

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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IN RE: NUCLEAR COST  
RECOVERY CLAUSE

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Docket No. 090009-EI  
Submitted for filing: August 14, 2009

**PEF'S OBJECTIONS TO CITIZENS' SEVENTH  
SET OF INTERROGATORIES (NO. 73)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.350 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure in this matter, Progress Energy Florida, Inc. ("PEF") hereby serves its objections to Office of Public Counsel's ("OPC" or "Citizens") Seventh Set of Interrogatories (No. 73) and states as follows:

**GENERAL OBJECTIONS**

PEF will make all responsive documents available for inspection and copying at the offices of PEF, 106 E. College Ave., Suite 800, Tallahassee, Florida, 32301 at a mutually-convenient time, or will produce the documents in some other manner or at some other place that is mutually convenient to both PEF and OPC for purposes of inspection, copying, or handling of the responsive documents.

With respect to any "Definitions" and "Instructions" in OPC's Interrogatories, PEF objects to any definitions or instructions that are inconsistent with PEF's discovery obligations under applicable rules. If some question arises as to PEF's discovery obligations, PEF will comply with applicable rules and not with any of OPC's definitions or instructions that are inconsistent with those rules. Furthermore, PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. No responses to the requests will be made on behalf of persons or entities

other than PEF. PEF also objects to OPC's request that PEF provide documents in a specific electronic format. Furthermore, PEF objects to any request that calls for PEF to create documents that it otherwise does not have because there is no such requirement under the applicable rules and law.

Additionally, PEF generally objects to OPC's Interrogatories to the extent that they call for documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law. PEF will provide a privilege log in accordance with the applicable law or as may be agreed to by the parties to the extent, if at all, that any document request calls for the production of privileged or protected documents.

Further, in certain circumstances, PEF may determine upon investigation and analysis that documents responsive to certain requests to which objections are not otherwise asserted are confidential and proprietary and should be produced only under an appropriate confidentiality agreement and protective order, if at all. By agreeing to provide such information in response to such a request, PEF is not waiving its right to insist upon appropriate protection of confidentiality by means of a confidentiality agreement, protective order, or the procedures otherwise provided by law or in the Order Establishing Procedure (the "Order"). PEF hereby asserts its right to require such protection of any and all information that may qualify for protection under the Florida Rules of Civil Procedure, the Order, and all other applicable statutes, rules and legal principles.

PEF generally objects to Citizens' Interrogatories to the extent that they call for the production of "all" documents of any nature, including, every copy of every document responsive to the requests. PEF will make a good faith, reasonably diligent attempt to identify

and obtain responsive documents when no objection has been asserted to the production of such documents, but it is not practicable or even possible to identify, obtain, and produce “all” documents. In addition, PEF reserves the right to supplement any of its responses to OPC’s Interrogatories if PEF cannot produce documents immediately due to their magnitude and the work required to aggregate them, or if PEF later discovers additional responsive documents in the course of this proceeding.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to OPC’s discovery at the time PEF’s response is due under the Florida Rules of Civil Procedure and the Order. PEF provides these general objections at this time to comply with the intent of the Order to reduce the delay in identifying and resolving any potential discovery disputes.

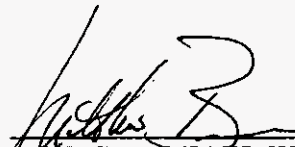
#### **SPECIFIC OBJECTIONS**

**Request 73:** PEF objects to OPC’s Interrogatory number 73 in its entirety. The Order Establishing Procedure entered by the Prehearing Officer in this docket (Order No. PSC-09-0137-PCO-EI, entered March 6, 2009) states that “[u]nless subsequently modified by the Prehearing Officer . . . Discovery shall be completed by August 17, 2009.” See Order No. PSC-09-0137-PCO-EI, at 2. PEF concedes that Section VIII the Order also states that the “Last Day to Conduct Discovery” is August 21, 2009, see id. at 8, and as such there may be some confusion as to the Discovery cut-off date; however, any such confusion is now a moot point. The Prehearing Officer has issued no order modifying the Discovery cut-off date, thus the last day to file a Discovery request that would have allowed a party the full 20-days to respond was Friday, July 21<sup>st</sup>, 2009. As such, OPC’s Seventh Set of Interrogatories, filed August 4, 2009, does not allow PEF the full 20 days in which to respond (regardless of whether August 17<sup>th</sup> or August 20<sup>th</sup>

is determined to be the actual discovery cut-off date) and is therefore in violation of the Order. As such, PEF objects to this discovery in its entirety and will not file a response thereto.

Further, were this interrogatory not untimely, which it is, PEF would object to it based on the fact that it asks for PEF to “describe the circumstances known to [PEF] or the consortium related to Duke Power Company’s decision to delay signing [its] EPC contract . . .” This interrogatory asks for PEF to provide information that is wholly irrelevant to this proceeding, and is not reasonably tailored to lead to the discovery of any admissible evidence. It also seeks to require a response from a third-party (i.e. the consortium) that is not a party to this proceeding and is therefore not subject to discovery. PEF objects to any request which seeks information that is beyond the scope of discovery.

