

# Powering Through Industry Flux

*Progress Energy Florida, Inc. and Carlton Fields, P.A.*

By Scott M. Gawlicki

America's electric power industry has literally been turned inside out over the last decade. In many parts of the country, competition is now the watchword. Access to electric transmission is open, making it easier for sellers and end users to deal directly with one another.

Nobody knows that better than Alex Glenn, deputy general counsel for Progress Energy Service Company, a subsidiary of Raleigh, N.C.-based Progress Energy, Inc.

"I came here in 1996 and there have been changes impacting our operations virtually every year since," Glenn says. "In the 1990s, Florida considered and then rejected a plan to deregulate its electricity markets. In 2000, Florida Power merged with Carolina Power & Light to form Progress Energy. And now, to keep up with Florida's population growth, we're facing major transmission and power plant construction projects."

As a result, Progress Energy Florida, Inc.'s near-50-year legal partnership with outside counsel Carlton Fields, P.A. has changed as well.

"I'm no longer on the front lines, but it's interesting how different the issues are today compared to when I represented Florida Power in 1965," says Sylvia H. Walbolt, who chairs Carlton Fields' board of directors. "Back then our defense in most cases involved Public Services Commission regulations, which were designed to protect the utility. Now, with regulatory change and environmental concerns, the business has evolved to a whole new level."

"The partnership has grown in parallel with the complexity of the industry," adds Gary L. Sasso, a Carlton Fields shareholder and the firm's relationship partner who will become president and CEO of the firm in February 2006. "When the relationship



Photography by Jay Carlson

*Pictured from left are Sylvia H. Walbolt and Gary L. Sasso, Carlton Fields, P.A., and Alex Glenn, Progress Energy Service Company*

began in the early 1960s, the regulatory landscape was pretty stable. But it's changed dramatically in the last 10 years. Every matter we work on involves some type of legislative, regulatory or technological change."

## Rapid Growth Brings Big Changes

Progress Energy is a Fortune 250 diversified energy company with more than 24,000 megawatts of generation capacity and \$9 billion in annual revenues. Progress Energy Service Company's legal department provides legal services to Progress Energy, Inc., and its subsidiaries—including Progress Energy Florida, Inc.

The country's fourth most populous state, Florida continues to grow by leaps and bounds. According to the U.S. Census

Bureau, Florida's population grew by nearly 25 percent in the 1990s, and continues to rise by better than 2 percent annually. That growth, combined with changing federal and state laws, has altered the way the utility serves its customers.

For example, although Florida rejected deregulation, its electric utilities are still bound by relatively new federal regulations that allow large customers to use their wires to import power from alternative suppliers—usually other in-state investor-owned or municipal utilities.

That, in turn, has affected the 30-year "franchise" agreements Progress Energy has with 110 Florida municipalities. Some of the agreements, which cover the rights-of-way Progress Energy needs to operate the local electrical distribution system, included



Alex Glenn, Progress Energy Service Company

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a clause that gave each municipality the option to purchase the system and operate as a municipal utility.

One municipality, Winter Park, recently exercised that right. That led to nearly four years of litigation, including two months of arbitration hearings to establish the price for the system. “The federal open access laws make it feasible for a municipality with no power plants to use Progress Energy’s wires to buy power from others,” explains Carlton Fields Shareholder James Michael “Mike” Walls. “Prior to that, a municipality like Winter Park would not have had that option.”

While the city wanted to value only the system’s equipment, Progress had to place a value on it as an ongoing, revenue-producing business concern. Further, the cost of separating the system from the utility-owned grid, and stranded costs—the costs incurred by the utility to build generating plants to power its territory—had to be figured into the price as well.

“I was the principal in-house lawyer and handled the day-to-day management of the case. As our principal outside litigation counsel, Carlton Fields handled the arbitration hearings,” Glenn says. “To build the case, they had to interact with most of the

major departments in the company, including accounting, operations and regulatory affairs.”

“We actually did a full inventory of all the assets in the city,” Walls adds. “We had to go out and count poles, electrical lines and substations, and place a value on the property under the substations. The arbitration award accounted for every aspect of value Progress Energy said should be included in the award. But it was a fully litigated proceeding.”

### **Fighting to Build**

Another somewhat similar issue is being driven by state legislation. With the state’s communities continuing to grow, acquiring land either voluntarily or through eminent domain in order to site new transmission lines has become increasingly difficult.

For example, in 1985, Florida implemented its Growth Management Act, which requires all local governments to plan for the impacts of development, including land use siting. In a recently decided test case, Gadsden County argued the act gave it the right to determine where new transmission lines could be placed within its boundaries. Unfortunately, Progress Energy was forced to sue, and the court ultimately ruled in its favor, saying power lines in established rights-of-way cannot be regulated by local governments.

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Nancy G. Linnan, Carlton Fields, P.A.

***“How do you site linear resources like power lines across the state when you’ve got 476 local governments thinking they can tell you where you can and cannot build?”***

## partnership at a glance

### **Progress Energy Florida, Inc.**

Like many power companies, it began with ice. In the early 1890s, the St. Petersburg Ice Company delivered its product to customers for food preservation. In 1896, the company offered to provide electricity from its generator to power 30 downtown streetlights.

