

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 090079-EI  
Submitted for filing:  
April 13, 2009

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**PEF'S OBJECTIONS TO OPC'S FIRST, SECOND AND THIRD REQUESTS  
FOR PRODUCTION OF DOCUMENTS (NOS. 1-68; 69-78; AND 79-121)**

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") First, Second, and Third Requests for Production of Documents (Nos. 1-68; 69-78; and 79-121, respectively, and together "the Requests") and states as follows:

**GENERAL OBJECTIONS**

PEF will make all responsive documents available for inspection and copying at the offices of PEF, 106 E. College Ave., Suite 800, 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 OPC for purposes of inspection, copying, or handling of the responsive documents.

With respect to any "Definitions" and "Instructions" in OPC's Requests for Production, 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 OPC's definitions or instructions that are inconsistent with those rules. 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 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 specific 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 Requests for Production to the extent that they call 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 2010 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 2006-2010.

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 1:** PEF objects to OPC's request number 1 because that request calls, in part, for PEF to produce data in each electronic format in which it exists, and specifically seeks the information in OPC's preferred format. If PEF has any responsive data in one of the electronic forms requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which it exists.

**Request 2:** PEF objects to OPC's request number 2 to the extent that it requests the information be produced in as specific electronic format. PEF will produce the information in the format in which it exists.

**Request 3:** PEF objects to OPC's request number 3 to the extent that the request calls for information for the year ended December 31, 2005. The 2005 historical information requested is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 6:** PEF objects to OPC's request number 6 because the request calls for PEF to obtain documents from another entity (i.e., "Progress Energy's Board of Directors") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 14:** PEF objects to OPC's request number 14 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy") that are not

within PEF's possession, custody, or control. PEF further objects to request number 16 to the extent the term "any committees" used therein is meant to mean committees of entities other than PEF. PEF objects to any response 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. Additionally, as the request relates to entities other than PEF, PEF objects to request number 14 because the data requested is wholly irrelevant to this case and has no bearing on this proceeding, nor is that data likely to lead to the discovery of admissible evidence. PEF will provide responsive meeting minutes to the extent they relate to PEF.

**Request 16:** PEF objects to request number 16 because it seeks budgets and forecasts for 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 23:** PEF objects to request number 23 because it seeks documents "evaluating, forecasting or discussing projected or actual expense savings" projected for 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 28:** PEF objects to request number 28 to the extent it seeks documents relating to the "possibility of PEF implementing or offering employee reduction programs or opportunities" projected for 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 29:** PEF objects to request number 29 to the extent it seeks documents “estimating or evaluating PEF’s cost or expense for health insurance” projected for 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 36:** PEF objects to request number 36 to the extent it seeks documents “analyzing, evaluating or critiquing PEF’s financial forecasts” projected for 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 50:** PEF objects to request number 50 to the extent it seeks information regarding the year 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 56:** PEF objects to OPC’s request number 56 because the request appears to call for PEF to obtain documents from other entities (i.e. “Progress Energy”) that are not within PEF’s possession, custody, or control. PEF objects to any 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.

**Request 59:** PEF objects to request number 59 to the extent it seeks information regarding the year 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 60:** PEF objects to request number 60 to the extent it seeks information regarding the year 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 63:** PEF objects to OPC's request number 63 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. If PEF has any responsive data in one of the electronic forms requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which it exists.

**Request 67:** PEF objects to OPC's request number 67 because that request calls, in part, for PEF to produce data in certain electronic forms irrespective of whether or not PEF has the data in question in the electronic formats sought. If PEF has any responsive data in one of the electronic forms requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which it exists.

**Request 68:** PEF objects to OPC's request number 68 because that request calls, in part, for PEF to produce data in hardcopy and certain electronic forms irrespective of how PEF currently stores the data in question. If PEF has any responsive data in one of the electronic forms requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which it exists.

