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 Sent: Friday, May 13, 2005 3:44 PM
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 Subject: Docket No. 050078.
 Attachments: PEF OBJECTIONS TO OPC 1ST REQ PROD.PDF



PEF

VS TO OPC :

Attached for filing and e-service on behalf of Progress Energy Florida is PEF's Objections to OPC's First Requests for Production of Documents (Nos. 1-75) [10 pages].

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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
Submitted for filing:
May 13, 2005

**PEF'S OBJECTIONS TO OPC'S FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS (NOS. 1-75)**

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 Office of Public Counsel's ("OPC") First Request for Production of Documents (Nos. 1-75) and states as follows:

GENERAL OBJECTIONS

PEF generally objects to the time and place of production requirement in OPC's First Request for Production of Documents and will make all responsive documents available for inspection and copying at the offices of Carlton Fields, P.A., 215 S. Monroe Street, Suite 500, 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 the "Definitions" and "Instructions" in OPC's First Request For Production (Nos. 1-75), 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. PEF objects to OPC's definitions "2" and "3" to the extent that OPC is attempting to seek information or documents from PEF's attorneys that is protected by the attorney-client privilege or work product doctrine. 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 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. PEF also objects to OPC's request that PEF provide documents in "a searchable 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 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 OPC's First 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 OPC'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.

PEF also objects to OPC's request for PEF to obtain and produce documents from Florida Power and Light Company ("FP&L") on page 1 and in request 31. PEF assumes that OPC's reference to FP&L is simply a typographical error, that OPC intended FP&L to mean PEF, and PEF will respond accordingly.

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 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 1: PEF objects to OPC's request number 1 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. If PEF has any responsive data in the electronic forms requested, PEF will provide that data to OPC in those forms. Otherwise, PEF will produce data to OPC in hard-copy format.

Request 3: PEF objects to OPC's request number 3 to the extent that the request calls for information for the year 2007. The 2007 projected information requested is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

Request 5: PEF objects to OPC's request number 5 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy") that are not within PEF's possession, custody, or control. PEF objects to any 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 use of the term "all documentation" in the request because such term is vague and ambiguous and, if read literally, makes the scope of request number 5 overbroad and unduly burdensome because "all documentation" that is "associated with" the change in the capitalization policy literally would encompass any and every document related to capital and O&M expenses that the Company may have. In response to this request, PEF will produce a copy of the new policy, cost benefit analyses or studies, if any, pertaining to the change in accounting for the 2005 prior year and the 2006 test year, and correspondence and memoranda, if any, discussing any changes in the policy, as described in the request, for the 2005 prior year and the 2006 test year. Finally, PEF objects to request number 5 to the extent it calls for any information protected by the attorney/client or work product privileges.

Request 13: PEF objects to OPC's request number 13 because the request calls for PEF to obtain documents from other entities (i.e. "PEF's parent company and any subsidiaries of affiliates") that are not within PEF's possession, custody, or control. PEF objects to any 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.

Request 16: PEF objects to OPC's request number 16 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy") that are not within PEF's possession, custody, or control. PEF further objects to request number 16 to the extent the term "any committees" used therein is meant to mean committees of entities other than PEF. PEF objects to any response 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. Additionally, as the request relates to entities other than PEF, PEF objects to request number 16 because the data requested is wholly irrelevant to this case and has no bearing on this proceeding, nor is that data likely to lead to the discovery of admissible evidence. Finally, PEF objects to request 16 to the extent it calls for any information protected by the attorney/client privilege or work product doctrine.

Request 33: PEF objects to request number 33 as overbroad and unduly burdensome because as drafted, request number 33 would technically call for PEF to produce all documents that are in any way related to bonuses to all of PEF's employees and corporate officers without any limitation. In response to this request, PEF will provide documents showing how PEF employee and corporate officers' bonuses were calculated during the time periods called for in the request, and PEF will provide the amounts of these payments for the time periods requested.

Request 61: PEF objects to request number 61 to the extent that it requests tax returns and tax information from or regarding entities other than PEF. PEF objects to any 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.

Request 66: PEF objects to OPC's request number 66 because the request appears to call for PEF to obtain documents from other entities (i.e. "work papers and source documents" from PEF's affiliates, subsidiaries, or parent company) that are not within PEF's possession, custody, or control. PEF objects to any 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 number 66 to the extent that the request calls for information for the year 2007. The 2007 projected information requested is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

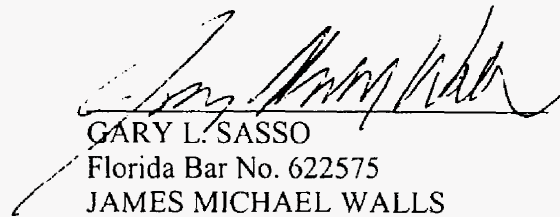
Request 67: PEF objects to OPC's request number 67 to the extent that the request calls for information for the year 2007. The 2007 projected information requested is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

Request 74: PEF objects to OPC's request number 74 to the extent that the request calls for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. If PEF has any responsive data in the electronic forms requested, PEF will provide that data to OPC in those forms. Otherwise, PEF will produce data to OPC in hard-copy format.

Request 75: PEF objects to OPC's request number 75 because it calls for documents that are irrelevant to this case. PEF's work papers underlying all its MFR schedules or any documents commenting, analyzing, or evaluating those MFR schedules

have no bearing on this proceeding, nor are they information likely to lead to the discovery of admissible evidence, because the MFRs the Company filed with the Commission contain the relevant information, by definition, upon the filing of the MFRs.


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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 13th day of May, 2005 to all counsel of record as indicated below.


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