

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

---

In re: Petition for Increase in Rates  
by Progress Energy Florida, Inc.

---

Docket No. 090079-EI  
Submitted for filing: May 7, 2009

**PEF'S OBJECTIONS TO OPC'S FOURTH  
SET OF INTERROGATORIES (NOS. 157-176)**

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 Office of Public Counsel's ("OPC") Fourth Set of Interrogatories (Nos. 157-176) and states as follows:

**GENERAL OBJECTIONS**

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 any "Definitions" and "Instructions" in OPC's Interrogatories, 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. Furthermore, PEF objects to any definition or request 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 requests will be made on behalf of persons or entities

other than PEF. PEF also objects to OPC's request that PEF provide documents in a specific electronic format. 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 OPC's Interrogatories 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 ("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 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 OPC’s Interrogatories 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 request that calls for projected data or information beyond the year 2010 because such data or information is wholly 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 a request does not specify a timeframe for which data or information is sought, PEF will interpret such request as calling only for data and information relevant to the years 2006-2010.

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

### **SPECIFIC OBJECTIONS**

**Request 158:** PEF objects to OPC’s interrogatory number 158 to the extent it requests PEF to provide responsive documents in multiple formats, and to the extent it seeks responsive documents in a specific electronic format. PEF will provide any responsive documents in the format in which they are presently maintained.

**Request 160:** PEF objects to OPC's interrogatory number 160 to the extent it seeks identification of "original source documents" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified. Additionally, Dr. Vander Weide's workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120. PEF also objects to OPC's request that PEF "identify the documents containing copies of the regressions run on the data" because that information is provided in Dr. Vander Weide's testimony and PEF is not required by the Rules or the Order to collate a list of such documents from information available to OPC. PEF objects to OPC's interrogatory to the extent that it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents, subject to these objections, in the format in which they are presently maintained. Finally, certain information sought in this interrogatory is publicly available information; PEF will therefore provide citations to where OPC may procure the information, but objects to any request that would require PEF to obtain the information on OPC's behalf.

**Request 161:** PEF objects to OPC's request number 161 to the extent that it seeks identification of "source documents" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when

performing his studies, he typically does not retain them in “original source” format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified. Additionally, Dr. Vander Weide’s workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120. PEF objects to OPC’s interrogatory to the extent that it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents, subject to these objections, in the format in which they are presently maintained. Finally, certain information sought in this interrogatory is publicly available information; PEF will therefore provide citations to where OPC may procure the information, but objects to any request that would require PEF to obtain the information on OPC’s behalf.

**Request 162:** PEF objects to OPC’s interrogatory number 162 because it seeks information that is publicly available (i.e., the weights applied to the stock prices of each company in arriving at the S&P Composite and Utility index values”). That information is available from the S&P’s website, and therefore PEF is not required by the Rules or the Order to retrieve that information for OPC. Further, PEF objects to this interrogatory because it seeks to require PEF to perform studies for OPC that have not been performed by or for PEF, presumably at PEF’s expense, that PEF is not required by the Rules or Order to perform that further is irrelevant and not reasonably calculated to lead to admissible evidence in this proceeding. Subject to these objections, to the extent there is responsive information, PEF objects to OPC’s

request that PEF provide that information in multiple formats, including Microsoft Excel, and will provide any responsive information in the format in which it is presently maintained.

**Request 163:** PEF objects to OPC's interrogatory number 163 because it requires PEF to perform legal research on OPC's behalf that has not been performed by or for PEF. As evidenced by Exhibit No. \_\_ (JVV-9), Appendix 1, Dr. Vander Weide has testified in some 400 cases spanning 35 years, and therefore it would take many hours to track down the records from each such case from the many different jurisdictions to ascertain the exact content of his testimony, evaluate whether that testimony is responsive to OPC's request, and prepare a list of the information OPC requests. However, the exhibit cited above contains the list of proceedings in which Dr. Vander Weide has testified, thereby enabling OPC to perform such research on its own behalf, if OPC elects to do so. PEF has no obligation to perform such analyses or studies for OPC that have not been performed by or for PEF, presumably at PEF's expense, under the Rules or Order.

**Request 164:** PEF objects to OPC's interrogatory number 164 to the extent it seeks identification of "source documents" used by Dr. Vander Weide in performing his studies. To the extent that Dr. Vander Weide has documents or information he relies on for or when performing his studies, he typically does not retain them in "original source" format, rather he keeps copies of the documents or information in electronic format, and therefore, they will be produced in the format in which they have been retained. Further, in performing his studies, Dr. Vander Weide also relied on over 35 years of experience in the field, for which there are obviously no documents, original source or otherwise, which can be identified. Additionally, Dr. Vander Weide's workpapers have already been provided to OPC in response to its Third Request for Production of Documents, number 120. PEF also objects to OPC's request that PEF

“indicate for each quarter in the study any companies that were omitted from the study, and the reason” for such omission because that information is impossible to provide as the request has not been limited to a subset of companies other than those not included in the study, which would thus include every company in the state, country, or world not included in the study, for each quarter over the 111 month time period of the study. PEF objects to OPC’s interrogatory to the extent that it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents, subject to these objections, in the format in which they are presently maintained.

**Request 165:** PEF objects to interrogatory number 165 to the extent it seeks to require PEF to make the requested documents available in multiple formats, including a specific electronic format (Microsoft Excel), regardless of the format in which they are kept. PEF will provide responsive documents in the format in which they are presently maintained.

