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Subject: Docket 110009 Filing
Attachments: Docket 110009 PEF Objections to Citizens Fifth Interrogatories.pdf; Docket 110009 PEF Objections to Citizens Fifth Req for Production.pdf



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Docket 110009

In re: Nuclear Cost Recovery Clause

1. The attached documents are being filed on behalf of Progress Energy Florida, Inc.
2. The filing includes 2 documents:
Progress Energy Florida, Inc.'s Objections to Citizens' Fifth Set of Interrogatories (Nos. 61-177) [13 pages]; and
Progress Energy Florida, Inc.'s Objections to Citizens' Fifth Request for Production of Documents (Nos.27-36) [8 pages].
3. This filing is being made by

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Thank you for your assistance in this regard.

DOCUMENT NUMBER-DATE

03780 MAY 31 =

FPSC-COMMISSION CLERK,

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause

Docket No. 110009-EI
Submitted for filing: May 31, 2011

**PROGRESS ENERGY FLORIDA, INC.'S OBJECTIONS TO CITIZENS' FIFTH
SET OF INTERROGATORIES (NOS. 61-177)**

Pursuant to Fla. Admin. Code Rule 28-106.206, Rules 1.340, 1.350, and 1.280 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure in this matter, Progress Energy Florida, Inc. ("PEF" or the "Company") hereby serves its objections to Office of Public Counsel's ("Citizens" or "OPC") Fifth Set of Interrogatories (Nos. 61-177) and states as follows:

GENERAL OBJECTIONS

If any interrogatory is to be answered through production of documents pursuant to Florida Rule of Civil Procedure 1.340(c), 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 the "Definitions" and "Instructions" in OPC's Fifth Set of Interrogatories, PEF objects to any definitions or instructions that are inconsistent with PEF's discovery obligations under applicable rules. If a question arises as to PEF's discovery obligations, PEF will comply with the applicable rules of the Florida Rules of Civil Procedure and of the Florida Public Service Commission ("Commission") and not with any of OPC's definitions or instructions that are inconsistent with those rules.

PEF objects to any definition or interrogatory 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 interrogatories will be made on behalf of persons or entities other than PEF.

If any interrogatory is to be answered by producing responsive documents, PEF objects to providing documents in a specific electronic format. As OPC admits in its request for production of documents, there is no requirement under the Florida Rules of Civil Procedure or Commission rules that PEF provide responses in a searchable electronic format. Thus, PEF reserves the right to provide documents in electronic format at its discretion. Further, PEF objects to any interrogatory 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. PEF also objects to any interrogatory that purports to require PEF or its experts to prepare studies, analyses, or to do work for OPC that has not been done for PEF, presumably at PEF's cost.

PEF objects to OPC's instructions to the extent that no time period is provided. The prudence of the Company's nuclear operations prior to January 1, 2009 (for the CR3 Uprate) and January 1, 2010 (for the LNP) has been reviewed by the Commission in previous dockets and those activities are not at issue in this docket. PEF will respond using those relevant time frames. PEF also objects to OPC's interrogatories to the extent they request documents or information which have been previously produced to OPC as duplicative and overly burdensome to PEF to require it to make a duplicative production of documents or to duplicate previous narrative responses.

PEF generally objects to OPC's interrogatories to the extent that they call for documents or information 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 interrogatory calls for privileged or protected documents or information.

Further, in certain circumstances, PEF may determine upon investigation and analysis that documents or information responsive to certain interrogatories 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 an interrogatory, 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, Order No. PSC-11-0179-PCO-EI, issued March 29, 2011 (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 interrogatories to the extent that they call for the production of "all" documents or information of any nature. PEF will make a good faith, reasonably diligent attempt to identify and obtain responsive information when no objection has been asserted, but it is not practicable or even possible to identify "all" documents or information. In addition, PEF reserves the right to supplement any of its responses to OPC's interrogatories if PEF cannot produce documents or information immediately due to the magnitude and the work required to aggregate them, or if PEF later discovers additional responsive documents or information in the course of this proceeding.

Finally, PEF objects to any attempt by OPC to evade the numerical limitations set on interrogatories in the Order Establishing Procedure by asking multiple independent questions within single individual questions and subparts.

