

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 090079-EI

FILED: August 6, 2009

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STAFF'S MOTION FOR ORDER
COMPELLING RESPONSES TO INTERROGATORIES

Pursuant to Fla. R. Civ. P. 1.340(a), Fla. R. Civ. P. 1.380(a), and Rule 28-106.204, Florida Administrative Code (F.A.C.), the Staff of the Public Service Commission (Staff), by its undersigned attorney, moves the Florida Public Service Commission for an order requiring Progress Energy Florida, Inc. (PEF), to fully respond to the following interrogatories concerning allocations of compensation between PEF and its corporate affiliates.

1. On May 28, 2009, Staff served upon PEF its tenth set of interrogatories (Nos. 123-126). On June 25, 2009, PEF served its responses to Staff's tenth set of interrogatories. PEF did not file any objections to interrogatory Nos. 123 - 126.

2. PEF failed to fully respond to interrogatory Nos. 123 and 124, which requested that for each employee of Progress Energy, Inc., (interrogatory No. 123) and PEF (interrogatory No. 124) whose total compensation during 2008, 2009, and 2010, is \$200,000 or greater, PEF provide the following:

- a. Name/Title
- b. Base Salary
- c. Overtime
- d. Bonuses
- e. Stock Awards
- f. Option Awards
- g. Non-Equity Incentive Plan Compensation
- h. All Other Compensation
- i. Total Compensation
- j. Amount of Total Compensation Allocated to Progress Energy Florida, Inc.
- k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3

PEF failed to fully respond to interrogatory Nos. 125 and 126, which requested that for each

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director of Progress Energy, Inc., (interrogatory No. 125) and PEF (interrogatory No. 126) whose total compensation during 2008, 2009, and 2010, is \$200,000 or greater, PEF provide the following:

- a. Name/Title
- b. Principal Business Affiliation
- c. Base Compensation
- d. Travel
- e. All Other Compensation
- f. Total Compensation
- g. Amount of Total Compensation Allocated to Progress Energy Florida, Inc.
- h. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3.

PEF's responses to interrogatory Nos. 123, 124, 125, and 126 were evasive or incomplete as follows:

(a). The responses to interrogatory Nos. 123 a), 124 a), 125 a) and 126 a) (Name/Title for each officer and director) need to be matched by line number with the compensation dollar amounts provided in the responses to interrogatory Nos. 123 a) through k), 124 a) through k), 125 a) through h), and 126 a) through h). Although they appear to be matched by line number, the Name/Title responses and the compensation dollar amount responses are on different pages, and there is no statement that these Names/Titles and dollar amounts do match.

(b). The responses to interrogatory Nos. 123 k), 124 k), 125 h) and 126 h) need to be but do not identify the compensation amount included in "Adjusted Jurisdictional Other O&M Expenses" on MFR Schedule C-1, Pages 1, 2, and 3. It would be acceptable for PEF to provide all worksheets showing how the total included in O&M expense was calculated along with the assumptions made and an explanation of how the assumptions were developed.

3. On June 24, 2009, Staff served upon PEF its eighteenth set of interrogatories (Nos. 197-198). On July 24, 2009 PEF served its responses to Staff's eighteenth set of interrogatories. PEF did not file any objections to interrogatory Nos. 197 and 198.

4. PEF failed to fully respond to interrogatory Nos. 197 and 198 which requested that for each employee of Progress Energy, Inc. (interrogatory No. 197) and PEF (interrogatory No. 198) during 2008, 2009, and 2010, whose total annual compensation is \$165,000 or greater but less than \$200,000, PEF provide the actual or projected compensation amounts for the following:

- a. Name/Title
- b. Base Salary
- c. Overtime Pay
- d. Bonuses
- e. Stock Awards
- f. Option Awards
- g. Non-Equity Incentive Plan Compensation
- h. All Other Compensation
- i. Total Compensation
- j. Amount of Total Compensation Allocated to Progress Energy Florida, Inc.
- k. Amount of Total Compensation Included in Adjusted Jurisdictional Other O&M Expenses on MFR Schedule C-1, Pages 1, 2 and 3.

PEF's responses to interrogatory Nos. 197 and 198 were evasive or incomplete as follows:

(a). The responses to interrogatory Nos. 197 a) and 198 a) (Name/Title for each employee) is not matched with the responses to interrogatory Nos. 197 (b) through (k) and 198 b) through k) concerning compensation amounts.

(b). PEF did not respond fully to interrogatory Nos. 197 k) and 198 k). The responses to interrogatory Nos. 197 k) and 198 k) should identify the compensation amount included in "Adjusted Jurisdictional Other O&M Expenses" on MFR Schedule C-1, pages 1 – 3. It would be acceptable for PEF to provide all worksheets showing how the total included in O&M expense was calculated along with the assumptions made and an explanation of how the assumptions were developed.