Then, in 1899, the company became the St. Petersburg Electric Light & Power Company, providing electricity to the city through the company’s first “franchise.” St. Petersburg Electric Light & Power later became Florida Power and, over the next century, grew into the second-largest provider of electricity in Florida. Today, after merging into the Progress Energy family, Florida Power has been

renamed Progress Energy Florida, Inc., serving more than 1.6 million customers in 32 counties. The utility generates more than 9,000 megawatts of power and has more than \$4.3 billion in assets.

**Alex Glenn joined Progress Energy in 1996 after working in the Energy and Litigation department at the Washington, D.C., office of Morgan, Lewis & Bockius LLP.**

**As deputy general counsel-Florida of Progress Energy Service Company, he manages the Florida legal operations for the company. Progress Energy Service Company’s legal department serves the holding company, Progress Energy, Inc., and its subsidiaries, including Progress Energy Florida, Inc.**

where you can and cannot build?” says Carlton Fields Shareholder Nancy G. Linnan. “We have been forced into substantial education, negotiation and now litigation. I used to be the only one doing this, but we recently had to create a team just to keep up.”

That tension promises only to increase with Progress Energy preparing to build a new nuclear and/or coal-fired “base load” power plant to quench the state’s increasing thirst for electricity. Glenn says the utility is currently in the early stages of what will probably be a 10- to 15-year project development process.

“From an environmental standpoint, natural gas plants are easier to permit and build. But the price volatility of gas increases the

Shareholder Robert W. “Bob” Pass. “At that time, nuclear power was a new technology. Today it’s a different environment. They’ve got the federal Energy Policy Act of 2005 behind them, which is designed to stimulate new nuclear power generation.”

“You’re looking at a lead time of up to 12 years to build one of these plants, so they have to start now,” Walls adds. “We have to examine a lot of interrelated issues. For example, what legislation or regulatory measures will impact the price of the proposal? Nobody’s built a nuclear plant in 30 years. We need to determine what can be done to build some cost certainty into the siting and permitting process.”

Suffice to say, Progress Energy will keep Carlton Fields very busy in the years to come.



*Pictured from left are Alex Glenn, Progress Energy Service Company; James Michael “Mike” Walls, Nancy G. Linnan and Robert W. “Bob” Pass, Carlton Fields, P.A.*

cost of electricity,” Glenn explains. “For a larger base load plant, there are really only two viable options—coal or nuclear generation.”

As such, Glenn has Carlton Fields examining the regulatory side of the proposal—including the environmental requirements imposed by Florida for both power plant technologies and the high-voltage transmission system that will distribute the electricity once the plant is built.

## New Nukes

“We represented them when they built their first (and only) nuclear plant—the Crystal River Nuclear Plant near Crystal River, Fla., back in the late 1970s,” says Carlton Fields

“Considering the population boom in Florida, building the base load plant and adding new transmission capacity are probably our two most critical issues,” Glenn concludes. “They will impact both the overall reliability of the grid and, in turn, the success of the company.”

“In a way, it’s strange,” Pass adds. “In general, the public tends to regard Progress Energy and other electric utilities as being part of a very staid and unchanging industry. And that’s just not true.”

partnership  
at a glance

## Carlton Fields, P.A.

Carlton Fields attorneys are uniquely positioned to help electric utilities like Progress Energy take full advantage of the ever-changing competitive landscape. The Progress Energy team includes:

**Sylvia H. Walbolt**, shareholder, chairs the firm’s board of directors. She handles federal and state appeals in all areas including tort, products liability, commercial, constitutional and employment discrimination cases. Contact Sylvia at [swalbolt@carltonfields.com](mailto:swalbolt@carltonfields.com).

**Gary L. Sasso**, shareholder, chairs the firm’s Litigation Practice Group, its Securities and Derivative Litigation Practice Group and is the firm’s CEO-elect. He represents business clients in the energy, financial services, manufacturing, and services sectors in complex litigation at trial and appellate levels, including securities and consumer class actions, contract disputes, internal investigations and constitutional litigation. Contact Gary at [gsasso@carltonfields.com](mailto:gsasso@carltonfields.com).

**James Michael “Mike” Walls**, shareholder, represents public utilities and other clients in complex business litigation, including class actions, contract and warranty disputes, administrative litigation, securities and shareholder derivative cases, and commercial arbitrations. Contact Mike at [mwalls@carltonfields.com](mailto:mwalls@carltonfields.com).

**Nancy G. Linnan**, shareholder, is the firm’s Government Law and Consulting Practice Group leader. She practices primarily in environmental/land use and administrative law and government consulting. Contact Nancy at [nlinnan@carltonfields.com](mailto:nlinnan@carltonfields.com).

**Robert W. “Bob” Pass**, shareholder, heads the firm’s Energy Practice Group and has more than 25 years of experience in representing public utilities and other businesses in state, federal and administrative litigation, including regulatory matters, contract disputes, insurance litigation, commercial arbitrations, constitutional law challenges to state laws, class actions, banking litigation and local government litigation. Contact Bob at [rpass@carltonfields.com](mailto:rpass@carltonfields.com).