

## 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:  
June 2, 2005

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**PEF'S OBJECTIONS TO FLORIDA RETAIL FEDERATION'S FIRST SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS  
(NOS. 1-13)**

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 Retail Federation's ("FRF") First Set of Requests for Production of Documents (Nos. 1-13) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in FRF's First 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 some other manner or at some other place that is mutually convenient to both PEF and FRF for purposes of inspection, copying, or handling of the responsive documents.

With respect to the "Definitions" and "Instructions" in FRF's First Set of Requests For Production (No. 1-13), 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 FRF's definitions or instructions that are inconsistent with those rules. PEF objects to any definitions or instructions to the extent that they attempt 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. 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 FRF'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 FRF's First Set of Requests 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 FRF'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 FRF's request for PEF to obtain and produce documents from Florida Power and Light Company ("FP&L") on page 1. PEF assumes that FRF's reference to FP&L is simply a typographical error, that FRF 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 FRF'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 7:** PEF objects to this request as overbroad, unduly burdensome, and calling for information not likely to lead to the discovery of admissible evidence because "any and all documents relative to the installed capital cost of Hines 2, including AFUDC, and the operating characteristics of Hines 2" would require PEF to produce any and all documents that merely mention, relate to, or even tangentially deal with those topics. Additionally, the term "operating characteristics" used in this request is vague and ambiguous and, if read literally, would call for every document that has anything to do with the operation of this generating unit. Subject to and without waiving these

objections or any of PEF's general objections, PEF will provide FRF responsive documents summarizing the installed capital cost of Hines 2, including AFUDC.

**Request 8:** PEF objects to this request as overbroad because it is not limited to any particular time, nor is it limited to any particular operation and maintenance costs, and therefore, if read literally, would call for every document that has anything to do with the cost of operating and maintaining this generating unit. Subject to and without waving any of these objections or any of PEF's general objections, PEF will provide FRF responsive documents summarizing the most recent operating and maintenance costs of Hines 2.

**Request 9:** PEF objects to this request as overbroad, unduly burdensome, and calling for information not likely to lead to the discovery of admissible evidence because "any and all documents relative to the installed capital cost of Hines 3, including AFUDC, and the operating characteristics of Hines 3" would require PEF to produce any and all documents that merely mention, relate to, or even tangentially deal with those topics. Additionally, the term "operating characteristics" used in this request is vague and ambiguous and, if read literally, would call for every document that has anything to do with the operation of this generating unit. Subject to and without waving these objections or any of PEF's general objections, PEF will provide FRF responsive documents summarizing the capital cost of Hines 3, including AFUDC.

**Request 10:** PEF objects to this request as overbroad because it is not limited to any particular time, nor is it limited to any particular operation and maintenance costs and therefore, if read literally, would call for every document that has anything to do with the cost of operating and maintaining this generating unit. Subject to and without waving

any of these objections or any of PEF's general objections, PEF will provide FRF responsive documents summarizing the estimated operation and maintenance costs of Hines 3.

**Request 11:** PEF objects to this request because, as currently drafted, it is overbroad and impossible to determine what FRF wants that is not irrelevant to this proceeding and unlikely to lead to the discovery of admissible evidence. The request asks for "any and all" confidential documents filed in the Hines 3 need proceeding without limiting the request to a particular set of documents or a particular subject matter when, for example, the Hines 3 need proceeding involved multiple sets of documents dealing with PEF's request for proposal process and responses to PEF's request for proposals from entities other than PEF. Such documents have nothing to do with this proceeding, and without a more limited request from FRF, PEF would have to assemble and produce such patently irrelevant documents in response to Request 11 as it is written.

**Request 12:** PEF objects to this request because, as currently drafted, it is overbroad and impossible to determine what FRF wants that is not irrelevant to this proceeding and unlikely to lead to the discovery of admissible evidence. The request asks for "any and all" confidential documents filed in the Hines 3 need proceeding without limiting the request to a particular set of documents or a particular subject matter when, for example, the Hines 3 need proceeding involved multiple sets of documents dealing with PEF's request for proposal process and responses to PEF's request for proposals from entities other than PEF. Such documents have nothing to do with this proceeding, and without a more limited request from FRF, PEF would have to assemble and produce such patently irrelevant documents in response to Request 12 as it is written.

Respectfully submitted,

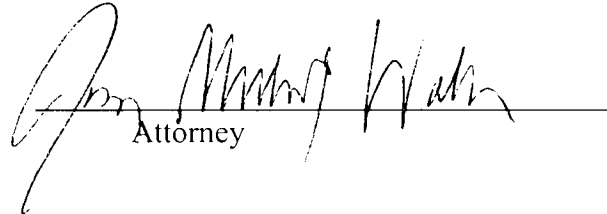
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 22 day of June, 2005 to all counsel of record as indicated below.

  
Attorney

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