

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Energy Conservation Cost
Recovery Clause.

Docket No. 120002-EI

Submitted for Filing: August 1, 2012

**PEF'S OBJECTIONS TO SACE'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS (Nos. 1-5)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.350 of the Florida Rules of Civil Procedure, and the Order Establishing Procedure, Progress Energy Florida, Inc. ("PEF") hereby serves its objections to the Southern Alliance for Clean Energy's ("SACE") First Request for Production of Documents (Nos. 1-5), and herein states as follows:

GENERAL OBJECTIONS

PEF objects to each request for production to the extent it requests documents created "in the past five years" because that time period is beyond the scope of the issues in this docket. Further, these requests for production seek documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The purpose of this docket is to set conservation cost recovery factors to be utilized during the period 2013. Relevant information to this docket includes true-up costs incurred by PEF during 2011, actual/estimated costs for 2012, and projected costs for 2013. Therefore, of the requested "past five years" period, only the year 2011 is relevant to this proceeding. Accordingly, PEF will provide responsive documents, if

COM _____ any, for the year 2011.

AFD 4

APA 1

ECO 1

ENG _____

GCL 1

IDM _____

TEL _____

CLK _____

PEF generally objects to the time and place of production requirement in SACE's First

Request to Produce Documents and will make all responsive documents available for inspection

and copying at the offices of Progress Energy Florida, Inc., 106 E. College Ave., Tallahassee,

DOCUMENT NUMBER-DATE

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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 SACE for purposes of inspection, copying, or handling of the responsive documents.

With respect to the “Definitions” in SACE’s First Request for Production of Documents, 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 SACE’s definitions or instructions that are inconsistent with those rules. 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 SACE’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 SACE's First Request for Production of Documents to the extent that it calls 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 SACE'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 Interrogatory or Request for Production that purports to require PEF or its experts to prepare studies, analyses, or to do work for SACE that has not been done for PEF, presumably at PEF's cost.

By making these general objections at this time, PEF does not waive or relinquish its right to assert additional general and specific objections to SACE'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 reduce the delay in identifying and resolving any potential discovery disputes.

SPECIFIC OBJECTIONS

Request 5. PEF objects to request for production number 5 because it seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the documents requested in this request would only be relevant to the

design and characteristics of PEF's Demand Side Management ("DSM") programs, as compared to other utilities, and would not be relevant to the recovery of the costs for those programs. SACE attempted to raise similar issues in last year's clause proceeding, Docket No. 110002-EG.¹ As the Prehearing Officer noted in Order Number PSC-11-0507-PHO-EG, such issues are beyond the scope of this cost recovery proceeding. The Prehearing Officer further noted: "The individual demand-side management (DSM) plan dockets implement and address the approval of the programs and continue to be the more appropriate forum for resolution of SACE's raised issues." This same observation applies to the documents requested in Request Number 5. Notwithstanding this objection, and without waiving the same, PEF states that it has no responsive documents for the year 2011.

Respectfully submitted,



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¹ The five specific issues that SACE attempted to raise in last year's docket, all of which were determined to be irrelevant and beyond the scope of the proceedings, were as follows: (9) Has the utility documented a levelized cost, or used another methodology, to determine the DSM plan program cost per unit of energy savings? (10) Would a different mix of compliant DSM Plan programs result in a lower conservation cost recovery factor? (11) Would modifying the design of existing compliant DSM Plan programs result in a lower cost recovery factor? (12) Would an increased reliance on lower cost compliant DSM Plan programs result in a lower cost recovery factor? (13) Are the costs of the DSM Plan programs prudent?

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 1st day of August, 2012 to all parties of record as indicated below.


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