

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 23, 2005

**PEF'S OBJECTIONS TO OPC'S THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 108-124)**

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") Third Set of Requests for Production of Documents (Nos. 108-124) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in OPC's Third Set of Requests 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

- CMP \_\_\_\_\_ some other manner or at some other place that is mutually convenient to both PEF and OPC for
- COM \_\_\_\_\_
- CTR \_\_\_\_\_ purposes of inspection, copying, or handling of the responsive documents.
- ECR \_\_\_\_\_ With respect to the "Definitions" and "Instructions" in OPC's Third Set of Requests For
- GCL \_\_\_\_\_ Production (Nos. 108-124), PEF objects to any definitions or instructions that are inconsistent
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_ with PEF's discovery obligations under applicable rules. If some question arises as to PEF's
- RCA \_\_\_\_\_ discovery obligations, PEF will comply with applicable rules and not with any of OPC's
- SCR \_\_\_\_\_ definitions or instructions that are inconsistent with those rules. PEF objects to OPC's
- SEC   1   \_\_\_\_\_
- OTH \_\_\_\_\_

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/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. 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 Third Set of 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. 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 114:** Subject to the Company's general objections, and without waiving same, PEF objects to OPC's request for production of documents number 114 to the extent that it requests documents for the past 10 years because the request is overbroad, unduly burdensome, and requires PEF's consultant to engage in research and work, presumably at PEF's cost, to respond. PEF will produce responsive documents that are reasonably available to PEF's consultant without research or further work by PEF's consultant.

**Request 115:** Subject to the Company's general objections, and without waiving same, PEF objects to OPC's request for production of documents number 115 to the extent that it requests documents for the past 10 years because the request is overbroad, unduly burdensome, and requires PEF's consultant to engage in research and work, presumably at PEF's cost, to respond. PEF will produce responsive documents that are reasonably available to PEF's consultant without research or further work by PEF's consultant.

**Request 116:** Subject to the Company's general objections, and without waiving same, PEF objects to OPC's request for production of documents number 116 to the extent the request is for information for the past 10 years because the request is overbroad and because the underlying data is no longer available from PEF's financial records due to the Company's data

retention policy within the financial systems. As stated in 18 CFR Section 125.3, the retention policy for work order sheets that are necessary to respond to request number 116 is five years after clearance to plant account, provided continuing plant inventory records are maintained. Otherwise the policy is to retain the records for five years after the plant is retired. Moreover, the information requested pre-dates PEF's conversion of its work management computer system in 2001 and, as a result, an extensive, technical effort is required to even determine if the information continues to exist at all despite PEF's data retention policy. To the extent request number 116 is directed at information from work orders more than five years ago and before the conversion of PEF's computer system in 2001, the information cannot be provided.

**Request 117:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's request number 117 because the request improperly requires PEF to do work for OPC that has not been prepared or done by PEF, presumably at PEF's cost, to provide the information requested. PEF does not maintain or track information in the specific manner that OPC has requested, therefore, an extensive effort is required to collect, assimilate, and analyze data to create the documents that OPC requests. PEF is not required by the rules or Order to create information or documents in order to respond to a discovery request.

**Request 120:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's request number 120 because the underlying data is no longer available from PEF's financial records due to the Company's data retention policy within the financial systems. As stated in 18 CFR Section 125.3, the retention policy for work order sheets that are necessary to respond to request number 120 is five years after clearance to plant account, provided continuing plant inventory records are maintained. Otherwise the policy is to retain the records for five years after the plant is retired. Moreover, the documents requested pre-date

PEF's conversion of its work management computer system in 2001 and, as a result, an extensive, technical effort is required to even determine if the documents continue to exist at all despite PEF's data retention policy. Because the request calls for work orders in 1993, which is more than five years ago and before the conversion of PEF's computer system in 2001, the documents cannot be provided.

**Request 121:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's request number 121 because the underlying data is no longer available from PEF's financial records due to the Company's data retention policy within the financial systems. As stated in 18 CFR Section 125.3, the retention policy for work order sheets that are necessary to respond to request number 121 is five years after clearance to plant account, provided continuing plant inventory records are maintained. Otherwise the policy is to retain the records for five years after the plant is retired. Moreover, the documents requested pre-date PEF's conversion of its work management computer system in 2001 and, as a result, an extensive, technical effort is required to even determine if the documents continue to exist at all despite PEF's data retention policy. Because the request calls for work orders in 1997 through 1999, which is more than five years ago and before the conversion of PEF's computer system in 2001, the documents cannot be provided.

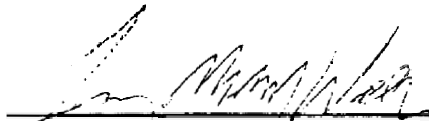
**Request 122:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's request number 122 to the extent the request calls for documents for the past 10 years because the request is overbroad and because the underlying data is no longer available from PEF's financial records due to the Company's data retention policy within the financial systems. As stated in 18 CFR Section 125.3, the retention policy for work order sheets that are necessary to respond to request number 122 is five years after clearance to plant account,

provided continuing plant inventory records are maintained. Otherwise the policy is to retain the records for five years after the plant is retired. Moreover, the documents requested pre-date PEF's conversion of its work management computer system in 2001 and, as a result, an extensive, technical effort is required to even determine if the documents continue to exist at all despite PEF's data retention policy. To the extent request number 122 calls for work orders more than five years ago and before the conversion of PEF's computer system in 2001, the documents cannot be provided. PEF must further object to request number 122 because it improperly requires PEF to do work for OPC that has not been prepared or done by PEF, presumably at PEF's cost, to provide the information requested. PEF does not maintain or track information in the specific manner that OPC has requested, therefore, an extensive effort is required to collect, assimilate, and analyze data to create the documents that OPC requests. PEF is not required by the rules or Order to create information or documents in order to respond to a discovery request. Subject to these objections, and without waiving same, PEF will produce documentation that is reasonably available to PEF in the format or manner that it is maintained by PEF in response to this document request.

**Request 123:** Subject to the Company's general objections, and without waiving same, PEF must object to OPC's request number 123 to the extent the request calls for documents for the past 10 years because the request is overbroad and because the underlying data is no longer available from PEF's financial records due to the Company's data retention policy within the financial systems. As stated in 18 CFR Section 125.3, the retention policy for work order sheets that are necessary to respond to request number 123 is five years after clearance to plant account, provided continuing plant inventory records are maintained. Otherwise the policy is to retain the records for five years after the plant is retired. Moreover, the documents requested pre-date

PEF's conversion of its work management computer system in 2001 and, as a result, an extensive, technical effort is required to even determine if the documents continue to exist at all despite PEF's data retention policy. To the extent request number 123 calls for work orders more than five years ago and before the conversion of PEF's computer system in 2001, the documents cannot be provided. PEF must further object to request number 123 because it improperly requires PEF to do work for OPC that has not been prepared or done by PEF, presumably at PEF's cost, to provide the documents requested. PEF does not maintain or track information in the specific manner that OPC has requested, therefore, an extensive effort is required to collect, assimilate, and analyze data to create the information that OPC requests. PEF is not required by the rules or Order to create information or documents in order to respond to a discovery request.

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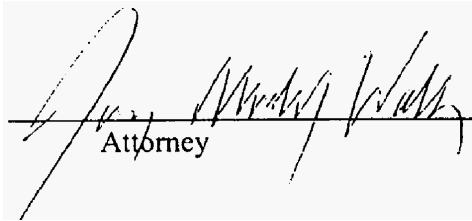
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**CERTIFICATE OF SERVICE**

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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