they would file
3 on rebuttal, I can't say for absolute certainty that
4 it's, that it's unreasonable. But my experience and my
5 knowledge of this docket tells me that it is just not
6 workable because this insurance issue is, is a new one
7 and it's a novel one and we're just not ready to go on
8 that.

9 **COMMISSIONER BALBIS:** Thank you.

10 Mr. Brew?

11 **MR. BREW:** Yes. Thank you, Commissioner. I
12 would fully support what OPC has just said, and note in
13 that regard it's been somewhat of my lot to be dragged
14 into quite a number of prudence cases. And I've found
15 that, as Mr. Rehwinkel said, universally on rebuttal a
16 lot comes up. That's the nature of the beast in terms
17 of the utility's response to the testimony that it saw,
18 and it's absolutely critical for a Commission decision
19 that there be adequate time for discovery and
20 depositions. And so at a minimum, we need a substantial
21 adjustment there between whenever rebuttal is filed to
22 allow adequate time for discovery before we move to
23 hearing. Thank you.

24 **COMMISSIONER BALBIS:** Okay. Thank you.

25 Mr. Wright?

1 **MR. WRIGHT:** I would just add that I agree
2 with Mr. Rehwinkel and Mr. Brew. Thank you,
3 Commissioner.

4 **MR. MOYLE:** And FIPUG would support the
5 comments of OPC. They have been doing cases before this
6 Commission for years and years and years and will have a
7 significant laboring oar in this effort. So we would
8 support them in terms of taking the amount of time that
9 they feel necessary to have the case ready to go to
10 trial. Thank you.

11 **MR. REHWINKEL:** Commissioner, I apologize.
12 Because I did the privilege stuff in the prior phase I
13 kind of took it out of my thoughts about here. But I
14 think until the privilege issue is resolved and we know
15 fully the scope of what's going to be looked at, we're
16 also a bit at a disadvantage.

17 Progress has -- Duke has lodged objections to
18 providing discovery, and those will be resolved. But
19 until we get those resolved and we know where they're
20 going to go and if we're going to get additional
21 information, or we're going to know kind of the posture
22 of their burden vis-a-vis the assertion of a privilege.
23 In other words, there's a principle in law that you
24 can't use the privilege as a sword and a shield.
25 Sometimes you've got to live with the consequences of

1 the privilege you assert. We don't know how that's
2 going to shake out. Until we do, we won't really fully
3 know the scope of what the testimony is going to be
4 about. Thank you.

5 **COMMISSIONER BALBIS:** Okay. Thank you.

6 And I just want to give you my comments on
7 this matter and my mind-set, where I am with this. And
8 this is a unique case, and we all understand that. But
9 one of the unique aspects of this case, which is, I
10 think, a good thing, is that the settlement agreement
11 established a procedure for all of the parties to have
12 an unprecedented coordination and free flow of
13 information once that settlement agreement was agreed to
14 on certain issues.

15 At each of the status conferences I asked each
16 one of the parties as to how that process was working,
17 how the information was flowing, and if it was a good
18 process. Each time I asked that, each party indicated
19 that it was working very well. And I'd anticipated as
20 the status conferences were going on that it would make
21 the hearing process easier.

22 It is clear from the proposed issues, the
23 briefs, the reply briefs, the oral arguments here today,
24 and, in fact, even, Mr. Rehwinkel, your comments,
25 there's not much left.

1 In contrast, recent billion dollar rate cases
2 had up to 192 issues, ranging from liability insurance
3 all the way up to return on equity. Those are issues
4 this Commission is used to dealing with, those are
5 complex issues that we're used to dealing with, and all
6 the parties here today are used to dealing with.

7 But maybe a more important and appropriate
8 comparison is the settlement agreement that this
9 Commission approved. That was a very complex settlement
10 dealing with multiple dockets, dealing with new nuclear
11 units, dealing with a rate case, dealing with CR3 and
12 other issues that were very complicated that we were
13 able to review and approve because it was in the best
14 interest of all the parties. In fact, one of the
15 justifications to review and approve that settlement
16 expeditiously was, and I'll quote, the speedy
17 approval -- the parties recognize that the continued
18 uncertainty related to the issues addressed in this
19 agreement adversely affects the utility and the
20 customers.

21 The most important consideration that I need
22 to make is that Progress Energy no longer exists. In
23 fact, we have interchanged the Duke Energy and Progress
24 Energy, but Progress Energy does not exist. It has been
25 merged with Duke Energy to become the largest electric

1 company in the United States. With that merger comes
2 expected and unexpected personnel changes.

3 Unfortunately, key personnel associated with
4 the decision-making process of this important case have
5 changed and will continue to change: Bill Johnson,
6 former CEO of Progress Energy, also for a short period
7 of time CEO of Duke, and he was even on the board of
8 NEIL, is no longer with Duke Energy; Vinny Dolan, former
9 president of Progress Energy Florida, has retired; Jeff
10 Lyash, a key witness in many of our proceedings, has
11 announced his retirement; and even Jim Rogers, current
12 CEO of Duke, who was CEO when the final decision was
13 made to retire CR3, who was CEO when the final
14 settlement from NEIL was, was approved, may not be in
15 that position by the end of this year.

16 Information can become stale, memories can
17 become short, and, more importantly, people can retire
18 and move on. These issues are ripe for hearing. The
19 customers and investors cannot afford for this
20 uncertainty to continue any more than it has.

21 I believe that the additional six months will
22 afford all of the parties the time needed to prepare,
23 and will allow the Commission to make an informed
24 decision. There's not much left, and I think we can
25 have a thorough hearing process. Because, quite

1 frankly, the ratepayers have waited long enough.

2 So I'll take all of your comments into
3 consideration and will issue an appropriate ruling.

4 Thank you for your time this morning.

5 (Proceeding concluded at 11:37 a.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 2nd day of May,
19 2013.

20 Linda Boles

21 LINDA BOLES, CRR, RPR
22 FPSC Official Commission Reporters
23 (850) 413-6734
24
25

Docket No. 100437-EI – Motion for Reconsideration

ATTACHMENT B



ATTORNEYS AT LAW

4221 W Boy Scout Boulevard | Suite 1000
Tampa, Florida 33607-5780
P O Box 3239 | Tampa, Florida 33601-3239
813 223 7000 | fax 813.229 4133
www.carltonfields.com

Blaise N Gamba
(813) 229-4328 Direct Dial
bgamba@carltonfields.com

April 24, 2013

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APR 30 2013

OFFICE OF
PUBLIC COUNSEL

Charles Rehwinkel, Esq.
Erik Saylor, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Re: Docket No. 100437-EI

Dear Charles:

Enclosed are Progress Energy Florida's revised privilege logs relating to OPC's Eighth Request for Production of Documents and OPC's Seventh Request for Production of Documents. These privilege logs were revised pursuant to your request to John Burnett that the Company modify the privilege logs to a) list on the log whether the documents were withheld entirely or partially, and b) provide additional details regarding some of the recipients of the documents.

Please do not hesitate to contact us with any questions.

