

ORIGINAL

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 12, 2005

**PEF'S OBJECTIONS TO STAFF'S FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS TO PROGRESS ENERGY FLORIDA INC. (NOS. 1-24)**

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 Florida Public Service Commission Staff's ("Staff"), First Request for Production of Documents to Progress Energy Florida, Inc. (Nos. 1-24) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in Staff'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,

CMP \_\_\_\_\_ Tallahassee, Florida, 32301 at a mutually-convenient time, or will produce the documents in  
COM \_\_\_\_\_ some other manner or at some other place that is mutually convenient to both PEF and Staff for  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_ purposes of inspection, copying, or handling of the responsive documents.

GCL \_\_\_\_\_ While PEF will endeavor to respond to Staff's discovery requests whenever possible,  
OPC \_\_\_\_\_ PEF respectfully objects to any discovery requests that are improper or inconsistent with PEF's  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_ discovery obligations under applicable rules and the Order. If some question arises as to PEF's

SCR \_\_\_\_\_ discovery obligations, PEF will comply with applicable rules and Order. For example, PEF  
SEC   1   objects to any discovery request that attempts to seek information or documents from the files of  
OTH \_\_\_\_\_

PEF's outside and in-house attorneys that is protected by the attorney-client privilege or work product doctrine and is otherwise not within the scope of discovery under the applicable rules and law. Furthermore, PEF objects to any request that seeks to encompass persons or entities other than PEF who are not parties to this proceeding 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 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 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 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 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 4:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 4 because that request calls, in part, 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.

**Request 5:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 5 because that request calls, in part, 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.

**Request 6:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 6 because that request calls, in part, 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.

**Request 7:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 7 because that request calls, in part, 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.

**Request 8:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 8 because that request calls, in part, 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.

**Request 12:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 12 because that request is overbroad and burdensome because it involves the cost of producing scores of filed testimony involving hundreds if not thousands of pages of testimony and exhibits. PEF will provide Staff with a list of all direct or rebuttal testimony filed by Dr. Vander Weide in the last five (5) years and will provide copies of the direct or rebuttal testimony reasonably selected by Staff.

**Request 13:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 13 to the extent the request calls for PEF to produce "other materials" relied upon by Dr. Vander Weide to prepare his testimony because the request is vague and ambiguous and, if read literally, encompasses the same breadth as document requests numbers 14, 16, and 18. PEF, accordingly, incorporates by reference its objections to Staff's document requests numbers 14, 16, and 18 as if they were fully stated herein. Notwithstanding this objection, the work papers, spreadsheets, and electronic files Dr. Vander Weide relied on in preparing his testimony, and the articles referred to in his testimony, will be provided.

**Request 14:** Subject to PEF’s general objections, and without waiving same, PEF must object to Staff’s request number 14 because that request calls for PEF to produce all databases used by Dr. Vander Weide in the course of preparing his testimony and the databases are not the property of Dr. Vander Weide or PEF. Rather, they are the proprietary property of third parties who license the use of the databases to individuals like Dr. Vander Weide, and the databases cannot be produced without violating the license agreement. Staff, however, can access the same databases by obtaining its own licensing agreement from the entities that created and own the databases.

**Request 16:** Subject to PEF’s general objections, and without waiving same, PEF must object to Staff’s request number 16 to the extent that request calls for PEF to produce “all texts, treatises, textbooks, or other materials” that Dr. Vander Weide “relied upon” in the course of preparing his testimony in this proceeding because Dr. Vander Weide relies on all of the knowledge gained from the review of such material over his entire career of over thirty years to prepare his testimony. Therefore, he cannot possibly produce all such material that he has “relied upon” to form his opinions in this proceeding. To the extent that Dr. Vander Weide refers to any specific source material that material, subject to the other general and specific objections asserted herein, has been or will be produced.

**Request 18:** Subject to PEF’s general objections, and without waiving same, PEF must object to Staff’s request number 18 because that request calls for PEF to produce “all source documents” used by Dr. Vander Weide to create his exhibits to his testimony and, again, the “source documents” are databases that are not the property of Dr. Vander Weide or PEF. Rather, they are the proprietary property of third parties who license the use of the databases to individuals, like Dr. Vander Weide, and the databases cannot be produced without violating the

license agreement. Staff, however, can access the same databases by obtaining its own licensing agreement from the entities that created and own the databases. Further, all data drawn from such databases by Dr. Vander Weide are displayed in the schedules or exhibits to his testimony and the databases from which that data was derived are identified in his testimony or his schedules or exhibits.

**Request 19:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 19 to the extent the request calls for PEF to produce "any other documentation" relied upon by Dr. Vander Weide to prepare his testimony because the request is vague and ambiguous and, if read literally, encompasses the same breadth as document requests numbers 14, 16, and 18. PEF, accordingly, incorporates by reference its objections to Staff's document requests number 14, 16, and 18 as if they were fully stated herein.

**Request 21:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 21 because that request is overbroad and burdensome because it involves the cost of producing scores of filed testimony involving hundreds if not thousands of pages of testimony and exhibits. PEF will provide Staff with a list of all direct or rebuttal testimony filed by Dr. Cicchetti in the last five (5) years and will provide copies of the direct or rebuttal testimony reasonably selected by Staff.

**Request 23:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 23 to the extent that request calls for PEF to produce "all texts, treatises, textbooks, or other materials" that Dr. Cicchetti "relied upon" in the course of preparing his testimony in this proceeding because Dr. Cicchetti relies on all of the knowledge gained from the review of such material over his entire career of over forty years to prepare his testimony and, therefore, he cannot possibly produce all such material that he has "relied upon"

to form his opinions in this proceeding. To the extent that Dr. Cicchetti refers to any specific source material that material, subject to the other general and specific objections asserted herein, has been or will be produced.

**Request 24:** Subject to PEF's general objections, and without waiving same, PEF must object to Staff's request number 24 to the extent the request calls for PEF to produce "any other documentation" relied upon by Dr. Cicchetti to prepare his testimony because the request is vague and ambiguous and, if read literally, encompasses the same breadth as document request number 23. PEF, accordingly, incorporates by reference its objections to Staff's document request number 23 as if it was fully stated herein.

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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 16<sup>th</sup> day of May, 2005 to all counsel of record as indicated below.

  
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