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July 29, 2005

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COMMISSION
CLERK

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 0500078-EI,
Petition for a Rate Increase by Progress Energy Florida, Inc.

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of the Citizens' First Motion To Compel Production of Documents from Progress Energy Florida, Inc. for filing in the above referenced docket.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Patricia A. Christensen
Associate Public Counsel

- CMP _____
- COM 5
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA PAC/dsb
- SCR Enclosures
- SGA _____
- SEC 1
- OTH Kim P.

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May
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DA

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FPSC-COMMISSION CLE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for a Rate Increase by)
Progress Energy Florida, Inc.)
_____)

Docket No. 050078-EI
Filed: July 29, 2005

**CITIZENS' FIRST MOTION TO COMPEL PRODUCTION OF DOCUMENTS
FROM PROGRESS ENERGY FLORIDA, INC.**

The Citizens of Florida (Citizens), through the Office of Public Counsel, pursuant to Rule 28-106.204, Florida Administrative Code, and Rules 1.280, 1.350, and 1.380, Florida Rules of Civil Procedure, request the Prehearing Officer issue an order compelling Progress Energy Florida, Inc. (“Progress” or “Company”) to immediately answer Citizens Requests for Production of Document No. 110.

1. On May 11, 2005, Citizens served Progress with Request for Production of Document No. 110. Production of Document No. 110 asks:

110. Please provide a complete copy of the most recent industry surveys associated with depreciation statistics in the possession of the Company and/or its outside consultant who performed the depreciation study.

2. On June 3, 2005, Progress filed its response in which it claimed that the information, AGA/EEI Survey of Depreciation Statistics: 2003 Results for Electric Companies and A Survey of Depreciation Statistics, was privileged. Progress stated that these documents were subject to a contractual confidentiality provision that requires it to given notice to the owner of the information in the study and obtain consent from that owner prior to the production in order to protect potential trade secret information. Progress indicated that it would notify the owner and attempt to gain its consent.

Through several communications, Progress assured Citizens that it was still trying to obtain permission to provide the data. Finally, in mid-July, Progress informed Citizens that it was unable to obtain the necessary consent and refused to provide the document.

3. Citizens are entitled to these documents for several reasons. First, the documents are relevant and reasonably calculated to lead to discoverable evidence. Progress' response to Citizens request to produce indicates that its consultant possessed this industry data when he performed his analysis of Progress' depreciation rates. These surveys are the AGA/EEI Survey of Depreciation Statistics: 2003 Results for Electric Companies and the 1996 - A Survey of Depreciation Statistics.

4. Second, Citizens' witness Pous has reviewed past versions of these surveys. He is aware of at least three other jurisdictions where these surveys have been made available to him: Texas, California, and Alberta, Canada. These surveys are identified as annual surveys and appear to be conducted and/or updated annually. Mr. Pous states that these surveys are a compilation of publicly available information. Thus, the information in the surveys can not contain trade secrets or privileged business information.

5. On July 28, 2005, Progress provided a portion of the third party agreement entitled "Survey Information – Rules for Submission and Use." The agreement requires that participants in the survey not use and not disclose to anyone, including a regulatory body, the information obtained from the survey. However, the agreement provides procedures that company must follow if it is ordered to provide the information. Essentially, the agreement requires that AGA/EEI be notified if it is required to be disclosed so that the Company and AGA/EEI may seek a protective order. In other words, the agreement contemplates the possibility that the information may be required

of Progress and also recognizes that availability of a protective order to limit its use and maintain its confidentiality.

6. While Citizens contends that this information does not warrant confidential treatment because the underlying information is all publicly available, Citizens would be willing to shield such data and limit the use to the pending rate case.

Wherefore, Citizens requests that this Motion to Compel be granted and Progress be required to produce immediately, the AGA/EEI Survey of Depreciation Statistics: 2003 Results for Electric Companies and A Survey of Depreciation Statistics, in response to POD No. 110.

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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and U.S. Mail this 29th day of July, 2005 to all counsel of record as indicated below.

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Jennifer Rodan
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A handwritten signature in black ink, appearing to read 'Patricia A. Christensen', with a long horizontal flourish extending to the right.

Patricia A. Christensen
Associate Public Counsel

110. Please provide a complete copy of the most recent industry surveys associated with depreciation statistics in the possession of the Company and/or its outside consultant who performed the depreciation study.

Answer:

Please see attached privilege log.

