

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Increase in Rates
by Progress Energy Florida, Inc.

Docket No. 090079-EI
Submitted for filing: May 7, 2009

**PEF'S OBJECTIONS TO OPC'S SIXTH SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS (NOS. 127-173)**

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 Office of Public Counsel's ("OPC") Sixth Set of Requests for Production of Documents (Nos. 127-173) 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. 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 (the "Order"). 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, 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. PEF provides these general objections at this time to comply with the intent of the Order to reduce the delay in identifying and resolving any potential discovery disputes.

SPECIFIC OBJECTIONS

Request 127: PEF objects to OPC’s request number 127 to the extent it seeks to require PEF to provide the requested information in a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 128: PEF objects to OPC's request number 128 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 129: PEF objects to OPC's request number 129 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 130: PEF objects to OPC's request number 130 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 131: PEF objects to OPC's request number 131 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 132: PEF objects to OPC's request number 132 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 133: PEF objects to OPC's request number 133 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic

format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 134: PEF objects to OPC's request number 134 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 135: PEF objects to OPC's request number 135 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 136: PEF objects to OPC's request number 136 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 137: PEF objects to OPC's request number 137 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 138: PEF objects to OPC's request number 138 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 139: PEF objects to OPC's request number 139 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 140: PEF objects to OPC's request number 140 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 141: PEF objects to OPC's request number 141 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 142: PEF objects to OPC's request number 142 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 143: PEF objects to OPC's request number 143 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 144: PEF objects to OPC's request number 144 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic

format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 145: PEF objects to OPC's request number 145 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 146: PEF objects to OPC's request number 146 to the extent it seeks production of documents from another entity (i.e. "Progress Energy, Inc.") that is not a party to this proceeding. 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 147: PEF objects to OPC's request number 147 to the extent it seeks production of documents from another entity (i.e. "Progress Energy, Inc.") that is not a party to this proceeding. 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 148: PEF objects to OPC's request number 148 to the extent it seeks production of documents from another entity (i.e. "Progress Energy, Inc.") that is not a party to this proceeding. 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 150: PEF objects to OPC's request number 150 to the extent it seeks production of documents from another entity (i.e. "Progress Energy, Inc.") that is not a party to this

proceeding. 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 151: PEF objects to OPC's request number 151 on the same basis that PEF objected to OPC's Interrogatory number 173, i.e., PEF objects to the extent that the request seeks documents "for the past ten years" as the information from 2000-2005 is irrelevant, has no bearing on these proceedings, and is not reasonably calculated to lead to the discovery of admissible evidence.

Request 152: PEF objects to OPC's request number 152 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 153: PEF objects to OPC's request number 153 because it seeks documents that have already been produced to OPC.

Request 154: PEF objects to OPC's request number 151 on the same basis that PEF objected to OPC's Interrogatory number 174, i.e., PEF objects to the extent that it seeks information "for the past ten years" as the information from 2000-2005 is irrelevant, has no bearing on these proceedings, and is not reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to this request to the extent it seeks information related to other entities (i.e. "Progress Energy . . . and other Progress Energy, Inc. subsidiaries") that are not parties to this proceeding. 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 155: PEF objects to OPC's request number 155 on the same basis that PEF objected to OPC's Interrogatory number 160, i.e., PEF objects to the extent it seeks identification of "original source documents" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified or produced. Additionally, Dr. Vander Weide's workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120. PEF also objects to OPC's request that PEF "identify the documents containing copies of the regressions run on the data" because that information is provided in Dr. Vander Weide's testimony and PEF is not required by the Rules or the Order to collate a list of such documents from information available to OPC. PEF objects to OPC's interrogatory to the extent that it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents, subject to these objections, in the format in which they are presently maintained. Finally, certain information sought in this interrogatory is publicly available information, PEF has provided citations to where OPC may procure the information, and PEF objects to any request that requires PEF to obtain the information on OPC's behalf when OPC can obtain the information itself.

