

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 050078-EI  
Submitted for filing:  
June 16, 2005

**PEF'S OBJECTIONS TO FLORIDA RETAIL FEDERATION'S FIRST SET OF  
INTERROGATORIES (NOS. 1-77)**

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 Florida Retail Federation's ("FRF's") First Set of Interrogatories to PEF, Nos. 1-77, and states as follows:

**GENERAL OBJECTIONS**

PEF respectfully must object to FRF's First Set of Interrogatories, Nos. 1-77, 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 FRF's definitions or instructions that are inconsistent with those rules. 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 FRF's definition "(C)" given that it includes "affiliates" in the 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 FRF's First Set of Interrogatories to PEF to the extent that they require PEF or PEF's retained experts to develop information or create material for FRF, 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 FRF to create information or material that FRF 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 FRF'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 FRF 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 FRF'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 5:** PEF must object to this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. While PEF may elect to produce such a document, PEF is not required by the rules or Order to produce such



documents in order to respond to an interrogatory, and does not otherwise waive this objection by doing so.

**Request 7:** PEF must object to section (c) of this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. While PEF may elect to produce such a document, PEF is not required by the rules or Order to produce such documents in order to respond to an interrogatory, and does not otherwise waive this objection by doing so.

**Request 44:** PEF must object to section (c) of this interrogatory because the interrogatory improperly requires PEF to prepare a study or do work for PEF that has not been done for PEF, presumably at PEF's cost, and, further, that work would be extensive and time consuming. Responsive information must be analyzed and conclusions must be made from the data to arrive at the information requested. While PEF may elect to produce such a document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so.

**Request 53:** PEF must object to request number 53 to the extent the request is for information over the past 10 years. The request is overbroad as to time, and is therefore irrelevant, and not likely to lead to the discovery of admissible evidence in this proceeding. Additionally, the total flotation costs for the years before 2000 are pre-merger and are necessarily irrelevant to this proceeding, as they relate to a different company than PEF.

**Request 69:** PEF must object to sections (b) and (c) of this interrogatory as vague, ambiguous, overbroad, and unduly burdensome as drafted because the interrogatory states “any contract or contracts” without specifying what contracts are to be identified by PEF. PEF will assume that “any contract or contracts” means contracts referenced in 69(a) and will respond accordingly.


**Request 74:** PEF must object to section (c) of this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. Additionally, PEF must also object to section (c) of this interrogatory to the extent that it requires PEF to prepare a study or do work for PEF 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. While PEF may elect to produce such a document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so.

**Request 76:** PEF must object to section (c) of this interrogatory to the extent that it improperly utilizes this question to request documents from PEF. Additionally, PEF must also object to section (c) of this interrogatory to the extent that it requires PEF to prepare a study or do work for PEF 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. While PEF may elect to produce such a

document, PEF is not required by the rules or Order to create information in order to respond to a discovery request, and does not otherwise waive this objection by doing so.

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 16<sup>th</sup> day of June, 2005 to all counsel of record as indicated below.

  
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