

Ruth Nettles

090002-EG

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Sent: Tuesday, October 27, 2009 10:32 AM
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Subject: Docket 090002-EG Filing: PEF's Objections to FIPUG's 2nd Request for Production of Documents
Attachments: PEF's Objections to FIPUG's 2nd Request for PODs.pdf

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Docket: 090002-EG

In re: Energy conservation cost recovery clause

On behalf of Progress Energy Florida

Consisting of 6 pages

The attached document for filing is PEF's Objections to FIPUG's 2nd Request for PODs

10/27/2009

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost
recovery clause.)
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)

Docket No. 090002-EG

Filed: October 27, 2009

**PEF'S OBJECTIONS TO FIPUG'S SECOND
REQUEST FOR PRODUCTION OF DOCUMENTS (Nos. 4-11)**

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 the Florida Industrial Power Users Group ("FIPUG") Second Request for Production of Documents (Nos. 4-11) and states as follows:

GENERAL OBJECTIONS

PEF generally objects to the time and place of production requirement in FIPUG's Second 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, 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 FIPUG for purposes of inspection, copying, or handling of the responsive documents.

With respect to the "Definitions" and "Instructions" in FIPUG's Second 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 FIPUG's definitions or instructions that are inconsistent with those rules. PEF objects to any definition or request that seeks to encompass persons or entities other than PEF who are not

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parties to this action and that are otherwise not subject to discovery. 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 FIPUG's request 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 FIPUG's Second 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 FIPUG'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 FIPUG that has not been done for PEF, presumably at PEF's cost.

Finally, PEF objects to any attempt by FIPUG to evade the numerical limitations set on document requests 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 FIPUG'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

Response 4, 5, 7-11: PEF objects to FIPUG's request numbers 4-11 because they are outside of the discovery deadline established in Commission Order No. PSC-09-0184-PCO-EG. PEF also objects to these requests because the Prehearing Officer ruled during the Prehearing Conference that that the issues concerned in these discovery requests will be decided in PEF's Rate Case Docket No. 090079-EI or PEF's DSM Goals Docket No. 080408-EG.

Response 6: PEF objects to FIPUG's request number 6 because PEF is unsure what

FIPUG means by the term "study" presented in a FPSC docket more than 17 years ago which exceeds PEF's document retention policies and are no longer likely available to PEF. PEF also objects to this request because the term "study" is vague and ambiguous and, if read literally, makes the scope of request number 6 overbroad and unduly burdensome because the term literally would encompass any and every study produced during the proceeding.

Response 8: PEF objects to FIPUG's request number 8 because the request asks for documents interpreting a recommendation by intervenor witness Jeffrey Pollock. PEF objects to any request that seeks to encompass recommendations of persons or entities other than PEF because PEF has no knowledge of, nor does it have an obligation, to produce documents that an intervenor witness relies upon to form an opinion. No responses to requests will be made on behalf of persons or entities other than PEF.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. Mail this 27 day of October, 2009 to all parties of record as indicated below.


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