Sincerely,

Blaise N Gamba

BNG/ss
Enclosures

cc: John Burnett, Esq. (w/encl.)
Arlene Tibbetts (w/encl.)

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

PROGRESS ENERGY FLORIDA, INC.'S *REVISED* PRIVILEGE LOG TO
 OPC'S SEVENTH REQUEST FOR PRODUCTION

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production Nos. 64, 65, and 66 (a-c) Entire document	8/27-28/2012	Alex Glenn, Esq.	Jon Franke, Vinny Dolan, David Fountain, Esq.	CR3 Review Team Whitepaper (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	7/31/2012	David Fountain, Esq.	Marc Manly, Esq.	Progress Energy v. NEIL CR3 Delamination Repair Case Update powerpoint presentation (prepared at direction of General Counsel; contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	2012	John Burnett, Esq.	Alex Glenn, Esq.	Spreadsheet of possible scenarios (contains attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65 Entire document	7/29/2011	Alex Glenn, Esq.	John Burnett, Esq.	Draft outline of NEIL Coverage Legal Analysis & Recommendations (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	2012	John Burnett, Esq.	Alex Glenn, Esq.	Timeline/analysis of NEIL coverage (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	1/29/2010	Peter Gillon, Esq., John O'Neill, Esq.	Dave Conley, Esq.	Memorandum re: Crystal River Unit 3, Initial Coverage Analysis (contains attorney mental impressions and work product)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	5/3/2012	John Burnett, Esq.	Alex Glenn, Esq.	Draft CR3 Decommissioning Analysis (contains attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65 Entire document	5/26/2012	David L. Elkind, Esq., Erin L. Webb, Esq.	John Burnett, Esq.	Memorandum re: Crystal River Nuclear Generating Plant, Unit 3 Coverage Overview – Decommissioning Scenario (contains attorney mental impressions/prepared at the direction of counsel)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	5/28/2012	Mike Walls, Esq.	John Burnett, Esq.	Draft memorandum re: insurance coverage (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	3/21/2011	Gary Little	John Burnett, Esq.	Email re: NEIL Coverage Details and Options (work product obtained pursuant to and prepared at attorney's request)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	5/23/2012	Alex Glenn, Esq.	Jon Franke, Vinny Dolan, David Fountain, Esq.	CR3 Retirement Option – Insurance Policy Coverage – Legal Analysis powerpoint presentation (contains attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65 Entire document	6/7/2012	Alex Glenn, Esq.	Jon Franke, Vinny Dolan, David Fountain, Esq.	CR3 Repair Legal Analysis powerpoint presentation (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	5/17/2012	L.D. Simmons II, Esq., L. Quinlan, Esq.	David Fountain, Esq.	Memorandum re: Analysis of Coverage Available under the NEIL Policies in the event Progress elects to decommission CR3 (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	7/17/2012	L.D. Simmons II, Esq.	David Fountain, Esq.	Memorandum re: Progress Energy Florida v. NEIL Proof of loss (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	3/2012	David Fountain, Esq., Alex Glenn, Esq.	Jon Franke, Vinny Dolan	Crystal River 3 NEIL Update powerpoint presentation (contains attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65 Entire document	11/3/2011	L.D. Simmons II, Esq.	David Fountain, Esq.	Memorandum/Legal Analysis re: Crystal River Unit 3 Delamination Claim Against NEIL Master Coverage Analysis (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	2012	Alex Glenn, Esq.	Jon Franke, Vinny Dolan, David Fountain, Esq.	Slides to powerpoint re: scenarios of retirement of CR3 (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	8/1/2012	David Fountain, Esq. (email); L.D. Simmons, II, Esq., and L. Quinlan, Esq. (memo)	Swati Daji, Garry Little, Keith Bone, Patricia Smith, Esq.	Email attaching 5/17/2012 Memorandum from McGuire Woods re Analysis of Coverage available under the NEIL Policies in the event Progress elects to decommission CR3 (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	2012	John Burnett, Esq.	Alex Glenn, Esq.	Slides to powerpoint re: scenarios of retirement of CR3 (contains attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65 Entire document	8/7/2012	Swati Daji	Keith Bone, David Fountain, Esq., Patricia C. Smith, Esq., Gary Little	Email re: 8 am meeting and attached presentation of NEIL update including marginalia on email and presentation (prepared at request of counsel and containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	2/12/2010	Peter Gillon, Esq., John O'Neill, Esq.	Dave Conley, Esq.	Memorandum re: Crystal River Unit 3 Summary of Initial Coverage Analysis (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	5/21/2012	L.D. Simmons II, Esq.	Alex Glenn, Esq., David Fountain, Esq.	Email re: Analysis of Available Coverage for Property Damage/Outage in the Event of Decommissioning and attachment (contains attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	5/22/2012	L.D. Simmons II, Esq.	Alex Glenn, Esq.	Email exchange re: RE: CR3 Decommissioning Insurance Coverage Legal Analysis Rev0.pptx and attached draft powerpoint presentation (containing attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production No. 65 Entire document	5/22/2012	Lowndes Quinlan, Esq.	Alex Glenn, Esq., L.D. Simmons II, Esq., Joshua Davey, Esq.	Email exchange re: RE: NEIL Drafting History (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	3/26/2012	L.D. Simmons, II, Esq.	David Fountain, Esq., Frank Schiller, Esq., David Elkind, Esq.	Memorandum re: PEF v. NEIL: Strategy Implications of Outage Policy Coverage (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production No. 65 Entire document	10/22/2012	Paul Newton, Esq.	Diane Wilkinson	Email forwarding Gary Little email re: NEIL policy, NEIL policy containing marginalia and draft notes regarding NEIL policy(containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production Nos. 64, 65 Entire document	2012	David Fountain, Esq.	Jon Franke, Vinny Dolan	PowerPoint re: Other NEIL Defenses (containing attorney mental impressions)	Attorney Client Communication Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production Nos. 64, 65 Entire document	2012	David Fountain, Esq.	Jon Franke, Vinny Dolan	PowerPoint re: Progress Energy v. NEIL CR3 Delamination Repair Case Update September 2012 (containing attorney mental impressions)	Attorney Client Communication Work Product
OPC's Seventh Request for Production Nos. 64, 65, and 66 (a-c) Entire document	9/11/2012	John O'Neil, Esq., Jack McKay, Esq., Peter Gillon, Esq.	Paul Newton, Esq.	Progress Energy v. NEIL Pillsbury Briefing Binder (contains attorney mental impressions, advice, and attorney work product)	Attorney Client Communication Work Product
OPC's Seventh Request for Production Nos. 64, 65, and 66 (a-c) Entire document	11/18/2012	Frank Schiller, Esq., L.D. Simmons, II, Esq., David Fountain, Esq., Alex Glenn	David Ripsom, Randy Mehrberg, Greg Wilks, Kenneth Manne, Esq., Eric Green (mediator)	Progress Energy Florida, Inc. v. Nuclear Insurance Limited Mediation Presentation of Progress Energy including discussion of mediation issues and substance of mediation issues.	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
OPC's Seventh Request for Production Nos. 64 and 66 (d) Entire document	1/31/2013	Julie Janson, Esq.	Duke Energy Board: James E. Rogers, William Barnet III, G. Alex Bernhardt, Sr., Michael Browning, Harris DeLoach, Jr., Daniel DiMicco, John Forsgren, Ann Gray, James Hance, Jr., James Hylar, Jr., E. Marie McKee, E. James Reinsch, James Rhodes, Carlos Saladrigas, Philip Sharp	PowerPoint, Crystal River 3 Legal Issues (containing attorney mental impressions)	Attorney Client Communication Work Product