Request 156: PEF objects to OPC's request number 156 to the extent it seeks production of "all theoretical and empirical studies known to Dr. Vander Weide" regardless of whether Dr.

Vander Weide possesses them because neither the Rules nor the Order require PEF to perform studies or research for OPC, presumably at PEF's expense, in order to respond to a discovery request. In response, PEF will provide copies of any such study in PEF's or Dr. Vander Weide's possession or citations to publicly available sources. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified or produced. Additionally, Dr. Vander Weide's workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120.

Request 157: PEF objects to OPC's request number 157 to the extent it seeks production of "all studies known to Dr. Vander Weide which indicate that 'investors use the mean forecast as a consensus estimate of future performance'" regardless of whether Dr. Vander Weide possesses them because neither the Rules nor the Order require PEF to perform studies or research for OPC, presumably at PEF's expense, in order to respond to a discovery request. In response, PEF will provide copies of any such study in PEF's or Dr. Vander Weide's possession or citations to publicly available sources. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified or produced. Additionally, Dr. Vander Weide's workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120.

Request 159: PEF objects to OPC's request number 159 to the extent it seeks all original source documents used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the

documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. PEF further objects to OPC's request number 159 because it seeks "copies of all data and source documents used in the Ibbotson Report" The Ibbotson Report was prepared by a third party that is not subject to discovery in this case, and therefore this request seeks documents that are not within PEF's possession, custody or control. PEF further objects to the request to the extent it seeks to have responsive documents provided in a specific electronic format, regardless of the format in which the documents exist. PEF will produce all responsive documents, subject to these objections, in the format in which they are presently maintained.

Request 160: PEF objects to OPC's request number 160. PEF has already provided OPC the testimony of Dr. Vander Weide and the Appendices to his testimony. PEF is not obligated under the Rules or the Order to produce to OPC what PEF has already provided OPC in a format that OPC requests, particularly in a different, editable electronic format (Microsoft Word).

Request 161: PEF objects to OPC's request number 161 to the extent it seeks identification of "original source documents and work papers" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be or have been produced in the format in which they have been retained. PEF has already provided OPC with Dr. Vander Weide's workpapers in response to OPC's Third Request for Production of Documents, number 120. Additionally, to the extent there are documents responsive to this request that have not previously been produced to OPC, PEF

objects to this request to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist.

Request 162: PEF objects to OPC's request number 162 to the extent it seeks identification of "original source documents and work papers" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be or have been produced in the format in which they have been retained. PEF has already provided OPC with Dr. Vander Weide's workpapers in response to OPC's Third Request for Production of Documents, number 120. Additionally, to the extent there are documents responsive to this request that have not previously been produced to OPC, PEF objects to this request to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist.

Request 163: PEF objects to OPC's request number 163 to the extent it seeks identification of "original source documents and work papers" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be or have been produced in the format in which they have been retained. PEF has already provided OPC with Dr. Vander Weide's workpapers in response to OPC's Third Request for Production of Documents, number 120. Additionally, to the extent there are

documents responsive to this request that have not previously been produced to OPC, PEF objects to this request to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist.

Request 164: PEF objects to OPC's request number 164 to the extent it seeks identification of "original source documents and work papers" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be or have been produced in the format in which they have been retained. PEF has already provided OPC with Dr. Vander Weide's workpapers in response to OPC's Third Request for Production of Documents, number 120. Additionally, to the extent there are documents responsive to this request that have not previously been produced to OPC, PEF objects to this request to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist.

Request 165: PEF objects to OPC's request number 165 to the extent it seeks identification of "original source documents and work papers" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be or have been produced in the format in which they have been retained. PEF has already provided OPC with Dr. Vander Weide's workpapers in response to OPC's Third

Request for Production of Documents, number 120. Additionally, to the extent there are documents responsive to this request that have not previously been produced to OPC, PEF objects to this request to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist.

