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090009-EI

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Subject: Electronic Filings Docket No. 090009
Attachments: PEF Object to Citizens 8th Production Req.pdf; PEF Object to Citizens 7th Interrogatories.pdf

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These filing are to be made in Docket 090009-EI, In re: Nuclear Cost Recovery Clause;

The attached documents are Progress Energy Florida's Objections to Citizens' Eighth Request for Production of documents (Nos. 100-116); PEF's Objections to Citizens' Seventh Set of Interrogatories (No. 73)

Thank you.

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DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NUCLEAR COST
RECOVERY CLAUSE

Docket No. 090009-EI
Submitted for filing: August 14, 2009

**PEF'S OBJECTIONS TO CITIZENS' EIGHTH REQUEST FOR
PRODUCTION OF DOCUMENTS (NOS. 100-116)**

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" or "Citizens") Eighth Request for Production of Documents (Nos. 100-116) 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 Citizens' 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.

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

Requests 100-116: PEF objects to Citizens’ Request numbers 100-116 in their entirety. The Order Establishing Procedure entered by the Prehearing Officer in this docket (Order No. PSC-09-0137-PCO-EI, entered March 6, 2009) states that “[u]nless subsequently modified by the Prehearing Officer . . . Discovery shall be completed by August 17, 2009.” See Order No. PSC-09-0137-PCO-EI, at 2. PEF concedes that Section VIII the Order also states that the “Last Day to Conduct Discovery” is August 21, 2009, see id. at 8, and as such there may be some confusion as to the Discovery cut-off date; however, any such confusion is now a moot point. The Prehearing Officer has issued no order modifying the Discovery cut-off date, thus the last day to file a Discovery request that would have allowed a party the full 20-days to respond was Friday, July 21st, 2009. As such, OPC’s Eighth Request for Production of Documents, filed August 4, 2009, does not allow PEF the full 20 days in which to respond (regardless of whether August 17th or August 20th is determined to be the actual discovery cut-off date) and is therefore

in violation of the Order. As such, PEF objects to this discovery in its entirety and will not file a response thereto.

Request 106: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC's request number 106 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. Information regarding negotiations and/or discussions between PEF and potential joint owners for the Levy Nuclear Project ("LNP") (that have not been completed) will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project.

Request 107: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC's request number 107 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. A "list of all meeting with potential joint owners of the LNP since January 1, 2006" will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project.

Request 108: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC's request number 108 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. All "analyses and evaluations" of the desired or "required" joint ownership will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project.

Request 109: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC's request

number 109 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. All “handouts or presentations” used at any meeting with potential joint owners will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project.

Request 110: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC’s request number 110 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. All “handouts or presentations” to the Senior Management Committee or PEF Board of Directors discussing joint owner participation will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project.

Request 111: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC’s request number 111 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. Analyses of the “optimal level” of joint ownership will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project. Furthermore, PEF objects to this request as vague and ambiguous. PEF is not aware of what OPC defines as the “optimal level” or how to ascertain what is meant by the term.

Request 112: PEF incorporates the specific objection noted above relating to the untimely nature of this request, and without waiving same, further objects to OPC’s request number 112 because it seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to admissible evidence. Analyses of the “minimum level” of joint ownership

will in no way provide any information helpful in analyzing the costs expended by PEF on the LNP, their prudence, or the feasibility of the project. Furthermore, PEF objects to this request as vague and ambiguous. PEF is not aware of what OPC defines as the "minimum level" or how to ascertain what is meant by the term.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 14th day of August, 2009.


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