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

PROGRESS ENERGY FLORIDA, INC.'S *REVISED* PRIVILEGE LOG TO
OPC'S EIGHTH REQUEST FOR PRODUCTION

Bates No./ Request	Date	Author	Recipient	Description	Privilege
Nos. 81, 82 Entire document withheld	9/11/2012	John O'Neil, Esq., Jack McKay, Esq., Peter Gillon, Esq.	Paul Newton, Esq.	Progress Energy v. NEIL Pillsbury Briefing Binder (contains attorney mental impressions, advice, and attorney work product)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	10/2012	David Fountain, Esq., Frank Schiller, Esq.	Jim Rogers, Paul Newton, Esq., Patricia Smith, Esq.	Progress Energy v. NEIL Preparation for November 7 Session with Jim Rogers and Senior Management (contains attorney mental impressions and advice)	Attorney Client Communication Attorney Work Product
No. 78 Entire document withheld	11/8/2012	Frank Schiller, Esq., L.D. Simmons, II, Esq., David Fountain, Esq., Alex Glenn	David Zaslowsky, Esq., Kenneth Manne, Esq., Eric Green (mediator)	Confidential Mediation Statement of Progress Energy and exhibits thereto including discussion of mediation issues and substance of mediation issues.	Mediation/Settlement Privilege
No. 78 Entire document withheld	11/18/2012	Frank Schiller, Esq., L.D. Simmons, II, Esq., David Fountain, Esq., Alex Glenn	David Ripsom, Randy Mehrberg, Greg Wilks, Kenneth Manne, Esq., Eric Green (mediator)	Progress Energy Florida, Inc. v. Nuclear Insurance Limited Mediation Presentation of Progress Energy including discussion of mediation issues and substance of mediation	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
				issues.	
No. 81, 82 Entire document withheld	Undated 11/15/2012 10/12/2012 11/9/2012 9/24/2012 10/4/2012 10/16/2012	Paul Newton, Esq.	Paul Newton, Esq.	Attorney notes regarding meeting with counsel and senior management regarding mediation (contains attorney advice and mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	11/15/2012	David Fountain, Esq.	Paul Newton, Esq., Patricia Smith, Esq.	Email exchange/ communication re article re CR3 (contains attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 82, 84 Entire document withheld	8/24/2012 8/21/2012	David Fountain, Esq.	Paul Newton, Esq.	Drafts of Preliminary NEIL Arbitration Case Assessment (contains attorney mental impressions, advice and work product)	Attorney Client Communication Attorney Work Product
Nos. 81, 82, 84 Entire document withheld	2012	Frank Schiller, Esq., L.D. Simmons, II, Esq.	Paul Newton, Esq.	Flowchart of insurance recovery (contains attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	10/11/2012	Benjamin Borsch	Paul Newton, Esq.	Email re: RE: CR3- Privileged & Confidential / Attorney – Client Communication re repair costs (prepared at the direction of counsel and contains attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 76 Entire document withheld	11/8/2012	David Zaslowsky, Esq.	Eric Green (mediator); L.D. Simmons, II, Esq.	Letter and NEIL's Mediation Statement including discussion of mediation issues and substance of mediation issues.	Mediation/Settlement Privilege
No. 81, 82 Entire document withheld	2012	Paul Newton, Esq.	Paul Newton, Esq.	Work product re Property Damage Insurance for the CR3 Containment Repair Project (contains attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	3/26/2012	L. D. Simmons, II, Esq.	David Fountain, Esq.	Memorandum re: PEF v. NEIL: re Outage Policy Coverage (contains attorney mental impressions and advice and work product)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	10/1/2012	Paul Newton, Esq.	Rita G. Kale; Paul Newton, Esq.	Email forwarding Stephen Allred, Esq. email re: Letter to NEIL Regarding Proofs of Loss – Position on Coverage Under Second Outage Policy (contains attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	9/20/2012	Patricia Smith, Esq.	Paul Newton, Esq.	Email forwarding email exchange between David Zaslowsky, Esq. and L.D. Simmons, II, Esq. re: Mediation Logistics (contains attorney mental impressions and comments in email exchange)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 84 Entire document withheld	3/2012	Frank Schiller, Esq., L.D. Simmons, II, Esq.	Paul Newton, Esq.	Comparison of Provisions in NEIL Policies (prepared at direction of counsel and contains attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product
No. 81, 82 Entire document withheld	9/10/2012	Edgar Roach, Esq.; Frank Schiller, Esq.	Paul Newton, Esq.	CR3/NEIL Overview presentation (contains attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 74, 82 Entire document withheld	8/25/2011	Gary Little	John Burnett, Esq.; David Fountain, Esq.; Alex Glenn, Esq.; Ron Coats; Frank Schiller, Esq.; Edgar Roach, Esq.; John Elnitsky; Jon Franke; Sherri Green	Email re: NEIL Meeting (prepared at the request of counsel and relays attorney advice and impressions)	Attorney Client Communication Attorney Work Product
Nos. 74, 82 Entire document withheld	8/25/2011	John Burnett, Esq.	John Elnitsky, Gary Little; David Fountain, Esq.; Alex Glenn, Esq., Ron Coats; Frank Schiller, Esq.; Edgar Roach, Esq., Mike Delowery	Email exchange re: NEIL Meeting (contains attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 74, 82 Entire document withheld	2/27/2012	David Fountain, Esq.	Jeff Stone	Memorandum re: CR-3/NEIL Insurance Coverage Recovery Process – 4Q2011 (contains attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 74 Entire document withheld	9/22/2011	Alex Glenn, Esq.	Gary Little; Frank Schiller, Esq.; David Fountain, Esq.; John Burnett, Esq.	Email exchange re: NEIL Letters (containing attorney mental impressions and advice)	Attorney Client Communication Attorney Work Product
No. 74, 82 Entire document withheld	7/1/2011	Alex Glenn, Esq.	Alex Glenn, Esq.	Internal Memo re: June 30, 2011 Meeting with NEIL Executive Team (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 72 Entire document withheld	6/6/2012	Kenneth C. Manne, Esq.	David Fountain, Esq. cc: Gregory Wilks, David Zaslowsky, Esq., Jacob Kaplan, Esq., Frank Schiller, Esq., L.D. Simmons, II, Esq.	Letter re: Crystal River 3 Claim (FRE 408) includes discussions re documents to be exchanged for the purposes of mediation and details re substance of mediation issues.	Mediation/Settlement Privilege
No. 82 Entire document withheld	8/30/2011	Gary Little	Alex Glenn, Esq.	Email re: NEIL Meetings (prepared at the request of counsel)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	2012	Alex Glenn, Esq.	Alex Glen, Esq.	Internal memo, re NEIL – (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 74 Entire document withheld	7/27/2011	John Burnett, Esq.	Alex Glenn, Esq., Gary Little, Jon Franke	Email exchange re: Crystal River (containing attorney mental impressions and advice)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 74 Entire document withheld	6/14/2012	David Fountain, Esq.	L.D. Simmons II, Esq.; Frank Schiller, Esq.; David Elkind, Esq.; Joshua Davey, Esq.; Matthew Calabria, Esq.; Edgar Roach, Esq., Peter Covington, Esq.; Gary Little, Ron Coats	Email forwarding NEIL letter (providing attorney advice and mental impressions)	Attorney Client Communication Attorney Work Product
No. 74, 82 Entire document withheld	8/19/2011	Alex Glenn, Esq.	Gary Little; David Fountain, Esq.; John Burnett, Esq.; Ron Coats; Frank Schiller, Esq.; John Elnitsky; Jon Franke	Email re: NEIL – Privileged & Confidential/Attorney-Client Communication; Work Summary of conversation (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	8/2/2011	Alex Glenn, Esq.	Gary Little	Email exchange re: NEIL (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	7/31/2011	Gary Little	Alex Glenn, Esq.; Jon Franke; John Burnett, Esq.; Frank Schiller, Esq.; Edgar Roach, Esq.; David Fountain, Esq.	Email exchange re: NEIL – Privileged & Confidential/Attorney-Client Communication; Work Product (requesting advice and containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 74, 82 Entire document withheld	9/24/2011	Gary Little	Frank Schiller, Esq.; Alex Glenn, Esq.; David Fountain, Esq.	Email exchange re: RE: Progress v. NEIL – Revised Draft NEIL Letters (requesting advice and containing attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