5. Complete responses to interrogatory Nos. 123, 124, 125, 126, 197, and 198 as set forth above are required as part of staff's analysis in this docket. The Commission reviews all expenses for reasonableness. Compensation is a major component of PEF's operating expenses

which may be recoverable from ratepayers and therefore is a significant component of base rates. In order to determine if the portion of an employee's compensation is allocated to PEF is reasonable, the Commission needs to know if the total compensation for that employee is reasonable. Staff is unable to determine the reasonableness of compensation allocations between PEF and its corporate affiliates. The purpose of requiring this information is to show the revenue effect on rates. Ultimately, this information impacts the revenue requirement which translates into rates and charges.

6. Counsel for PEF has informed Staff that it does not intend to provide the information Staff requires in order to make its interrogatory responses complete. Counsel for PEF has also informed Staff that a "key" exists that would allow Staff to "match" the Name/Title responses with compensation amounts, but that PEF will not provide this key in response to the interrogatory requests. PEF's position is unsupportable. PEF is required to provide complete responses to interrogatory Nos. 123, 124, 125, 126, 197, and 198 pursuant to Fla. R. Civ. Pro. 1.280 and Rule 28-106.206, F.A.C. PEF did not file any objections to the interrogatories at issue. Therefore, it is incumbent upon PEF to fully and accurately respond to these interrogatories without delay.

7. Staff has notified PEF of its failure to respond and conferred in good faith with PEF in an effort to secure the requested discovery without Commission action, but to no avail. The undersigned has conferred with counsel for PEF who objects to this motion to compel.

8. Staff notes that PEF's fifth request for confidential classification concerning the response it did provide to interrogatory Nos. 123 and 124, and PEF's sixth request for confidential classification concerning the response it did provide to interrogatory Nos. 197 and 198, are being considered at the Commission's August 18, 2009, Agenda Conference. These requests for confidential classification and Staff's motion to compel are integrally related. As

such, Staff requests that its motion to compel be considered at the same August 18, 2009 Agenda Conference.

9. Staff requests that PEF provide a response to this motion to compel no later than noon, Monday, August 10, 2009, so that a recommendation including both Staff and PEF's positions may be considered by the Commission

WHEREFORE, Staff requests that the Commission enter an order compelling PEF to respond within seven (7) days to each interrogatory and each subpart with answers that are specifically responsive and that are individually and clearly labeled to identify which interrogatory and specific subpart the answer is responsive to.

Respectfully submitted,



KATHERINE E. FLEMING
SENIOR ATTORNEY
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850) 413-6199

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In re: Petition for increase in rates by Progress
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DATED: AUGUST 6, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one correct copy of STAFF'S MOTION FOR ORDER COMPELLING RESPONSES TO INTERROGATORIES has been served by electronic and U.S. mail to Progress Energy Services Company, LLC, John T. Burnett/R. Alexander Glenn, Post Office Box 14042, St. Petersburg, Florida 33733-4042, and that a true copy thereof has been furnished to the following by electronic and U.S. mail this 6th day of August, 2009.

Progress Energy Florida Inc.
Paul Lewis, Jr.
106 East College Avenue, Suite 800
Tallahassee, Florida 32301-7740

J. Michael Walls/Dianne M. Tripplett
Carlton Fields Law Firm
Post Office Box 3239
Tampa, Florida 33601-3239

Florida Retail Federation
Robert Scheffel Wright/John T. LaVia III
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301

Florida Industrial Power Users Group
Vicki G. Kaufman/Jon C. Moyle, Jr.
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, Florida 32301

Office of Attorney General
Bill McCollum/Cecilia Bradley
The Capitol, PL01
Tallahassee, Florida 32399-1050

Office of Public Counsel
J.R. Kelly/Charles Rehwinkel
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

PCS Phosphate – White Springs
James W. Brew/F. Alvin Taylor
Brickfield Law Firm
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, D.C. 20007-5201

Kay Davoodi
Naval Facilities Engineering Command
Director, Utility Rates and Studies Office
1322 Patterson Avenue SE
Washington Navy Yard, DC 20374-5065

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Richard D. Melson
705 Piedmont Drive
Tallahassee, Florida 32312

Jim Selecky
Brubaker & Associates, Inc.
P.O. Box 412000
St. Louis, MO 63141-2000

Audrey Van Dyke
Naval Facilities Engineering Command
Litigation Headquarters
720 Kennon Street, S.E. Building 36,
Room 136
Washington Navy Yard, DC 20374



KATHERINE E. FLEMING
Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
(850) 413-6218