**Request 69:** PEF objects to OPC's Request number 69 to the extent that it seeks information regarding the year 2005. The 2005 historical information is irrelevant to this

case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible information.

**Request 70:** PEF objects to OPC's Request number 70 to the extent that it seeks regarding the years 2004 and 2005. The 2004 and 2005 historical information is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible information.

**Request 71:** PEF objects to OPC's Request number 71 to the extent that it seeks regarding the years 2004 and 2005. The 2004 and 2005 historical information is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible information.

**Request 78:** PEF objects to OPC's Request number 78 to the extent that it seeks regarding the years 2002 through 2005. The 2002 through and 2005 historical information is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible information.

**Request 79:** PEF objects to OPC's request number 79 to the extent that it is duplicative of request number 55.

**Request 82:** PEF objects to OPC's request number 82 to the extent the request calls for PEF to obtain documents from another entity (i.e., "Progress Energy Service, LLC") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 83:** PEF objects to OPC's request number 83 to the extent that it is



duplicative of request number 57.

**Request 84:** PEF objects to OPC's request number 84 to the extent that it is duplicative of request number 58.

**Request 86:** PEF objects to OPC's request number 86 because the request calls for PEF to obtain and produce documents from other entities (i.e. "Progress Energy Service, LLC and each of Progress Energy, Inc.'s affiliates") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 87:** PEF objects to OPC's request number 86 because the request calls for PEF to obtain and produce documents from other entities (i.e. "Service, LLC [which PEF assumes to mean Progress Energy Services, LLC] and each non-affiliated company for which Progress Energy Service, LLC provides any services") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 88:** PEF objects to OPC's request number 88 to the extent that it is duplicative of request number 59.

**Request 89:** PEF objects to OPC's request number 89 to the extent that it is duplicative of request number 60.

**Request 90:** PEF objects to OPC's request number 90 because the request calls

for PEF to obtain and produce documents from other entities (i.e. “each Tier 1 subsidiary of Progress Energy, Inc. and each Tier I subsidiary of Progress Energy Florida”) that are not within PEF’s possession, custody, or control. PEF objects to any 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 also objects to request number 90 to the extent that its requests information regarding year 2011. The 2011 projected information, if any exists, is irrelevant to this case and has no bearing on this proceeding, nor is that information likely to lead to the discovery of admissible evidence.

**Request 91:** PEF objects to OPC’s request number 91 to the extent that the request calls for PEF to produce data in a certain electronic form irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 94:** PEF objects to OPC’s request number 94 to the extent that the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 95:** PEF objects to OPC’s request number 95 to the extent it is duplicative of request number 63. PEF further objects to request number 95 to the extent

that the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 96:** PEF objects to OPC's request number 96 to the extent that the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 97:** PEF objects to OPC's request number 97 to the extent that the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 98:** PEF objects to OPC's request number 98 to the extent that it is duplicative of request number 55.

**Request 99:** PEF objects to OPC's request number 99 because it seeks information regarding entities other than PEF (i.e., "description [of] the services provided by [PEF's] affiliate[s] to nonaffiliated companies."). PEF objects to request number 99

because the information requested is wholly irrelevant to this case and has no bearing on this proceeding, nor is the data likely to lead to the discovery of admissible evidence.

**Request 100:** PEF objects to OPC's Request number 100 to the extent that it is duplicative of request number 64. PEF further objects to OPC's request number 100 because the request calls for PEF to obtain documents from other entities (i.e., PEF's "parent or service companies") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 101:** PEF objects to OPC's Request number 101 to the extent that it is duplicative of request number 65. PEF further objects to OPC's request number 101 because the request calls for PEF to obtain documents from other entities (i.e., PEF's "parent or service companies") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 102:** PEF objects to OPC's request number 102(a) to the extent that the request is duplicative of request number 66(a). PEF objects to OPC's request number 102(b) to the extent that the request is duplicative of request number 66(b). PEF further objects to request numbers 102(c) and 102(d) because those requests are vague and ambiguous and duplicative of requests 66(a), 66(b), 102(a) and 102(b). Specifically it is unclear whether the request seeks appraisals valuing the assets at the time of transfer or at the present time. To the extent that the request seeks appraisals of the present value of assets

that are no longer in PEF's possession, custody or control, the request relates to entities other than PEF, PEF objects to request numbers 102(c) and 102(d) because the data requested is wholly irrelevant to this case and has no bearing on this proceeding, nor is that data likely to lead to the discovery of admissible information.