13DELAM-OPCPOD8-82-000094 Portion of document withheld	10/20/2011	David Fountain, Esq.	Stephen Cahill, Gary Little; Jeff Lyash; Mike Delowery	Portion of email exchange re: NEIL (containing attorney mental impressions re exchange)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	5/26/2011	Gary Little	John Burnett, Esq.; Jon Franke; Alex Glenn, Esq.; Garry Miller; Peter Toomey	Email re: G Little – March 2011 Delam (prepared at the request of counsel and requesting advice)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	10/14/2011	Gary Little	Alex Glenn, Esq.; John Burnett, Esq.; Ron Coats, Frank Schiller, Esq.; Stephen Cahill; David Fountain, Esq.	Email exchange re: RE: Privileged & Confidential/Attorney-Client Communication; Work Product (requesting advice and containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 81 Entire document withheld	2012	Paul Newton, Esq.	NA	Progress Energy v. NEIL Executive Briefing Book (containing compilation of privileged documents - <i>contained on this privilege log</i> - and analysis of Duke counsel to prepare for Mediation including discussion of issues to be mediated)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
Nos. 81, 82 Entire document withheld	10/15/2012	Paul Newton, Esq.	David Fountain, Esq.; Frank Schiller, Esq.; Edgar Roach, Esq.; Jack McKay, Esq.; David Dekker; Paul Newton, Esq.; Patricia Smith, Esq.	Presentation re NEIL Update Findings to Date and Next Steps (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 82 Entire document withheld	11/16/2012	Frank Schiller, Esq.	Paul Newton, Esq.; David Fountain, Esq.	Email re: Privileged and Confidential – talking points and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 76, 79 Entire document withheld	2012	David Ripsom, Kenneth Manne, Esq., David Zaslowsky, Esq.	Marc Manly, Esq.; Jim Reinsch, Garry Miller; Paul Newton, Esq.; David Fountain, Esq.; Patricia Smith, Esq.; Alex Glenn, Eric D. Green (Mediator)	Nuclear Electric Insurance Limited Presentation (subject to FRE 408 Protocol) includes discussion of substance of mediation issues.	Mediation/Settlement Privilege
No. 82 Entire document withheld	6/18/2010	Franke Schiller, Esq., L.D. Simmons, II Edgar Roach, Esq.	David Fountain, Esq.; Jack McKay, Esq.; David Dekker; Paul Newton, Esq.; Patricia Smith, Esq.	CR3 Outage NEIL Coverage Issues chart (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	11/28/2012	L.D. Simmons II, Esq.	Paul Newton, Esq.; David Fountain, Esq.	Memorandum re: Mediation Themes (containing attorney mental impressions, advice and work product)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	7/6/2012	David Fountain, Esq.	Marc Manly, Esq.	Memorandum re: NEIL Mediation Status Regarding CR3 Claim (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 84 Entire document withheld	2012	Franke Schiller, Esq., L.D. Simmons, II	Paul Newton, Esq.	Assessment of Arbitration Outcomes (containing attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product
No. 84 Entire document withheld	11/26/2012	L.D. Simmons II, Esq.	David Fountain, Esq.	Memorandum re: Progress Energy v. NEIL – Updated Arbitration Assessment (containing attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product
Nos. 77, 83 Entire document withheld	12/21/2012	Eric D. Green (Mediator)	NEIL: David Ripsom; Randall Mehrberg / Duke: Alex Glenn; Jim Reinsch; Jim Rogers	Email re: Progress Energy/NEIL – Mediator's Proposal re mediation issues.	Mediation/Settlement Privilege
No. 82 Entire document withheld	8/24/2012	David Fountain, Esq.	Marc Manly, Esq.; Patricia Smith, Esq.	Email exchange re: Neil (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	2/27/2012	David Elkind, Esq.; Erin Webb, Esq.	David Fountain, Esq.	Memorandum re: Progress Energy: Insurance Coverage Issues for NEIL Claim (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	12/5/2012	David Fountain, Esq.	Marc Manly, Esq.; Paul Newton, Esq.; Alex Glenn; Patricia Smith, Esq.	Email re: NEIL Talking Points and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 82 Entire document withheld	8/24/2012	David Fountain, Esq.	Patricia Smith, Esq.	Email forwarding email from Marc Manly, Esq. re: One Pager – NEIL Issues (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	7/31/2012	LD Simmons II, Esq.	David Fountain, Esq.; Marc Manly, Esq.	Progress Energy v. NEIL CR3 Delamination Repair Case Update July 2012 (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	12/8/2012	L.D. Simmons II, Esq.	Jack McKay, Esq.; David Fountain, Esq.; Patricia Smith, Esq.; Paul Newton, Esq.; Joshua Davey, Esq.; Edgar Roach, Esq.	Email re: Talking Points for Call and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	12/5/2012	L.D. Simmons II, Esq.	Jack McKay, Esq.; David Fountain, Esq.; Paul Newton, Esq.	Email re: Talking Points for Call and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	2/29/2012	L.D. Simmons II, Esq.	David Fountain, Esq.; Gary Little	Email re: Progress v. NEIL – Letter to NEIL, 12.5 Notes, Interview Plans and Plans for High Level Meeting and attachment Email re: Talking Points for call and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	10/18/2011	L.D. Simmons II, Esq.	David Fountain, Esq.; Peter Covington, Esq.; Frank Schiller, Esq.; Edgar Roach, Esq.	Email exchange re: RE: More Prep - - High Level Coverage Talking Points (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
Nos. 81, 82 Entire document withheld	10/2011	L.D. Simmons II, Esq.	Gary Little, David Fountain, Esq.	Memorandum re: Crystal River Delamination Claim Against NEIL Master Coverage Analysis (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	9/30/2011	L.D. Simmons II, Esq.	David Fountain, Esq.; Gary Little	Email forwarding Quinlan, Esq. email re: CR3 – Documents (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	10/7/2011	L.D. Simmons II, Esq.	David Fountain, Esq.; Peter Covington, Esq.; Frank Schiller, Esq.; Edgar Roach, Esq.; Lowndes Quinlan, Esq.	Email re: Progress v. NEIL – Call to Discuss NEIL Meeting (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	11/28/2012	Jack McKay, Esq.	Paul Newton, Esq.; David Fountain, Esq.; Patricia Smith, Esq.	Memorandum re Mediation Numbers (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	11/7/2012	L.D. Simmons II, Esq.; Frank Schiller, Esq.	Paul Newton, Esq.; David Fountain, Esq.; Patricia Smith, Esq.; Marc Manly, Esq.; Alex Glenn, Esq.; Jack McKay, Esq.	Progress Energy v. NEIL Management Briefing November 7, 2012 (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	7/25/2012	L.D. Simmons II, Esq.	Gary Little; David Fountain, Esq.; Patricia Smith, Esq.	Email re: Collection of Additional Claim Payments (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
Nos. 81, 82 Entire document withheld	10/11/2011	L.D. Simmons II, Esq.	Stephen Cahill, Wendy Dunn; Gary Little; David Fountain, Esq.; Mike Delowery; John Elnitsky; Jody Godsey-Baur; Garry Miller; Jon Franke; Frank Schiller, Esq.; Alex Glenn, Esq.; Peter Covington, Esq.; Leigh Formanek; Ron Coats	Progress v. NEIL Assessment of Coverage Issues and Negotiating Strategy CR3 Delamination Repair (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	9/26/2012	L.D. Simmons II, Esq.	Jack McKay, Esq.; David Fountain, Esq.; Patricia Smith, Esq.; Paul Newton, Esq.	Email re: Progress v. NEIL: Call with David Zaslowky on 25 September (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	9/30/2012	Stephen Alfred, Esq.	David Dekker; Patricia Smith, Esq.; Jack McKay, Esq.; L.D. Simmons II, Esq.; David Fountain, Esq.; Paul Newton, Esq.	Email re: Letter to NEIL regarding Proof of Loss – Position on Coverage Under Second Outage Policy and attachments (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	10/23/2012	L.D. Simmons II, Esq.	David Fountain, Esq.; Frank Schiller, Esq.; Edgar Roach, Esq.; Jack McKay, Esq.; David Dekker; Paul Newton, Esq.; Patricia Smith, Esq.; Gary Little	Email exchange re: RE: Crystal River Unit 3 (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 84 Entire document withheld	2/26/2013	Frank Schiller, Esq.	Matthew Calabria, Esq.	Email forwarding email to Alex Glenn re: Write Up and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 84 Entire document withheld	2/26/2013	Frank Schiller, Esq.	Matthew Calabria, Esq.	Email forwarding email to Alex Glenn re: Couple of Thoughts (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 84 Entire document withheld	1/17/2013	Frank Schiller, Esq.	Alex Glenn	Email re: Write Up and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 84 Entire document withheld	1/17/2013	Frank Schiller, Esq.	Alex Glenn	Email re: Couple of Thoughts (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 81, 82 Entire document withheld	6/5/2012	L.D. Simmons II, Esq.	David Fountain, Esq., Alex Glenn, Esq., David Elkind, Esq., Frank Schiller, Esq., Edgar Roach, Esq., Peter Covington, Esq.	Email re: PEF v. NEIL: Letter to NEIL re Notice and Proofs of Loss and attachment (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 84, 81, 82 Entire document withheld	1/18/2013	Alex Glenn	Julie Janson, Esq.	CR3 Insurance Settlement Talking Points (containing attorney mental impressions and prepared at the request of counsel)	Attorney Client Communication Attorney Work Product