111. Please provide a copy of all site visit notes made by the depreciation consultant, as well as all documents containing information associated with each site visit (e.g., the time period spent at each facility, the dates, who took part in the site visits, which field personnel or office personnel had discussions with the depreciation consultant, on what topics, and for how long, etc.).

Answer:

Responsive documents are attached herein Bates ranges PEF-RC-014627 through PEF-RC-014733 and PEF-RC-014746 through PEF-RC-014748. Please note that certain documents in these ranges are confidential and are subject to PEF's Second Motion for Temporary Protective Order.

112. Please provide, by account, the documents comprising or referring to the specific items of information provided by the Company to its depreciation consultant regarding future expectations, policies, etc. for each separate account that had any meaningful impact in the determination of mortality characteristics proposed in the depreciation study.

Answer:

Responsive documents are attached herein Bates Ranges PEF-RC-019093.

113. Please provide a copy of work papers and electronic files not specifically requested in any other request pertaining to the topic of depreciation. This request includes all underlying data relied upon for any net salvage or life analyses. Provide electronic files in Lotus or Excel readable format.

Answer:

Responsive information is enclosed on the CD-Rom enclosed in Bates range PEF-RC-014396.

PROGRESS ENERGY FLORIDA, INC. - PRIVILEGE LOG
OPC'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS

N o	BATES NO. PEF-RC- PRIV	PAGES	AUTHOR	RECIPIEN T	DOC DATE	TITLE & SUMMARY	PRIVILEGE
1.	0886 through 0956	71	American Gas Association Accounting Services Committee & Edison Electric Institute Property Accounting & Valuation Committee.	PEF	2003	AGA/EEI SURVEY OF DEPRECIATION STATISTICS: 2003 Results for Electric Companies.	This document has a contractual confidentiality provision that requires PEF to give notice to the owner of the information in this study and obtain consent from that owner prior to production in order to protect potential trade secret information. PEF will notify that said owner as required, and this document will be produced when PEF has such consent.
2.	0957 through 1144	188	American Gas Association Accounting Services Committee & Edison Electric Institute Property Accounting & Valuation Committee.	PEF	1996	A SURVEY OF DEPRECIATION STATISTICS	This document has a contractual confidentiality provision that requires PEF to give notice to the owner of the information in this study and obtain consent from that owner prior to production in order to protect potential trade secret information. PEF will notify that said owner as required, and this document will be produced when PEF has such consent.

SURVEY INFORMATION – RULES FOR SUBMISSION AND USE

A SURVEY OF DEPRECIATION STATISTICS ("Survey") is a joint AGA and EEI (AGA and EEI) survey of their members involving submission of confidential and proprietary data (Information) by participating utilities subject to the express agreement between AGA and EEI and each participant and each participant to the other participants and AGA and EEI that the Information submitted will be kept confidential and subject to the strictest privacy standards, and access to such Information will be restricted. All Information is provided based upon an agreement by the participants, individually and collectively, that there are very specific limitations on the use of the Information, i.e. for internal use by its employees only, and each participant further agrees it cannot share any Information with any non-participant; however, each participant can share its own information which it submitted to the Survey as it sees fit.

As a condition precedent to participating in the Survey, each participant must represent and warrant that:

- the data submitted to the Survey contains confidential and proprietary information, and
- it provides such confidential and proprietary Information with the express understanding it, as well as the other participants, will not disclose such Information to any third party that is not a participant in the Survey for any reason at any time, and
- disclosure of such confidential Information outside of the participants in the Survey may cause harm to it and the other participants, and
- it agrees to keep such Information confidential, private and subject to restricted access limited only to participants in the Survey.

Further, each recipient of the survey must enter into the following agreement regarding use of the Information prior to receipt of the Survey:

Each participant represents and warrants that it shall hold in confidence, not use and not disclose to anyone, including but not limited to any person, company, agency, commission,

regulatory body, legal tribunal or court any and all Information provided to and/or obtained from the Survey, its participating companies and any of their employees.

In the event Recipient is required by law, regulations, or court order to disclose any Information, Recipient will promptly notify AGA and EEI in writing prior to making any such disclosure to facilitate AGA and EEI seeking a protective order or other appropriate remedy from the proper authority. Recipient agrees to cooperate with AGA and EEI in seeking such order or other remedy. Recipient further agrees that if AGA and EEI are not successful in precluding the requesting legal body from requiring the disclosure of the Information, it will furnish only that portion of the Information that is legally required and will exercise all legal efforts to obtain reliable assurances that confidential treatment will be accorded the Information.

This confidential and proprietary agreement shall remain in full force and effect after termination of this Agreement.

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