**Request 103:** PEF objects to OPC's request number 103 to the extent that it is duplicative of request number 67. PEF further objects to request number 103 because the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 106:** PEF objects to OPC's request number 106 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy, Inc.") that are not within PEF's possession, custody, or control. PEF objects to any 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, to the extent the requested documents are within PEF's possession, custody or control, PEF objects to request number 106 because the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

**Request 107:** PEF objects to OPC's request number 107 to the extent that it is duplicative of request numbers 55 and 79.

**Request 108:** PEF objects to OPC's request number 108 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy, Inc. and each of its subsidiaries or affiliates") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 109:** PEF objects to OPC's request number 109 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy, Inc. and each of its subsidiaries or affiliates") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 110:** PEF objects to OPC's request number 110 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy, Inc. and each of its subsidiaries or affiliates") that are not within PEF's possession, custody, or control. PEF objects to any 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 further objects to request number 110 as overbroad and unduly burdensome because as drafted, request number 110 would technically call for the production of twenty-four months worth of standard recurring journal entries, including the supporting workpapers and

documentation, the response to which would amount to thousands of pages with little or no relevance to these proceedings. In response to this request, PEF will produce lists of journal entries for the requested years to OPC and will then work with counsel for OPC for the production of specific journal entries.

**Request 111:** PEF objects to OPC's request number 111 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy, Inc. and each of its subsidiaries or affiliates") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 116:** PEF objects to OPC's request number 116 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy Service Company, Progress Energy, Inc.") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 117:** PEF objects to OPC's request number 117 because the request calls for PEF to obtain documents from other entities (i.e., "Progress Energy Service Company, Progress Energy, Inc.") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 118:** PEF objects to OPC's request number 118 because the request calls for PEF to obtain documents from other entities (i.e., PEF and "each of its subsidiaries, affiliates and divisions") that are not within PEF's possession, custody, or control. PEF objects to any 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.

**Request 119:** PEF objects to OPC's request number 119 because the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

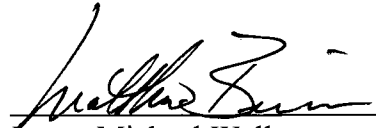
**Request 120:** PEF objects to OPC's request number 120 as overbroad and unduly burdensome. As drafted, PEF would technically be responsible for providing literally all workpapers that support both the Company's testimony and exhibits with no limitation. In response to this request, PEF will produce all workpapers that were actually relied upon as support for the Company's testimony and exhibits. PEF further objects to the request because it calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists. Finally, PEF objects to request 120 to the extent that it calls for any information protected by the attorney/client privilege or work product doctrine.



**Request 121:** PEF objects to OPC's request number 121 because the request calls for PEF to produce data in a certain electronic forms irrespective of whether or not PEF has the data in question in the electronic format sought. If PEF has any responsive data in the electronic form requested, PEF will provide that data to OPC in that form. Otherwise, PEF will produce data to OPC in the format in which the information exists.

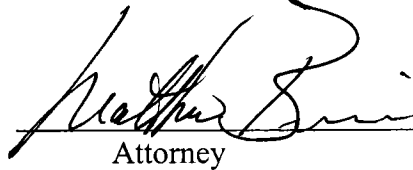
Respectfully submitted this 3<sup>rd</sup> day of April, 2009.

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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 13<sup>th</sup> day of April, 2009 to all counsel of record as indicated below.

  
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Attorney

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