Respectfully submitted,



JAMES MICHAEL WALLS  
Florida Bar No. 0706242  
DIANNE M. TRIPLETT  
Florida Bar No. 0872431  
MATTHEW R. BERNIER  
Florida Bar No. 0059886  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
(813) 223-7000 / FAX: (813) 229-4133

R. ALEXANDER GLENN  
General Counsel  
JOHN BURNETT  
Associate General Counsel  
PROGRESS ENERGY SERVICE  
COMPANY, LLC  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
(727) 820-5587 / FAX: (727) 820-5519

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 14<sup>th</sup> day of August, 2009.

  
ATTORNEY

MR. PAUL LEWIS, JR.  
Progress Energy Florida, Inc.  
106 East College Avenue, Ste. 800  
Tallahassee, FL 32301-7740  
(850) 222-8738 / FAX: (850) 222-9768  
Email: [paul.lewisjr@pgnmail.com](mailto:paul.lewisjr@pgnmail.com)

CHARLES REHWINKEL  
Associate Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
(850) 488-9330  
Email: [rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)

KEINO YOUNG  
LISA BENNETT  
JENNIFER BRUBAKER  
ANNA WILLIAMS  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee 32399  
(850) 413-6218 / FAX: (850) 413-6184  
Email: [kyoung@psc.state.fl.us](mailto:kyoung@psc.state.fl.us)  
[lbennett@psc.state.fl.us](mailto:lbennett@psc.state.fl.us)  
[jbrubake@psc.state.fl.us](mailto:jbrubake@psc.state.fl.us)  
[awilliams@psc.state.fl.us](mailto:awilliams@psc.state.fl.us)

VICKI GORDON KAUFMAN  
JON C. MOYLE, JR.  
118 North Gadsden Street  
Tallahassee, FL 32301  
(850) 681-3828 / FAX: (850) 681-8788  
Email: [vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
[jmoyle@kagmlaw.com](mailto:jmoyle@kagmlaw.com)

HONORABLE CHARLES S. DEAN  
Senate Majority Whip  
411 Tomkins Street  
Inverness, FL 34450  
Phone: (352) 860-5175

JOHN W. MCWHIRTER  
McWhirter Law Firm  
Post Office Box 3350  
Tampa, FL 33601-3350  
(813) 224-0866 / FAX: (813) 221-1854  
Email: [jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

BRYAN S. ANDERSON  
JESSICA CANO  
Florida Power & Light  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
(561) 691-7101 / FAX: (561) 691-7135  
Email: [bryan.anderson@fpl.com](mailto:bryan.anderson@fpl.com)  
[Jessica.cano@fpl.com](mailto:Jessica.cano@fpl.com)

JAMES W. BREW  
F. ALVIN TAYLOR  
Brickfield Burchette Ritts & Stone, PC  
1025 Thomas Jefferson St NW  
8th FL West Tower  
Washington, DC 20007-5201  
(202) 342-0800 / FAX: (202) 342-0807  
Email: [jbrew@bbrslaw.com](mailto:jbrew@bbrslaw.com)  
[ataylor@bbrslaw.com](mailto:ataylor@bbrslaw.com)

E. LEON JACOBS, JR.  
Southern Alliance for Clean Energy, Inc.  
c/o Williams Law Firm  
1720 S. Gadsden Street MS 14, Ste. 20  
Tallahassee, FL 32301  
(850) 222-1246 / FAX: (850) 599-9079  
Email: [Ljacobs50@comcast.net](mailto:Ljacobs50@comcast.net)

RANDY B. MILLER  
White Springs Agricultural Chemicals, Inc.  
P.O. Box 300  
White Springs, FL 32096  
Email: [RMiller@pcsphosphate.com](mailto:RMiller@pcsphosphate.com)

GARY A. DAVIS  
JAMES S. WHITLOCK  
Gary A. Davis & Associates  
P.O. Box 649  
Hot Springs, NC 28743  
(828) 622-0044  
Email: [gadavis@enviroattorney.com](mailto:gadavis@enviroattorney.com)  
[jswhitlock@enviroattorney.com](mailto:jswhitlock@enviroattorney.com)

HONORABLE MIKE FASANO  
8217 Massachusetts Avenue  
New Port Richey, FL 34653  
(727) 485-5885 / FAX: (727) 841-4453

CAPTAIN SHAYLA L. MCNEILL  
AFLOA/JACL-ULT  
AFCESA  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, FL 32403  
(850) 283-6663 / FAX: (850) 283-6219  
Email: [shayla.mcneill@tyndall.af.mil](mailto:shayla.mcneill@tyndall.af.mil)

EDGAR M. ROACH, JR.  
McGuire Woods  
2600 Two Hanover Square  
P.O. Box 27507 (27611)  
Raleigh, NC 27601  
(919) 755-6690 / Fax: (919) 755-6593