

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050078-E1
Submitted for filing:
June 6, 2005

**PEF'S OBJECTIONS TO OPC'S SIXTH SET OF
INTERROGATORIES (NOS. 208-225)**

Pursuant to Fla. Admin. Code R. 28-106.206, Rule 1.340 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 the Office of Public Counsel's ("OPC") Sixth Set of Interrogatories to PEF, Nos. 208-225, and states as follows:

GENERAL OBJECTIONS

PEF respectfully must object to OPC's Sixth Set of Interrogatories, Nos. 208-225, to the extent that they are improper under the applicable rules and Order. With respect to the "Definitions" and "Instructions," 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. For example, PEF objects to definition "(v)" given that there is no requirement in the applicable rules for PEF to perform any of the tasks set forth in the definition of the word "identify" therein. Furthermore, PEF objects to any interrogatory that calls for PEF to create data or information that it otherwise does not have because there is no such requirement under the applicable rules and law.

PEF objects to OPC's definition "(i)" given that it includes "affiliates" in the

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

definition of "PEF," and 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.

PEF must also object to OPC's Sixth Set of Interrogatories to PEF to the extent that they require PEF or PEF's retained experts to develop information or create material for OPC, presumably at PEF's expense. The purpose of discovery, of course, is to obtain information that already exists, not to require the other side to create information or material for the requesting party. PEF, therefore, is not obligated to incur the expense of performing or having its experts perform work for OPC to create information or material that OPC seeks in these interrogatories. PEF must object to the request because it is improper discovery to serve interrogatories on PEF that require PEF to incur expense to do work or create information for another party.

Additionally, PEF generally objects to OPC's interrogatories to the extent that they call for data 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.

Further, in certain circumstances, PEF may determine upon investigation and analysis that 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 such 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. 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 also objects to any interrogatory that calls for projected data or information beyond the year 2006 because such data or information is 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 an interrogatory does not specify a timeframe for which data or information is sought, PEF will interpret such interrogatory as calling only for data and information relevant to the years 2004-2006.

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 Establishing Procedure. PEF provides these general objections at this time to comply with the intent of the Order Establishing Procedure to reduce the delay in identifying and resolving any potential discovery disputes.

SPECIFIC OBJECTIONS

Request 214: PEF must object to this interrogatory to the extent the request is for information regarding the annual quantity of asbestos removed for the past 10 years at

generating plants. The interrogatory is overbroad as to time, and is therefore irrelevant, and not likely to lead to the discovery of admissible evidence in this proceeding. PEF will respond to this part of interrogatory number 214 using a reasonable time period for the response.

Request 217: PEF must object to this interrogatory because the interrogatory improperly requires PEF or its expert to prepare a study or do work for OPC that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive and time consuming because the requested information is not readily available or discernible in an existing database. Rather, responsive information must be analyzed and conclusions must be made from the data to arrive at the information requested. PEF is not required by the rules or Order to create information in order to respond to a discovery request.

Request 225: Subject to the Company's general objections, and without waiving same, PEF must object to OPC's interrogatory number 225 because the underlying data is no longer available from PEF's financial records due to the Company's data retention policy within the financial systems. As stated in 18 CFR Section 125.3, the retention policy for work order sheets that are necessary to respond to interrogatory number 225 is five years after clearance to plant account, provided continuing plant inventory records are maintained. Otherwise the policy is to retain the records for five years after the plant is retired. Moreover, the information requested pre-dates PEF's conversion of its work management computer system in 2001 and, as a result, an extensive, technical effort is required to even determine if the information continues to exist at all despite PEF's data retention policy. Because the interrogatory requests information from work orders in the

1990's, which is more than five years ago and before the conversion of PEF's computer system in 2001, the information cannot be provided.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 6th day of June, 2005 to all counsel of record as indicated below.


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