

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:
June 6, 2005

**PEF'S OBJECTIONS TO STAFF'S THIRD SET OF
INTERROGATORIES (NOS. 104-128)**

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 Staff of the Florida Public Service Commission ("Staff") Third Set of Interrogatories to PEF, Nos. 104-128, and states as follows:

GENERAL OBJECTIONS

PEF respectfully must object to Staff's Third Set of Interrogatories, Nos. 104-128, to the extent that they are improper under the applicable rules and Order. With respect to the "Definitions", 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 Staff's definitions or instructions that are inconsistent with those rules. 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 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

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
DPC _____
WMS _____
RCA _____
SCR _____
SEC 1
JTH _____

discovery. No responses to the interrogatories will be made on behalf of persons or entities other than PEF.

PEF must also object to Staff's Third Set of Interrogatories to PEF to the extent that they require PEF or PEF's retained experts to develop information or create material for Staff, 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 Staff to create information or material that Staff 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 Staff'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 Staff 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 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 112: PEF must object to this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. Additionally, PEF must also object to this interrogatory to the extent that it requires PEF or its expert to prepare a study or do work for Staff that has not been done for PEF, presumably at PEF's cost, and,

further, that work would be extensive and time consuming because the requested information is not readily available or discernible in an existing database. Rather, responsive information must be analyzed and conclusions must be made from the data to arrive at the information requested. While PEF may elect to produce such a document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so.

Request 120: PEF must object to this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. Additionally, PEF must also object to this interrogatory to the extent that it requires PEF or its expert to prepare a study or do work for Staff that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive and time consuming because the requested information is not readily available or discernible in an existing database. Rather, responsive information must be analyzed and conclusions must be made from the data to arrive at the information requested. While PEF may elect to produce such a document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so. 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 interrogatory number 120 is directed at information from more than five years ago and before the conversion of PEF's computer system in 2001, the information cannot be provided.

Request 121: PEF must object to this interrogatory to the extent that it improperly requests PEF to provide a legal theory on the split between the qualified and non-qualified fund maximizes fund growth. PEF is not obligated to respond with any legal opinions.

Request 122: PEF must object to this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. Additionally, PEF must also object to this interrogatory to the extent that it requires PEF or its expert to prepare a study or do work for Staff that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive and time consuming because the requested information is not readily available or discernible in an existing database. Rather, responsive information must be analyzed and conclusions must be made from the data to arrive at the information requested. While PEF may elect to produce such a document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so. Moreover, PEF objects to this interrogatory because it calls for PEF to provide information about entities other than PEF (i.e. Progress Energy Carolinas). 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.

Request 125: PEF must object to this interrogatory to the extent that it requires PEF or its expert to prepare a study or do work for Staff that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive and time consuming because the requested information is not readily available or discernible in an existing database. Rather, responsive information must be analyzed and conclusions must be

made from the data to arrive at the information requested. While PEF may elect to produce such a document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so.

Request 127: PEF must object to this interrogatory because it assumes that Rule 25-14.004 applies to PEF, while the Rule does not in fact apply. It is therefore impossible for PEF to comply with Interrogatory 127.

Request 128: PEF must object to this interrogatory because it assumes that Rule 25-14.004 applies to PEF, while the Rule does not in fact apply. It is therefore impossible for PEF to comply with Interrogatory 127.

Respectfully submitted,

R. ALEXANDER GLENN
Deputy General Counsel – Florida
PROGRESS ENERGY SERVICE
COMPANY, LLC
100 Central Avenue, Ste. 1D
St. Petersburg, FL 33701
Telephone: (727) 820-5587
Facsimile: (727) 820-5519


GARY L. SASSO
Florida Bar No. 622575
JAMES MICHAEL WALLS
Florida Bar No. 0706272
JOHN T. BURNETT
Florida Bar No. 173304
DIANNE M. TRIPLETT
Florida Bar No. 0872431
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

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 6th day of June, 2005 to all counsel of record as indicated below.


Attorney

<p>Jennifer Brubaker Felicia Banks Jennifer Rodan Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850</p>	<p>John W. McWhirter, Jr. McWhirter, Reeves, Davidson, Kaufman & Arnold, P.A. 400 North Tampa Street, Ste. 2450 Tampa, FL 33601-3350 -and- Timothy J. Perry McWhirter, Reeves, Davidson, Kaufman & Arnold, P.A. 117 South Gadsden Street Tallahassee, FL 32301 Counsel for Florida Industrial Power Users Group</p>
<p>Harold McLean Office of the Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400</p>	<p>C. Everett Boyd, Jr. Sutherland Asbill & Brennan LLP 2282 Killeam Center Blvd. Tallahassee, FL 32309</p>
<p>Mike B. Twomey P.O. Box 5256 Tallahassee, FL 32314-5256 Counsel for AARP</p>	<p>James M. Bushee Daniel E. Frank Andrew K. Soto Sutherland Asbill & Brennan LLP 1275 Pennsylvania Avenue, N.W. Washington, DC 20004-2415 Richard A. Zambo Richard A. Zambo, P.A. 2336 S.E. Ocean Boulevard, #309 Stuart, Florida 34996</p>
<p>Robert Scheffel Wright, John T. LaVia, III, Landers & Parsons, P.A. 310 West College Avenue (ZIP 32301) Post Office Box 271 Tallahassee, Florida 32302 Counsel for Florida Retail Federation</p>	

	<p>-and-</p> <p>Karin S. Torain PCS Administration, (USA), Inc. Suite 400 Skokie blvd. Northbrook, IL 60062</p> <p>Counsel for White Springs</p>
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