

**ORIGINAL**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by  
Progress Energy Florida, Inc.

Docket No. 050078-E1  
Submitted for filing:  
June 6, 2005

**PEF'S OBJECTIONS TO FLORIDA RETAIL FEDERATION'S SECOND SET  
OF REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 14-15)**

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") Second Set of Requests for Production of Documents (Nos. 14-15) and states as follows:

**GENERAL OBJECTIONS**

PEF generally objects to the time and place of production requirement in FRF's Second 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 Second Set of Requests For Production (Nos. 14-15), PEF objects to any definitions or instructions that are inconsistent with PEF's discovery obligations under applicable rules. If some

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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 Second 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.

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 14:** PEF must object to sections (a) and (b), to the extent this request applies to PEF's expert witnesses, because this request is overbroad and burdensome in that it involves the cost of producing scores of filed testimony, deposition transcripts, and hearing transcripts involving hundreds if not thousands of pages of testimony and exhibits, as well as copies of articles and texts prepared for publication. PEF will provide FRF with a list of all direct or rebuttal testimony filed by Dr. Cicchetti and Dr. Vander Weide in the last five (5) years, as well as a list of all materials published or prepared for publication in the last five (5) years by Dr. Cicchetti and Dr. Vander Weide. PEF will provide copies of the direct or rebuttal testimony, the hearing or deposition transcripts, and published materials reasonably selected by FRF from this list.

PEF also objects to sections (a) and (b) of this request, to the extent this request applies to PEF's non-expert witnesses Javier Portuondo and John B. Crisp, as overbroad and unduly burdensome. The request asks for pre-filed testimony, hearing transcripts, and deposition transcripts, which involve potentially hundreds of pages of testimony and exhibits. Specifically, Mr. Portuondo has testified numerous times in PEF's franchise litigations, fuel clause proceedings, and environmental clause proceedings. Mr. Crisp has

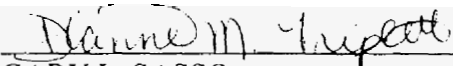
testified numerous times in PEF's franchise litigations, need proceedings, the reserve margin docket, and proceedings related to the 10 year site plan. If FRF is able to narrow its broad request to some reasonable number of specific proceedings for which testimony and transcripts are sought, then PEF will provide the requested documents.

PEF also objects to Request 14, as to all PEF's non-expert witnesses, to the extent that the request refers to proceedings in which PEF was not a party. Additionally, to the extent PEF's witnesses also submitted testimony in the last rate case proceeding and the last storm recovery clause proceeding, PEF understands that FRF intervened in both dockets and was represented by the same counsel. Accordingly, PEF assumes that FRF already has testimony and transcripts of PEF's witnesses in those proceedings and thus PEF will not produce such documents again.

**Request 15:** PEF objects to this request because it calls for PEF to provide information about entities other than PEF (i.e., "Progress Energy, Inc."). PEF objects to any interrogatory that seeks information from persons or entities other than PEF who are not parties to this action and thus are not subject to discovery. Subject to and without waiving any future objections or any of PEF's future general objections, PEF will provide the documents requested because they are in the public domain and are otherwise publicly available.

Respectfully submitted,

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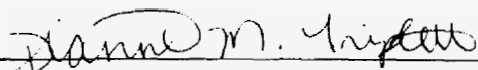
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 6<sup>th</sup> day of June, 2005 to all counsel of record as indicated below.

  
Attorney

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