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 objections at this time to comply with the intent of the Order to reduce the delay in identifying and resolving any potential discovery disputes. In addition, PEF provides the following specific objections.

SPECIFIC OBJECTIONS

Interrogatory No. 62: PEF objects to OPC interrogatory number 62 subparts (a), (b), (e) and (f) because it requests responses prior to January 1, 2010, which are not relevant or reasonably calculated to lead to the discovery of admissible evidence and are overly burdensome. The prudence of the Company's LNP costs and project prior to January 1, 2010 has been reviewed by the Commission and already determined to be reasonable and prudent in Dockets Nos. 090009-EI and 10009-EI, as such, those activities are not at issue in this docket. PEF further objects to OPC's interrogatory to the extent it requests documents or information which has been previously produced to OPC as duplicative and burdensome to PEF to require it to make a duplicative production of documents or to duplicate previous narrative responses.

Interrogatory No. 64: PEF objects to OPC interrogatory number 64 to the extent it requests responses prior to January 1, 2010, which are not relevant or reasonably calculated to lead to the discovery of admissible evidence and are overly burdensome. The prudence of the Company's LNP costs and project prior to January 1, 2010 has been reviewed by the Commission and already determined to be reasonable and prudent in Dockets Nos. 090009-EI and 10009-EI, as such, those activities are not at issue in this docket. PEF further objects to OPC's interrogatory to the extent it requests documents or information which has been previously produced to OPC as duplicative and burdensome to PEF to require it to make a duplicative production of documents or to duplicate previous narrative responses. Subject to these objections, and without waiving same, PEF will respond to this interrogatory for the relevant time period of January 1, 2010 to present.

Interrogatory No. 67: PEF objects to OPC interrogatory number 67 because it is not relevant or reasonably calculated to lead to the discovery of admissible evidence and because it is overly burdensome. How PEF internally evaluated its options and implemented the schedule shift was at issue in the 2010 NCRC proceeding in Docket No. 100009-EI. In fact, the Commission specifically determined that PEF's decision to continue pursuing a COLA for the LNP was reasonable in that docket. PEF objects to the extent OPC is raising issues that were reviewed and decided in Docket No. 100009-EI. PEF further objects to interrogatory number 67 because it is overly burdensome to PEF to require it to re-state its 2010 NCRC testimony and discovery responses. Subject to these objections, and without waiving same, please see the April 30, 2010 testimony of Mr. Jeff Lyash and Mr. John Elnitsky and the August 3, 2010 rebuttal testimony of Mr. Lyash and Mr. Elnitsky filed in Docket 100009-EI.

Interrogatory No. 68: PEF objects to OPC interrogatory number 68 because it is not relevant or reasonably calculated to lead to the discovery of admissible evidence and because it is overly burdensome. How PEF internally evaluated its options and implemented the schedule shift was at issue in the 2010 NCRC proceeding in Docket No. 100009-EI. In fact, the Commission specifically determined that PEF's decision to continue pursuing a COLA for the LNP was reasonable. PEF objects to the extent OPC is raising issues that were reviewed and decided in Docket No. 100009-EI. PEF further objects to interrogatory number 68 because it is overly burdensome to PEF to require it to re-state its 2010 NCRC testimony and discovery responses. Subject to these objections, and without waiving same, please see the April 30, 2010 testimony of Mr. Jeff Lyash and Mr. John Elnitsky and the August 3, 2010 rebuttal testimony of Mr. Lyash and Mr. Elnitsky filed in Docket 100009-EI.

Interrogatory No. 69: PEF objects to OPC interrogatory number 69 because it is not relevant or reasonably calculated to lead to the discovery of admissible evidence and because it is overly burdensome. The LNP schedule shift and EPC amendment 3 were at issue in the 2010 NCRC proceeding in Docket No. 100009-EI. In fact, the Commission specifically determined that PEF's decision to continue pursuing a COLA for the LNP was reasonable. PEF objects to the extent OPC is raising issues that were reviewed and decided in Docket No. 100009-EI. PEF further objects to interrogatory number 69 because it is overly burdensome to PEF to require it to re-state its 2010 NCRC testimony and discovery responses. Subject to these objections, and without waiving same, please see the April 30, 2010 testimony of Mr. Jeff Lyash and Mr. John Elnitsky and the August 3, 2010 rebuttal testimony of Mr. Lyash and Mr. Elnitsky filed in Docket No.100009-EI.