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 83 Entire document withheld	1/21/2013	Patricia Smith, Esq.	Julie Janson, Esq.	Memorandum re: Mediator's Proposal; CR3 Claims Against NEIL (containing attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product
No. 81, 82 Entire document withheld	2012	Gary Little	John Burnett, Esq., David Fountain, Esq., Alex Glenn, Esq.	Summary Notes – NEIL Policies/CR3 Claim (prepared at direction of counsel)	Attorney Client Communication Attorney Work Product
Nos. 81, 82, 84 Entire document withheld	10/26/2012	David Fountain, Esq.	David Fountain, Esq.	Compilation of privileged materials - cited herein - from Briefing Book (containing attorney mental impressions and work product)	Attorney Client Communication Attorney Work Product
No. 72 Entire document withheld	4/16/2012	David Fountain, Esq.	Kenneth Manne, Esq.	Letter re: FRE 408 Protocol and Meeting on April 16, 2012 includes discussions re mediation issues; documents for mediation; and substance of mediation issues.	Mediation/Settlement Privilege
No. 72 Entire document withheld	2/27/2012	Kenneth Manne, Esq.	David Fountain, Esq.	Letter re: Upcoming Discussions between NEIL and Progress Energy re mediation issues and substance of those communications.	Mediation/Settlement Privilege
No. 72 Entire document withheld	5/23/2012	David Ripsom	William Johnson cc: David Fountain, Esq., Kenneth Manne, Esq.	Letter re: Crystal River Claim and mediation includes detailed discussion of issues to be mediated and mediation schedule.	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 72 Entire document withheld	5/29/2012	Kenneth Manne, Esq.	David Fountain, Esq.	Letter re: May 25, 2012 letter from Bill Johnson to David Ripsom / May 25, 2012 letter from David Fountain, Esq. to Ken Manne, Esq. includes discussion of issues to be mediated and substance of mediation issues	Mediation/Settlement Privilege
No.72 Entire document withheld	10/23/2012	Gregory Wilks	David Fountain, Esq. cc: Ken Manne, Esq. David Zaslowsky, Esq.	Letter re: Crystal River Unit 3 includes discussion of substance of mediation issues.	Mediation/Settlement Privilege
No. 72 Entire document withheld	5/29/2012	Kenneth Manne, Esq.	David Fountain, Esq.	Letter re: discussion re substance of mediation issues.	Mediation/Settlement Privilege
No. 72 Entire document withheld	6/14/2012	Kenneth Manne, Esq.	David Fountain, Esq.	Letter re: Crystal River includes discussions re documents to be exchanged for the purposes of mediation and details re substance of mediation issues.	Mediation/Settlement Privilege
13DELAM-OPCPOD8-72-000128 / No. 72 Portion of document withheld	8/6/2012	Gregory Wilks	Gary Little	Portions of Letter re: Crystal River Unit 3 regarding substance of mediation issues.	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 82 Entire document withheld	4/2012	David Fountain, Esq.	Alex Glenn, Esq., Gary Little, Peter Gillon, Esq.; John O'Neill, Esq., Garry Miller; Jon Franke. Paul Newton, Esq.; Patricia Smith, Esq.;	Crystal River Unit #3 Meeting with NEIL presentation (containing attorneys' mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	11/3/2011	L.D. Simmons II, Esq.	Gary Little, David Fountain, Esq.	Memorandum re: Crystal River Delamination Claim Against NEIL Master Coverage Analysis (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	1/29/2009	Peter Gillon, Esq.; John O'Neill, Esq.	Dave Conley, Esq.	Memorandum re Crystal River Unit 3 Initial Coverage Analysis (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	2/26/2010	Peter Gillon, Esq.; John O'Neill, Esq.	Dave Conley, Esq., Gary Little	Memorandum re: Crystal River Unit 3 Summary of Initial Coverage Analysis Concerning Root Cause Issues (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
Nos. 81, 82 Entire document withheld	9/2012	LD Simmons II, Esq.	David Fountain, Esq.; Marc Manly, Esq.	Progress Energy v. NEIL CR3 Delamination Repair Case Update September 2012 (containing attorney mental impressions)	Attorney Client Communication Attorney Work Product
No. 72 Entire document withheld	12/1/2011	Kenneth Manne, Esq.	David Fountain, Esq.	Letter re: Meeting on December 2, 2011 (setting forth protections in Federal Rules of Evidence) includes discussion re issues to be	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
				mediated and protocols.	
No. 71 Entire document withheld	10/10/2012	Court reporter	L.D. Simmons II, Esq. Joshua D. Davey, Esq., Edgar M. Roach, Jr., Esq., Jack McKay, Esq., David Zaslowsky, Esq., Jacob M. Kaplan, Esq., Russell F.A. Riviere, Esq., Kenneth Manne, Esq., Andrew S. Amer, Esq.	Examination under oath transcript of Chong Chiu taken for the purposes of mediation includes discussion of mediation issues.	Mediation/Settlement Privilege
No. 71 Entire document withheld	10/11/2012	Court reporter	L.D. Simmons II, Esq. Joshua D. Davey, Esq., Edgar M. Roach, Jr., Esq., Jack McKay, Esq., David Zaslowsky, Esq., Jacob M. Kaplan, Esq., Russell F.A. Riviere, Esq., Kenneth Manne, Esq., Andrew S. Amer, Esq.	Examination under oath transcript of Chong Chiu taken for the purposes of mediation includes discussion of mediation issues.	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
No. 71 Entire document withheld	10/3/2012	Court reporter	L.D. Simmons II, Esq. Joshua D. Davey, Esq., Edgar M. Roach, Jr., Esq., Jack McKay, Esq., David Zaslowsky, Esq., Jacob M. Kaplan, Esq., Kenneth Manne, Esq., Andrew S. Amer, Esq.	Examination under oath transcript of Ronald Knott taken for the purposes of mediation includes discussion of mediation issues.	Mediation/Settlement Privilege
No. 71 Entire document withheld	10/16/2012	Court reporter	L.D. Simmons II, Esq. Edgar M. Roach, Jr., Esq., Jack McKay, Esq., David Zaslowsky, Esq., Jacob M. Kaplan, Esq., Kenneth Manne, Esq., Andrew S. Amer, Esq., Paul Newton, Esq.	Examination under oath transcript of Garry Miller taken for the purposes of mediation includes discussion of mediation issues.	Mediation/Settlement Privilege
No. 71 Entire document withheld	10/17/2012	Court reporter	L.D. Simmons II, Esq. Edgar M. Roach, Jr., Esq., Jack McKay, Esq., David Zaslowsky, Esq., Jacob M. Kaplan, Esq., Kenneth Manne, Esq., Andrew S. Amer, Esq., Paul Newton, Esq.	Examination under oath transcript of Garry Miller taken for the purposes of mediation includes discussion of mediation issues.	Mediation/Settlement Privilege