Request 166: PEF objects to OPC's request number 1667 to the extent it seeks production of "all theoretical and empirical studies that support Dr. Vander Weide's financial risk adjustment approach and methodology as presented in Exhibit No. ____ (JVW-8) regardless of whether Dr. Vander Weide possesses them because neither the Rules nor the Order require PEF to perform studies or research for OPC, presumably at PEF's expense, in order to respond to a discovery request. In response, PEF will provide copies of any such study in PEF's or Dr. Vander Weide's possession or citations to publicly available sources. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified or produced. Additionally, Dr. Vander Weide's workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120.

Request 167: PEF objects to OPC's request number 167 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 168: PEF objects to OPC's request number 168 on the same basis that PEF objected to OPC's Interrogatory number 161, i.e., PEF objects to the extent that it seeks identification of "source documents" used by Dr. Vander Weide in performing his studies. To

the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in “original source” format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified. Additionally, Dr. Vander Weide’s workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120. PEF objects to OPC’s request to the extent that it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents, subject to these objections, in the format in which they are presently maintained. Finally, certain information sought in this request is publicly available information, PEF has provided citations to where OPC may procure the information, but PEF objects to any request that would require PEF to obtain the information on OPC’s behalf.

Request 169: PEF objects to OPC’s request number 169 on the same basis that PEF objected to OPC’s Interrogatory number 162, i.e., because it seeks information that is publicly available (i.e., the weights applied to the stock prices of each company in arriving at the S&P Composite and Utility index values”). That information is available from the S&P’s website, and therefore PEF is not required by the Rules or the Order to retrieve that information for OPC. Further, PEF objects to this request because it seeks to require PEF to perform studies for OPC that have not been performed by or for PEF, presumably at PEF’s expense, that PEF is not required by the Rules or Order to perform that further is irrelevant and not reasonably calculated to lead to admissible evidence in this proceeding. Subject to these objections, to the extent there

is responsive information, PEF objects to OPC's request that PEF provide that information in multiple formats, including Microsoft Excel, and will provide any responsive information in the format in which it is presently maintained.

Request 170: PEF objects to OPC's request number 170 on the same basis that PEF objected to OPC's Interrogatory number 163, i.e., because it requires PEF to perform legal research on OPC's behalf that has not been performed by or for PEF. As evidenced by Exhibit No. __ (JWV-9), Appendix 1, Dr. Vander Weide has testified in some 400 cases spanning 35 years, and therefore it would take many hours to track down the records from each such case from the many different jurisdictions to ascertain the exact content of his testimony, evaluate whether that testimony is responsive to OPC's request, and prepare a list of the information OPC requests. However, the exhibit cited above contains the list of proceedings in which Dr. Vander Weide has testified, thereby enabling OPC to perform such research on its own behalf, if OPC elects to do so. PEF has no obligation to perform such analyses or studies for OPC that have not been performed by or for PEF, presumably at PEF's expense, under the Rules or Order.

Request 171: PEF objects to OPC's request number 171 on the same basis that PEF objected to OPC's Interrogatory number 164, i.e., PEF objects to the extent it seeks identification of "source documents" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified. Additionally, Dr. Vander Weide's

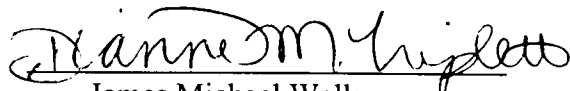
workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120. PEF also objects to OPC's request that PEF "indicate for each quarter in the study any companies that were omitted from the study, and the reason" for such omission because that information is impossible to provide as the request has not been limited to a subset of companies other than those not included in the study, which would thus include every company in the state, country, or world not included in the study, for each quarter over the 111 month time period of the study. PEF further objects to OPC's interrogatory to the extent that it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents, subject to these objections, in the format in which they are presently maintained.

Request 172: PEF objects to OPC's request number 172 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Request 173: PEF objects to OPC's request number 173 to the extent it seeks to require PEF to provide the requested information in multiple formats, including a specific electronic format, regardless of the format in which the documents exist. PEF will provide the requested information in the format in which it is presently maintained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 7th day of May, 2009.


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