Interrogatory No. 71: PEF objects to OPC interrogatory number 71 because it is not relevant or reasonably calculated to lead to the discovery of admissible evidence and because it is overly burdensome. The LNP schedule shift and EPC amendment 3 were at issue in the 2010 NCRC proceeding in Docket No. 100009-EI. In fact, the Commission specifically determined that PEF's decision to continue pursuing a COLA for the LNP was reasonable. PEF objects to the extent OPC is raising issues that were reviewed and decided in Docket No. 100009-EI. PEF further objects to interrogatory number 71 because it is overly burdensome to PEF to require it to re-state its 2010 NCRC testimony and discovery responses. Subject to these objections, and without waiving same, please see the April 30, 2010 testimony of Mr. Jeff Lyash and Mr. John Elnitsky and the August 3, 2010 rebuttal testimony of Mr. Lyash and Mr. Elnitsky filed in

Docket No.100009-EI.

Interrogatory No. 76: PEF objects to OPC interrogatory number 76 because it requests information related to the contents of PEF's EPC agreement and change orders with its vendors which are highly confidential and proprietary documents. Moreover, OPC has already reviewed the EPC agreement and the subject change orders. Subject to these objections, and without waiving same, PEF responds by reference to the EPC agreement and LLE change orders. These documents have been made available to and reviewed by OPC already, and PEF will work with OPC to make these documents available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 77: PEF objects to OPC interrogatory number 77 because it requires PEF to perform work for OPC to provide information in a particular format. Pursuant to the Florida Rules of Civil Procedure, PEF is not required to create documents or information or to complete charts for OPC at PEF's cost that have not been performed by or for PEF previously. More specifically, OPC is asking PEF to transfer the information from the format PEF has the information in into a format OPC has created for OPC's own benefit. PEF is under no obligation to do work for OPC at PEF's cost. Subject to these objections, and without waiving same, PEF has already made available detailed spreadsheets containing all of the requested information on the LLE items, and these spreadsheets have been reviewed by OPC's expert in this case. PEF will work with OPC to make these spreadsheets available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 81: PEF objects to OPC interrogatory number 81 because it requests information related to the contents of PEF's EPC agreement which is a highly confidential and proprietary document. Moreover, OPC has already reviewed the EPC agreement. Subject to these objections, and without waiving same, PEF responds by reference the EPC agreement. This contract has been made available to and reviewed by OPC already, and PEF will work with OPC to make this contract available again, if necessary, for OPC's review in response to this interrogatory.

Interrogatory No. 85: PEF objects to OPC interrogatory number 85 because it requests information related to the contents of PEF's EPC agreement and change orders with its vendors which are highly confidential and proprietary documents. Moreover, OPC has already reviewed the EPC agreement and the subject change orders. Subject to these objections, and without waiving same, PEF responds by reference to the EPC agreement and LLE change orders. These documents have been made available to and reviewed by OPC already, and PEF will work with OPC to make these documents available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 87: PEF objects to OPC interrogatory number 87 because it requires PEF to perform research for OPC at PEF's cost that PEF has not previously performed. PEF is under no obligation to perform research for OPC under the Florida Rules of Civil Procedure, and this information, to PEF's knowledge, is also publicly available and as equally accessible by OPC as it would be by PEF.

Interrogatory No. 88: PEF objects to OPC interrogatory number 88 because it requires PEF to perform research for OPC at PEF's cost that PEF has not previously performed. PEF is under no obligation to perform research for OPC under the Florida Rules of Civil Procedure, and this information, to PEF's knowledge, is publicly available and as equally accessible to OPC as it would be to PEF.