Bates No./ Request	Date	Author	Recipient	Description	Privilege
13DELAM- OPCPOD8- 82-000005 Portion of document withheld	5/2010	Gary Little	Gary Little	Redacted portion of Gary Little notes relating to attorney work product and advice received.	Attorney Client Communication Attorney Work Product

Docket No. 100437-EI – Motion for Reconsideration

ATTACHMENT C



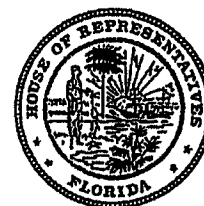
DON GAETZ
President of the Senate

J.R. Kelly
Public Counsel

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
1-800-342-0222

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV



WILL WEATHERFORD
Speaker of the House of Representatives

May 1, 2013

John T. Burnett
Duke Energy Florida
P.O. Box 14042
St. Petersburg, FL 33733-4042

Re: Docket No. 100437-EI; Prudence Associated NEIL claim relative to the CR3 Delaminations.

Dear John:

In preparation for the testimony that will be needed in this case, and given the very short timeframe for conducting discovery, the Public Counsel requests that Duke Energy Florida, Inc. (Duke) make available the individuals listed below and indicate your willingness to make them available in the time frame of May 20, 2013 through July 3, 2013. The OPC makes this request based on the information that the individuals have related to the issues of Duke's pursuit of the claim(s) for insurance payments related to the CR3 delaminations as described in the attached table (excerpted from page 7 of your April 26, 2013 reply brief).

While we recognize that not all of the individuals are employees of Duke, all were or are vendors or retirees of Duke or its affiliates. We have attempted to list the deponents in the order of importance with respect to timeliness. However, it should be noted that all of the prospective deponents are at a minimum critical to the case and the OPC must have an opportunity to interview them in deposition in order to test the prudence of Duke's decisions and actions.

The Public Counsel is requesting subpoenas from the Office of Commission Clerk for the individuals listed with an asterisk (*). I am requesting your assistance in making them available and to that end would request that you indicate your willingness to accept service in lieu of personal service for each of the individuals so noted with an (*).

