

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:  
May 23, 2005

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**PEF'S OBJECTIONS TO THE OFFICE OF PUBLIC COUNSEL'S SECOND SET OF  
INTERROGATORIES TO PROGRESS ENERGY FLORIDA, INC. NOS. 58-111**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.340 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") Second Set of Interrogatories to PEF, Nos. 58-111, and states as follows:

**GENERAL OBJECTIONS**

PEF respectfully must object to OPC's Second Set of Interrogatories, Nos. 58 through 111, to the extent that they are improper under the applicable rules and Order. With respect to the "Definitions" and "Instructions," 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. For example, PEF objects to OPC's request that PEF provide information in "a searchable electronic format" because there is no requirement in the applicable rules. PEF also objects to definition "(v)" given that there is no requirement in the applicable rules for PEF to perform any of the tasks set forth in the definition of the word "identify" therein. Furthermore, PEF objects to any interrogatory that calls for PEF to create data or information that it otherwise does not have because there is no such requirement under the applicable rules and law.

PEF objects to OPC's definition "(i)" given that it includes "affiliates" in the definition of "PEF," and PEF objects to any definition or interrogatory 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 interrogatories will be made on behalf of persons or entities other than PEF.

PEF must also object to OPC's Second Set of Interrogatories to PEF to the extent that they require PEF or PEF's retained experts to develop information or create material for OPC, presumably at PEF's expense. The purpose of discovery, of course, is to obtain information that already exists, not to require the other side to create information or material for the requesting party. PEF, therefore, is not obligated to incur the expense of performing or having its experts perform work for OPC to create information or material that OPC seeks in these interrogatories. PEF must object to the request because it is improper discovery to serve interrogatories on PEF that require PEF to incur expense to do work or create information for another party.

Additionally, PEF generally objects to OPC's interrogatories to the extent that they call for data or information 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.

Further, in certain circumstances, PEF may determine upon investigation and analysis that information responsive to certain interrogatories 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 an interrogatory, 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 also objects to any interrogatory 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 an interrogatory does not specify a timeframe for which data or information is sought, PEF will interpret such interrogatory as calling only for data and information relevant to the years 2004-2006.

Finally, PEF objects to any attempt by OPC to evade the numerical limitations set on interrogatories in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts.

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 61:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's interrogatory number 61 because the interrogatory is vague, ambiguous, and confusing because PEF does not know what "best practices" OPC is referring to in this interrogatory.

**Request 70:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's interrogatory number 70, subparts b, c, and d, because the interrogatory subparts improperly require PEF's expert to prepare a study or do work for OPC that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive, time consuming, and costly because the requested information is not readily available or discernible from existing completed analyses and collected data. In fact, subparts b, c, and d of interrogatory number 70 require PEF's expert to undertake extensive research on each one of the 98 other companies in the database for the last ten years, generating information on companies other than PEF, that ultimately has nothing to do with how PEF compares to the industry and is, therefore, irrelevant and not reasonably calculated to lead to admissible evidence in this proceeding.

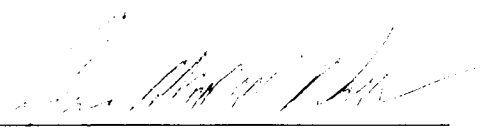
**Request 90:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's interrogatory number 90, because the interrogatory improperly requires PEF's expert to prepare a study or do work for OPC that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive, time consuming, and costly because the requested information is not readily available or discernible from existing completed analyses and collected data. Moreover, there is no reason to undertake such an extensive and costly analysis because the information requested is irrelevant and not reasonably calculated to lead to admissible evidence in this proceeding.

**Request 91:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's interrogatory number 91 to the extent that the interrogatory improperly requires PEF to perform work or create information for OPC that has not been done for PEF, presumably at PEF's cost, to determine the various reliability measures identified in the

interrogatory to obtain the national average of all utilities, Florida average of all utilities, and the measures for the two larger Florida utilities, including exclusions of events and their impacts.

**Request 95:** Subject to the Company’s general objections, and without waiving same, PEF must object to OPC’s interrogatory number 95 because the interrogatory is vague, ambiguous, and confusing because PEF does not know what OPC means by “not including other states” because a specific reference to the page and line that OPC is referring to in Mr. Cicchetti’s testimony is not provided.

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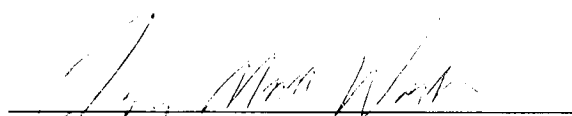


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 23<sup>rd</sup> day of May, 2005 to all counsel of record as indicated below.

  
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Attorney

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