Interrogatory No. 90: PEF objects to OPC interrogatory number 90 because it requests information related to the contents of PEF's EPC agreement and change orders with its vendors which are highly confidential and proprietary documents. Moreover, OPC has already reviewed the EPC agreement and the subject change orders. Subject to these objections, and without waiving same, PEF responds by reference to the EPC agreement and LLE change orders. These documents have been made available to and reviewed by OPC already, and PEF will work with OPC to make these documents available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 91: PEF objects to OPC interrogatory number 91 because it requests information related to the contents of PEF's EPC agreement and change orders with its vendors which are highly confidential and proprietary documents. Moreover, OPC has already reviewed the EPC agreement and the subject change orders. Subject to these objections, and without waiving same, PEF responds by reference to the EPC agreement and LLE change orders. These documents have been made available to and reviewed by OPC already, and PEF will work with OPC to make these documents available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 96: PEF objects to OPC interrogatory number 96 because it requests information related to the contents of PEF's EPC agreement (including Amendment 3) which is a highly confidential and proprietary document. Moreover, OPC has already reviewed the EPC agreement and Amendment 3. Subject to these objections, and without waiving same, PEF responds by reference to the EPC agreement, as amended. This contract has been made available to and reviewed by OPC already, and PEF will work with OPC to make this contract available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 97: PEF objects to OPC interrogatory number 97 because it requests information related to the contents of PEF's EPC agreement (including Amendment 3) which is a highly confidential and proprietary document. Moreover, OPC has already reviewed the EPC agreement and Amendment 3. Subject to these objections, and without waiving same, PEF responds by reference to the EPC agreement, as amended. This contract has been made available to and reviewed by OPC already, and PEF will work with OPC to make this contract available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 98: PEF objects to OPC interrogatory number 98 because it requests information related to the contents of PEF's EPC agreement which is a highly confidential and proprietary document. In addition, what strategic positions PEF intends to take in future negotiations is highly proprietary information and if revealed to third parties would put PEF at a competitive disadvantage and may even prevent PEF from being able to achieve an amendment to the its EPC agreement. PEF also objects because this interrogatory is requesting information

on undetermined future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket. Moreover, OPC has already reviewed the EPC agreement, as amended. Subject to these objections, and without waiving same, this contract has been made available to and reviewed by OPC already, and PEF will work with OPC to make this contract available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 103: PEF objects to OPC interrogatory number 103 because it requests information related to future contract negotiations and the Company's strategy and likely positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage and may even prevent PEF from being able to achieve an amendment to its EPC agreement. PEF also objects because this interrogatory is requesting information on future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket.

Interrogatory No. 104: PEF objects to OPC interrogatory number 104 because it requests information related to future contract negotiations and the Company's strategy and likely positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage. PEF also objects because this interrogatory is requesting information on future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket.

Interrogatory No. 106: PEF objects to OPC interrogatory number 106 because it is vague, ambiguous, and confusing. PEF does not understand what OPC means by a "major" or "minor" design change, therefore, PEF cannot answer this interrogatory.

Interrogatory No. 107: PEF objects to OPC interrogatory number 107 because it requests information related to future contract negotiations and the Company's strategy and likely positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage. PEF also objects because this interrogatory is requesting information on future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket. Subject to these objections, and without waiving same, PEF will provide a response as possible.

Interrogatory No. 109: PEF objects to OPC interrogatory number 109 because it requests information related to future contract negotiations and the Company's strategy and likely positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these

future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage. PEF also objects because this interrogatory is requesting information on future events, and is asking PEF to speculate, and thus is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket.

Interrogatory No. 110: PEF objects to OPC interrogatory number 110 because it requests information related to the contents of PEF's EPC agreement which is a highly confidential and proprietary document and PEF objects because it improperly requests information from the 2008 time period when no issues from 2008 are at issue in this docket. In addition, the Commission determined in the 2009 NCRC Docket No. 090009-EI that PEF's decision to execute the EPC agreement when it did was reasonable. OPC has already reviewed the EPC agreement and its amendments. Subject to these objections, and without waiving same, this contract has been made available to and reviewed by OPC already, and PEF will work with OPC to make this contract available again for OPC's review, if necessary, in response to this interrogatory.

Interrogatory No. 113: PEF objects to the second part of OPC interrogatory number 113 because it requires PEF to perform research for OPC at PEF's cost that PEF has not previously performed. PEF is under no obligation to perform research for OPC under the Florida Rules of Civil Procedure.