**Request 166:** PEF objects to interrogatory number 166 to the extent it seeks to require PEF to make the requested documents available in multiple formats, including a specific electronic format (Microsoft Excel), regardless of the format in which they are kept. PEF will provide responsive documents in the format in which they are presently maintained.

**Request 167:** PEF objects to interrogatory number 167 to the extent it seeks to require PEF to make the requested documents available in multiple formats, including a specific electronic format (Microsoft Excel), regardless of the format in which they are kept. PEF will provide responsive documents in the format in which they are presently maintained.

**Request 168:** PEF objects to interrogatory number 168 to the extent it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel)

regardless of the format in which they are kept. PEF will provide responsive documents in the format in which they are presently maintained.

**Request 169:** PEF objects to interrogatory number 169 to the extent it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents in the format in which they are presently maintained.

**Request 170:** PEF objects to interrogatory number 170 to the extent it seeks to require PEF to make the requested documents available in a specific electronic format (Microsoft Excel) regardless of the format in which they are kept. PEF will provide responsive documents in the format in which they are presently maintained.

**Request 172:** PEF objects to OPC's interrogatory number 172 to the extent that it seeks information "for the past ten years through 2008" as the information from 1999-2005 is irrelevant, has no bearing on these proceedings, and is not reasonably calculated to lead to the discovery of admissible evidence.

**Request 173:** PEF objects to OPC's interrogatory number 173 to the extent that it seeks information "for the past ten years" as the information from 2000-2005 is irrelevant, has no bearing on these proceedings, and is not reasonably calculated to lead to the discovery of admissible evidence.

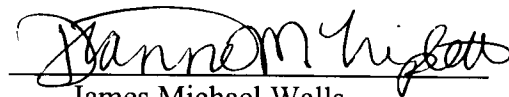
**Request 174:** PEF objects to OPC's interrogatory number 174 to the extent that it seeks information "for the past ten years" as the information from 2000-2005 is irrelevant, has no bearing on these proceedings, and is not reasonably calculated to lead to the discovery of admissible evidence. PEF further objects to this interrogatory to the extent it seeks information related to other entities (i.e. "Progress Energy . . . and other Progress Energy, Inc. subsidiaries")



that are not parties to this proceeding. PEF objects to any request 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.

**Request 175:** PEF objects to OPC's interrogatory number 175 because it seeks to require PEF to perform studies on behalf of OPC, presumably at PEF's expense, that have not been performed by or on behalf of PEF, and therefore that PEF has no obligation perform under the Rules or Order. PEF further objects to the request to the extent that it seeks to require PEF to produce any responsive information in multiple formats, including specifically Microsoft Excel. To the extent any responsive information exists, subject to the foregoing objection, PEF will provide that information in the format in which it is presently maintained.

Respectfully submitted,



James Michael Walls  
[mwalls@carltonfields.com](mailto:mwalls@carltonfields.com)  
Florida Bar No. 0706242  
Dianne M. Triplett  
[dtriplett@carltonfields.com](mailto:dtriplett@carltonfields.com)  
Florida Bar No. 0872431  
Matthew Bernier  
[mbernier@carltonfields.com](mailto:mbernier@carltonfields.com)  
Florida Bar No. 0059886  
Carlton Fields  
4221 W. Boy Scout Boulevard  
P.O. Box 3239  
Tampa, Florida 33607-5736  
(813) 223-7000 / (813) 229-4133 (fax)

R. Alexander Glenn  
[alex.glenn@pgnmail.com](mailto:alex.glenn@pgnmail.com)  
John T. Burnett  
[john.burnett@pgnmail.com](mailto:john.burnett@pgnmail.com)  
Progress Energy Service Company, LLC  
299 First Avenue North  
P.O.Box 14042 (33733)  
St. Petersburg, Florida 33701  
(727) 820-5184  
(727) 820-5249(fax)

Paul Lewis, Jr.  
[Paul.lewisjr@pgnmail.com](mailto:Paul.lewisjr@pgnmail.com)  
Progress Energy Service Company, LLC  
106 East College Avenue

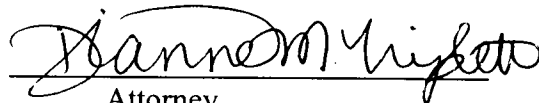
Richard Melson  
[rick@rmelsonlaw.com](mailto:rick@rmelsonlaw.com)  
Florida Bar No. 0201243  
705 Piedmont Drive

Suite 800  
Tallahassee, Florida 32301  
(850) 222-8738 / (850) 222-9768 (fax)

Tallahassee, FL 32312  
(850) 894-1351

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 7<sup>th</sup> day of May, 2009.

  
Attorney

Katherine Fleming  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, FL 32399

J.R. Kelly/Charles Rehwinkle  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street – Room 812  
Tallahassee, FL 32399-1400

Bill McCollum/Cecilia Bradley  
Office of the Attorney General  
The Capitol – PL01  
Tallahassee, FL 32399-1050

Vicki G. Kaufman/Jon C. Moyle, Jr.  
Keefe Law Firm, The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

James W. Brew/Alvin Taylor  
Brickfield Law Firm  
1025 Thomas Jefferson Street, NW, 8<sup>th</sup> Fl  
Washington, D.C. 20007

R. Scheffel Wright / John T. LaVia  
Young Law Firm  
225 South Adams Street, Ste. 200  
Tallahassee, FL 32301