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Subject: Docket No. 050078 Documents for Filing
Attachments: PEF's PEF Resp to OPC's 1st Motion to Compel POD.pdf



PEF's PEF
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Attached for filing and e-service on behalf of Progress Energy Florida is Progress Energy Florida, Inc.'s Response to the Office of Public Counsel's First Motion to Compel Production of Documents.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050078-EI

**PROGRESS ENERGY FLORIDA, INC.'S RESPONSE TO THE OFFICE OF PUBLIC
COUNSEL'S FIRST MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Progress Energy Florida, Inc. ("PEF") responds to the Office of Public Counsel's ("OPC's") First Motion to Compel Production of Documents as follows:

1. On May 11, 2005, PEF received Request for Production No. 110 from OPC, which required PEF to provide "a complete copy of the most recent industry surveys associated with depreciation statistics in the possession of the Company and/or its outside consultant who performed the depreciation study."

2. In its response to this request for production, PEF placed two depreciation studies, entitled "AGA/EEI Survey of Depreciation Statistics: 2003 Results for Electric Companies" and "A Survey of Depreciation Statistics," on its privilege log and did not produce these documents because these studies are subject to a confidentiality provision which requires PEF to give notice to the owner of the information in the study and obtain consent from such owner before such documents are produced to any third party.

3. PEF contacted the American Gas Association ("AGA") and the Edison Electric Institute ("EEI") to comply with its obligations referred to above. Michael Murray, general counsel for AGA, and Bruce Brown, representative for EEI, subsequently indicated that neither AGA nor EEI would consent to the production of the depreciation studies at issue. Accordingly, to abide by its obligations to AGA and EEI, PEF informed OPC that AGA and EEI would not

give PEF permission to produce the documents at issue. Commensurate with this notification, PEF also provided OPC a copy of the document setting forth PEF's aforementioned obligations to AGA and EEI.

4. After OPC was notified of the response PEF received from AGA and EEI, OPC filed the instant motion to compel. In that motion, OPC first erroneously argues that the documents at issue should be produced because, according to some non-identified discovery response supposedly provided by PEF, PEF's depreciation consultant possessed the documents at the time he prepared PEF's depreciation study. OPC further argues that their expert witness, Mr. Pous, has reviewed past versions of this survey, but Mr. Pous does not suggest that he has reviewed the versions of the studies at issue here. Finally, OPC argues, again without the use of any supporting documentation, that the documents at issue contain publicly available information, irrespective of PEF's obligations to AGA and EEI to keep all the information in the documents confidential.

5. This Commission should not compel PEF to produce these studies, because they contain sensitive, proprietary business information relating to other utilities throughout the country, and the disclosure of such information, even pursuant to a confidentiality agreement, may be harmful to AGA and EEI members. As noted in the document setting forth a participant's obligations with respect to these studies, the integrity of the depreciation studies at issue depends on the absolute and complete confidentiality of the information provided in these studies. Without assurance that no outside parties will have access to the information at issue, PEF and other utilities may not be willing to participate in the depreciation studies at all, for fear that confidential and proprietary information will be disclosed to the public.

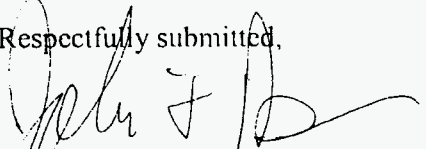
6. PEF has strictly maintained the confidentiality of the studies at issue. PEF has not shared the information contained in the studies with any outside party. PEF's depreciation expert does not have and has not relied on these depreciation studies. While PEF has produced extensive depreciation information regarding PEF in this proceeding, PEF has not provided anyone any non-PEF information from the studies, and PEF should not be compelled to produce confidential and proprietary information regarding third parties that are not parties to or involved in this proceeding.

7. In summary, the studies at issue contain confidential business information related to other utilities from around the country that PEF should not be forced to disclose. The integrity and efficacy of these depreciation studies depend upon all participants being assured that the information submitted to the study will be strictly maintained as confidential, and OPC has not shown why this non-PEF data should be produced in contravention of these assurances. Accordingly, PEF urges the Commission to deny this motion to compel production of the depreciation studies at issue, given the proprietary and confidential nature of the information contained in these studies.

Wherefore, PEF requests that this Motion to Compel be denied, and that PEF not be compelled to produce the depreciation studies at issue to OPC.

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Respectfully submitted,



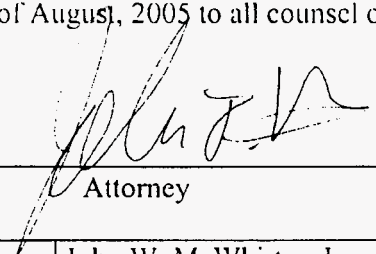
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 9th day of August, 2005 to all counsel of record as indicated below.



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