Interrogatory No. 115: PEF objects to OPC interrogatory number 115 because it requires PEF to assume as true facts that have not been established by any evidence and that PEF disputes, therefore, interrogatory number 115 is an improper question. PEF cannot respond to the interrogatory because PEF does not agree with the assumed premise for the interrogatory.

Interrogatory No. 116: PEF objects to OPC interrogatory number 116 because it requires PEF to assume as true facts that have not been established by any evidence and that PEF disputes, therefore, interrogatory number 116 is an improper question. PEF cannot respond to the interrogatory because PEF does not agree with the assumed premise for the interrogatory.

Interrogatory No. 117: PEF objects to OPC interrogatory number 117 because it requires PEF to speculate about unknown future events and to present an opinion based on speculation and conjecture, not fact. Pursuant to Rule 1.340(b), Florida Rules of Civil Procedure, an interrogatory can request an opinion or contention that relates to fact, not speculation or conjecture. PEF further objects to OPC interrogatory number 117 because it requests information related to future contract negotiations and the Company's strategy and likely positions in these future negotiations. What information and positions PEF intends to request in negotiations with its vendor and what strategic positions PEF intends to take in these future negotiations is highly proprietary and confidential information and if revealed to third parties would put PEF at a competitive disadvantage. As a result, interrogatory number 117 is not reasonably calculated to lead to the discovery of admissible evidence at this time in this docket.

Interrogatory No. 156: PEF objects to OPC interrogatory number 156 because it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this docket.

Interrogatory No. 158: PEF objects to OPC interrogatory number 158 because it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this docket. Subject to these objections, and without waiving same, PEF will provide a response a possible.

Interrogatory No. 164: PEF objects to OPC interrogatory number 164 because it is premised on speculation and conjecture and is not based on facts as required by the Florida Rules of Civil Procedure. Pursuant to Rule 1.340(b), Florida Rules of Civil Procedure, an interrogatory can request an opinion or contention that relates to fact, not speculation or conjecture. Therefore, this interrogatory is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 167: PEF objects to OPC interrogatory number 167 because the time frame provided is overbroad and the interrogatory is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in this docket. Subject to these objections, and without waiving same, PEF will provide a response as possible.

Interrogatory No. 168: PEF objects to OPC interrogatory number 168 because it is vague, unclear, potentially ambiguous and overbroad, and PEF does not understand it.


Interrogatory No. 169: PEF objects to OPC interrogatory number 169 because it requires PEF to speculate about a past date and to present an opinion based on mere speculation and conjecture. Pursuant to Rule 1.340(b), Florida Rules of Civil Procedure, an interrogatory can request an opinion or contention that relates to fact, not speculation or conjecture regarding PEF's position in this docket with respect to some unknown, speculative determination. In addition, PEF objects because responding to this interrogatory requires PEF to perform additional analysis that it has not performed, which it is not required to do, and that makes no sense to perform. OPC requests PEF to determine remaining costs if the LNP was cancelled May 2, 2011. Obviously that date is in the past, PEF cannot cancel the LNP project as of a past date, and therefore this interrogatory makes no sense, is irrelevant, and is not reasonably calculated to lead to the discovery of admissible evidence in this docket.

Interrogatory No. 171: PEF objects to OPC interrogatory number 171 because it requires PEF to speculate about a past date and to present an opinion based on mere speculation and conjecture. Pursuant to Rule 1.340(b), Florida Rules of Civil Procedure, an interrogatory can request an opinion or contention that relates to fact, not speculation or conjecture regarding PEF's position in this docket with respect to some unknown, speculative determination. In addition, PEF objects because responding to this interrogatory requires PEF to perform additional analysis that it has not performed, which it is not required to do, and that makes no sense to perform. OPC requests PEF to determine remaining costs if the LNP was cancelled May 2, 2011. Obviously that date is in the past, PEF cannot cancel the LNP project as of a past date, and therefore this interrogatory makes no sense, is irrelevant, and is not reasonably

calculated to lead to the discovery of admissible evidence in this docket.

Respectfully submitted this 31st day of May, 2011.

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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 31st day of May, 2011.



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