This list is preliminary and will likely expand as further information is evaluated. The individuals to be deposed are the following (and some aspect of their relevance is indicated based on OPC's belief and information):

May 1, 2013

Page 2

1. Gary Little – Duke Risk Management manager
2. Mike Delowery – CR3 repair project manager
3. Alex Glenn – Duke Energy Florida State President and former General Counsel
4. Garry Miller – Duke VP and responsible for CR3 repair
5. Dhiaa Jamil – Duke Chief Nuclear Officer
6. Jon Franke* -- Former CR3 Station VP
7. John Elnitsky – Duke VP
8. Bill Johnson* -- Former Progress Energy and Duke Energy CEO
9. Jeff Lyash* -- Former Duke Executive VP and former Progress Energy Florida President
10. John McArthur* -- Former Duke Executive VP
11. Jim Rogers – Current Duke Energy Chairman, President and CEO
12. Jim Reisch – Duke Director
13. David Ripsom (NEIL) – NEIL CEO
14. Ken Manne (NEIL) – NEIL Executive and General Counsel
15. Vincent Dolan* -- Former Progress Energy Florida President
16. Javier Portuondo – Duke Regulatory Accounting
17. Mark Mulhern* -- Former Progress CFO
18. John D. Baker, II* - Former Duke Director
19. Theresa Stone* -- Former Duke Director
20. Ann Maynard Gort Gray – Duke Managing Director
21. Michael Browning – Duke Director
22. Julie Moran (NEIL)* -- Senior Claims Coordinator

This letter is being sent to begin a dialogue on how the OPC can both interview individuals vital to the parties and the Commission understanding key facts in this NEIL aspect of the case and maintain the schedule that has been established by the Third OEP (issued April 26, 2013). The above individuals have important information and the timely availability of the individuals will have an essential bearing on the ability of the OPC and other Intervenors to properly and adequately prepare testimony and even have chance to meet what we believe to be an extremely challenging schedule.

Please advise at your earliest convenience when we can discuss Duke's willingness to make these individuals available so that notices can be prepared (or subpoenas issued) and the associated logistics can be arranged.

Thank you for your consideration. I look forward to discussing this matter with you.

Sincerely,



Charles J. Rehwinkel
Deputy Public Counsel

Attachment

cc: parties of record; docket file

ATTACHMENT

Intervenor Assertion	Page in Joint Brief	PEF Position
The Commission can consider the NEIL policies.	12	PEF Agrees.
The Commission can consider invoices and documents submitted to NEIL.	12	PEF Agrees.
The Commission can consider PEF's course of dealing with NEIL.	12	PEF Agrees.
The Commission can consider interactions at all corporate levels between PEF and NEIL.	12	PEF Agrees.
The Commission can consider PEF's overall corporate motivation for accepting the NEIL settlement.	12	PEF Agrees.
The Commission can consider the impact of the merger on PEF's motivation for accepting the NEIL settlement.	12	PEF Agrees.
The Commission can consider insurance recovery strategies that PEF did not pursue in resolving its claims with NEIL.	12	PEF Agrees.
The Commission can consider how insurance claims were processed.	12	PEF Agrees.
The Commission can consider the amount received from NEIL relative to the policy limits.	12	PEF Agrees.
The Commission can consider whether the insurance claims were handled properly.	12	PEF Agrees.
The Commission can consider why NEIL stopped making payments to PEF.	13	PEF Agrees.
The Commission can consider why PEF made public statements about full applicability of the policy limits in conjunction with the ultimate amount received from NEIL.	13	PEF Agrees.
The Commission can consider the nature of the NEIL policy provisions and policy changes over time.	13	PEF Agrees.
The Commission can consider the relationship between PEF and NEIL.	13	PEF Agrees.

Docket No. 100437-EI – Motion for Reconsideration

ATTACHMENT D



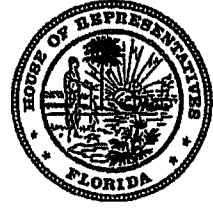
DON GAETZ
President of the Senate

J.R. Kelly
Public Counsel

STATE OF FLORIDA
OFFICE OF PUBLIC COUNSEL

c/o THE FLORIDA LEGISLATURE
111 WEST MADISON ST.
ROOM 812
TALLAHASSEE, FLORIDA 32399-1400
1-800-342-0222

EMAIL: OPC_WEBSITE@LEG.STATE.FL.US
WWW.FLORIDAOPC.GOV



WILL WEATHERFORD
*Speaker of the House of
Representatives*

May 1, 2013

Ann Cole
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

**Re: Prudence Associated NEIL claim relative to the CR3 Delaminations
in 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.**

Dear Ms Cole:

In preparation for the testimony that will be needed in this case, and given the very short timeframe for conducting discovery, the Public Counsel respectfully requests subpoenas for depositions for the individuals shown below. This list is preliminary and will likely expand as further information is evaluated. If further subpoenas are needed, we will make the request at that time. The individuals to be deposed are the following (and some aspect of their relevance to this case is described based on currently available information):

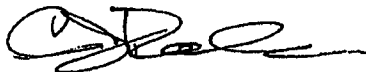
1. Jon Franke* – Former CR3 Station VP
2. Bill Johnson* – Former Progress Energy and Duke Energy CEO
3. Jeff Lyash* – Former Duke Executive VP and former Progress Energy Florida President
4. John McArthur* – Former Duke Executive VP
5. David Ripsom (NEIL)* – NEIL CEO
6. Ken Manne (NEIL)* – NEIL Executive and General Counsel
7. Vincent Dolan* – Former Progress Energy Florida President
8. Mark Mulhearn* – Former Progress CFO
9. John D. Baker, II* – Former Duke Director
10. Theresa Stone* – Former Duke Director
11. Julie Moran (NEIL)* – Senior Claims Coordinator

May 1, 2013
Page 2

We will be coordinating with Duke regarding scheduling depositions of the other fact witnesses listed in the letter to John Burnett dated May 1, 2013 and filed in this docket. We will file the appropriate notices of deposition with the Commission, setting forth the date, time, and locations of the depositions.

Please advise when we can pick up the subpoenas for these witnesses or if other information is needed. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Rehwinkel', with a long horizontal flourish extending to the right.

Charles J. Rehwinkel
Deputy Public Counsel

cc: parties of record; docket file

Docket No. 100437-EI – Motion for Reconsideration

ATTACHMENT E



Duke Energy
PEF-151 | 299 First Avenue North
St. Petersburg, FL 33701

John T. Burnett
Deputy General Counsel
Duke Energy Florida, Inc.

May 3, 2013

Charles Rehwinkle
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison St., Room 812
Tallahassee, FL 32399-1400

Re: Docket No.: 100437-EI

Dear Charles:

I am responding to your May 1, 2013 letter requesting that Duke Energy produce for deposition the twenty-two individuals you identified in your letter. As you acknowledge in your letter, many of these individuals are not Duke employees, and some are not vendors or retirees of Duke, as you suggest in your letter. Rather, they are employees of independent companies. I understand from your letter that you have requested the Florida Public Service Commission to issue subpoenas to these individuals. As explained in more detail below, Duke does not control these individuals and does not have their authorization or the authorization of their employers to accept service of any deposition subpoena or notice on their behalf. Duke will, however, endeavor to produce its employees that were identified in your letter for deposition within the May 20, 2013 to July 3, 2013 time period requested.

