

ORIGINAL

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**Subject:** Docket 050078 - Documents for Filing

**Attachments:** PEF's objections to Staff's 4th POD.pdf; PEF's objections to Staff's 5th ROGs.pdf

<<PEF's objections to Staff's 4th POD.pdf>> <<PEF's objections to Staff's 5th ROGs.pdf>>

Attached for filing and e-service on behalf of Progress Energy Florida are the following documents:

1. PEF's objections to Staff's Fourth Set of Requests for Production (Nos. 42-46); and
2. PEF's objections to Staff's Fifth Set of Interrogatories (Nos. 143-157).

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6/17/2005

42-46  
DOCUMENT NUMBER - DATE  
05767 JUN 17 05

FPSC-COMMISSION CLERK

143-157  
DOCUMENT NUMBER - DATE  
05768 JUN 17 05

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition for rate increase by  
Progress Energy Florida, Inc.

Docket No. 050078-EI  
Submitted for filing:  
June 17, 2005

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**PEF'S OBJECTIONS TO STAFF'S FOURTH REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 42-46)**

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 the Staff of the Florida Public Service Commission's ("Staff") Fourth Request for Production of Documents (Nos. 42-46) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in Staff's Fourth Request for Production of Documents and will make all responsive documents available for inspection and copying at the offices of Progress Energy Florida, Inc., 106 E. College Ave., Tallahassee, Florida, 32301 at a mutually-convenient time, or will produce the documents in some other manner or at some other place that is mutually convenient to both PEF and Staff for purposes of inspection, copying, or handling of the responsive documents.

With respect to the "Definitions" in Staff's Fourth Request For Production (Nos. 42-46), 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 Staff's

definitions or instructions that are inconsistent with those rules. PEF also objects to any request that calls for documents to be produced from the files of PEF's outside or in-house counsel in this matter because such documents are privileged and/or work product and are otherwise not within the scope of discovery under the applicable rules and law. 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. 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 Staff's requests to the extent that they call for documents protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law. PEF will provide a privilege log 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. 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 Establishing Procedure, and all other applicable statutes, rules, and legal principles.

PEF generally objects to Staff's Fourth Request for Production to the extent that it calls for the production of "all" documents of any nature, including, every copy of every document responsive to the requests. PEF will make a good faith, reasonably diligent attempt to identify and obtain responsive documents when no objection has been asserted to the production of such documents, but it is not practicable or even possible to identify, obtain, and produce "all" documents. In addition, PEF reserves the right to supplement any of its responses to Staff's requests for production 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.

PEF also objects to any request that calls for projected data or information beyond the year 2006 because such data or information is wholly irrelevant to this case and has no bearing on this proceeding, nor is such data or information likely to lead to the discovery of admissible evidence. Furthermore, if a request does not specify a timeframe for which data or information is sought, PEF will interpret such request as calling only for data and information relevant to the years 2004-2006.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to Staff's discovery at the time PEF's response is due under the Florida Rules of Civil Procedure and the Order Establishing Procedure. PEF provides these general objections at this time to comply

with the intent of the Order Establishing Procedure to reduce the delay in identifying and resolving any potential discovery disputes.

**SPECIFIC OBJECTIONS**

**Request 46:** PEF must object to section (c) of this request to the extent it requires PEF to produce “all applicable PUHCA and SEC rules.” PEF will make a good faith, reasonably diligent attempt to identify and obtain all such rules, but it may not be practicable or even possible to identify, obtain, and produce “all” the requested rules. Additionally, PEF must object to sections (c) and (d) of this request to the extent that it requires PEF to create documents that otherwise do not exist or to prepare a study or do work for Staff that has not been done for PEF, presumably at PEF’s cost. Subject to these objections, if PEF has any documents responsive to this request, PEF will provide those documents to Staff.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 17<sup>th</sup> day of June, 2005 to all counsel of record as indicated below.

  
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