To fully address your request, below is our response to your request for depositions for each of the twenty two individuals that you identified in your letter:

1. **Gary Little:** Mr. Little has retired and is in the process of leaving the Company. Nevertheless, we will endeavor to contact Mr. Little and produce him for deposition within the time frame that you identified in your letter. We need to get proposed dates from you so that we can discuss them with Mr. Little.
2. **Mike Delowery:** Mr. Delowery is a current Duke employee and we will produce him for deposition within the time frame that you identified in your letter. We need to get proposed dates from you so that we can discuss them with Mr. Delowery.
3. **Mr. Glenn:** Mr. Glenn is a current Duke employee and we will produce him for deposition within the time frame that you identified in your letter. We need to get proposed dates from you so that we can discuss them with Mr. Glenn.

4. Mr. Miller: Mr. Miller is a current Duke employee and we will produce him for deposition within the time frame that you identified in your letter. We need to get proposed dates from you so that we can discuss them with Mr. Miller.

5. Mr. Jamil: Mr. Jamil is a current Duke employee and we will produce him for deposition within the time frame that you identified in your letter. We need to get proposed dates from you so that we can discuss them with Mr. Jamil.

6. Mr. Franke: Mr. Franke is not a Duke employee and he is currently employed with another utility company, PPL Corporation, or one of its subsidiaries. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Franke or his current employer.

7. Mr. Elnitsky: Mr. Elnitsky is a current Duke employee. We are not sure why you want to depose Mr. Elnitsky given his limited involvement with the CR3 containment building repairs and his lack of any involvement with respect to the information included in the table to your letter. Perhaps we can discuss Mr. Elnitsky's deposition so you can decide if you need his deposition, but if you decide you do, we will produce him for deposition within the time frame that you identified in your letter. We will need at that point proposed dates from you so that we can discuss them with Mr. Elnitsky.

8. Mr. Johnson: Mr. Johnson is not a Duke employee. He is currently employed as the CEO of another utility company, TVA Corporation. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Johnson or his current employer.

9. Mr. Lyash: Mr. Lyash is not a Duke employee. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Lyash.

10. Mr. McArthur: Mr. McArthur is not a Duke employee. As a result, we do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. McArthur.

11. Mr. Rogers: As you know, Mr. Rogers is the current Chairman, President, and CEO for Duke Energy Corporation. Given his responsibilities as the Chairman, President, and CEO of Duke Energy Corporation, we request that we discuss the need for his deposition after you have taken the deposition of Mr. Glenn. Mr. Glenn will be the Company's witness to explain the prudence of the decision to settle with NEIL. Mr. Glenn was a member of senior management and led the senior management recommendation to settle with NEIL. Mr. Glenn presented this recommendation to the Duke Energy Corporation Board of Directors and the Duke Energy Board accepted this recommendation. Mr. Glenn will provide you with the information you need to understand why the Company decided to settle with NEIL. Once you have this information we believe you may determine that you do not need to depose Mr. Rogers.

12. Mr. Reinsch: Mr. Reinsch is an independent director of Duke Energy Corporation. Given his position and responsibilities outside Duke Energy Corporation, we request that we discuss the need for his deposition after you have taken the deposition of Mr. Glenn. Mr. Glenn will be the Company's witness to explain the prudence of the decision to settle with NEIL. Mr. Glenn was a member of senior management and led the senior management recommendation to settle with NEIL. Mr. Glenn presented this recommendation to the Duke Energy Corporation Board of Directors and the Duke Energy Board accepted this recommendation. Mr. Glenn will provide you with the information you need

to understand why the Company decided to settle with NEIL. Once you have this information we believe you may determine that you do not need to depose Mr. Reinsch.

13. David Ripsom: Mr. Ripsom is employed by the Nuclear Electric Insurance Limited (NEIL). We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Ripsom or NEIL.

14. Mr. Manne: Mr. Manne is employed by NEIL. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Manne or NEIL.

15. Mr. Dolan: Mr. Dolan is not a Duke employee. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Dolan.

16. Mr. Portuondo: Mr. Portuondo is a current Duke employee and we will produce him for deposition within the time frame that you identified in your letter. We need to get proposed dates from you so that we can discuss them with Mr. Portuondo.

17. Mr. Mulhern: Mr. Mulhern is not a Duke employee. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Mulhern.

18. Mr. Baker: Mr. Baker is not a Duke employee or a current member of the Duke Energy Corporation Board of Directors. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Baker.

19. Mrs. Stone: Mrs. Stone is not a Duke employee or a current member of the Duke Energy Corporation Board of Directors. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mr. Stone.

20. Mrs. Gray: Mrs. Gray is an independent director of Duke Energy Corporation. Given her position and responsibilities outside Duke Energy Corporation, we request that we discuss the need for her deposition after you have taken the deposition of Mr. Glenn. Mr. Glenn will be the Company's witness to explain the prudence of the decision to settle with NEIL. Mr. Glenn was a member of senior management and led the senior management recommendation to settle with NEIL. Mr. Glenn presented this recommendation to the Duke Energy Corporation Board of Directors and the Duke Energy Board accepted this recommendation. Mr. Glenn will provide you with the information you need to understand why the Company decided to settle with NEIL. Once you have this information we believe you may determine that you do not need to depose Mrs. Gray.

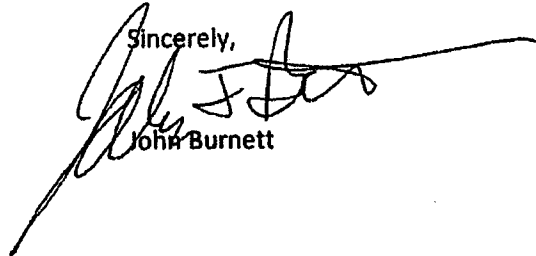
21. Mr. Browning: Mr. Browning is an independent director of Duke Energy Corporation. Given his position and responsibilities outside Duke Energy Corporation, we request that we discuss the need for his deposition after you have taken the deposition of Mr. Glenn. Mr. Glenn will be the Company's witness to explain the prudence of the decision to settle with NEIL. Mr. Glenn was a member of senior management and led the senior management recommendation to settle with NEIL. Mr. Glenn presented this recommendation to the Duke Energy Corporation Board of Directors and the Duke Energy Board accepted this recommendation. Mr. Glenn will provide you with the information you need to understand why the Company decided to settle with NEIL. Once you have this information we believe you may determine that you do not need to depose Mr. Browning.

22. Mrs. Moran: Mrs. Moran is employed by NEIL. We do not have the authority to accept service of a subpoena or notice for deposition on behalf of Mrs. Moran or NEIL.

With the exception of Mr. Rogers, we agree to produce the Company's employees for deposition that you identified in your May 1, 2013 letter and we are ready to discuss the logistics of these depositions once you determine which depositions you actually want to take at this time. We understand that you are currently pursuing subpoenas for the depositions of the identified individuals in your letter who are not Company employees or who have not authorized the Company to accept service of a deposition subpoena or notice on their behalf. With respect to Mr. Rogers and the Duke Energy directors identified in your letter, we believe it is more efficient and proper to discuss their depositions after you have taken the deposition of the Company's employees, in particular, Mr. Glenn.

Please let me know when you are ready to discuss the logistics of these depositions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Burnett", with a long horizontal flourish extending to the right.

John Burnett