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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)
of Need of Hines Unit 4 Power)
Plant)
_____)

DOCKET NO. 040817-EI

Submitted for filing: September 28, 2004

**PROGRESS ENERGY FLORIDA'S SECOND REQUEST
FOR CONFIDENTIAL CLASSIFICATION**

Progress Energy Florida ("PEF" or the "Company"), pursuant Section 366.093, Fla. Stats., and Rule 25-22.006, F.A.C., requests confidential classification for its responses to Staff's First Set of Interrogatories, Interrogatory Numbers 7 and 9, and for PEF's response to Staff's First Request for Production of Documents, Request 15. The unredacted responses and documents are being filed under seal with the Commission on a confidential basis for the reasons set forth below:

Basis for Confidential Classification

Subsection 366.093(1), Florida Statutes, provides that "any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt from [the Public Records

CMP _____ Act]." § 366.093(1), Fla. Stats. Proprietary confidential business information means
COM _____ information that is (i) intended to be and is treated as private confidential information by the
CTR _____
ECR | _____ Company, (ii) because disclosure of the information would cause harm, (iii) either to the
GCL | _____ Company's ratepayers or the Company's business operation, and (iv) the information has not
OPC _____
MMS _____ been voluntarily disclosed to the public. § 366.093(3), Fla. Stats. Specifically, "information
RCA _____ concerning bids or other contractual data" the "disclosure of which would impair the efforts of

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the public utility or its affiliates to contract for goods or services on favorable terms” is defined as proprietary confidential business information. § 366.093(3)(d), Fla. Stats.

Response to Interrogatory 7

PEF’s response to Staff’s Interrogatory Number 7 should be afforded confidential treatment for the reasons set forth in the Affidavit of Daniel J. Roeder previously filed with the Commission in support of PEF’s First Request for Confidential Classification and for the following reasons. Staff’s Interrogatory Number 7 calls for confidential information from the bids it received in response to its October 7, 2003 Request for Proposals in this matter (“RFP”). PEF is requesting confidential classification of its response because it contains details, facts, and cost data regarding bids submitted in response to the RFP.

In its October 7, 2003 RFP, the Company provided for the confidentiality of the bids it received in response to the RFP (along with any other information provided by the bidders during the course of the Company’s evaluation process). Specifically, the RFP provided that:

The Bidders should mark all confidential and proprietary information contained in its proposals as “Confidential.” While PEF will use its best efforts to protect the confidentiality of such information and only release such information to the members of the RFP Project Team, management, agents and contractors, and, as necessary and consistent with applicable laws and regulations, to its affiliates and regulatory commissions, in no event shall PEF be liable to a Bidder for any damages of whatsoever kind resulting from PEF’s failure to protect the confidentiality of Bidder’s information. By submitting a proposal, the Bidder agrees to allow PEF to use all information provided and the results of the evaluation as evidence in any proceeding before the Florida Public Service Commission (FPSC). To the extent PEF wishes to use information that a Bidder considers confidential, PEF will petition the Commission to treat such information as confidential and to limit its dissemination, but PEF makes no assurance of the outcome of any such petition.

(PEF 2007 RFP, page III-1, Appendix H to Need Study, Exhibit __ (SSW-1) to the Testimony of Samuel S. Waters). Four bidders submitted proposals for PEF’s consideration. All of the

bidders requested confidential treatment for some or all of the terms of their proposals, and the Company has not disclosed such information in the bids to the public.

The very purpose of the RFP was to obtain potentially favorable contract terms for supply-side alternatives to the Company's next-planned generating unit -- the Hines 4 combined cycle unit -- to provide the 517 megawatts ("MW") (winter rating) of capacity required to meet PEF's reliability need in the winter of 2007/08. The RFP was issued pursuant to the Commission's "bid rule," which is intended to provide a procedure under which a utility can "solicit and screen, for subsequent contract negotiations, competitive proposals for supply-side alternatives to the utility's next planned generating unit." Rule 25-22.082(2)(c), F.A.C. [emphasis supplied]. Through its RFP, the Company endeavored to attract all proposals that might offer lower-cost, supply-side resources or provide more economic value to PEF and its ratepayers than its next-planned generating unit.

In order to obtain such proposals, however, PEF must be able to assure potential bidders that the terms of their bids and the data contained therein will be kept confidential. To this end, PEF included a confidentiality provision in its RFP (as stated above). The purpose behind including that confidentiality provision in the RFP was to provide bidders the assurance that the terms of their bids would be kept confidential and would not be publicly disclosed. (Affidavit of Daniel J. Roeder, ¶ 5).

If such assurances are not provided, and potential bidders know that the terms of their bids are subject to public disclosure, they might withhold sensitive engineering, construction, cost, or other information necessary for the utility to fully understand and accurately assess the costs and benefits of their proposals. (Affidavit of Daniel J. Roeder, ¶ 5). Or, persons or companies who otherwise would have submitted bids in response to the utility's RFP might

decide not to do so, if there is no assurance that their proposals would be protected from disclosure. (Affidavit of Daniel J. Roeder, ¶ 5). In either case, without the assurance of confidentiality for the terms of the bids received in response to an RFP and the data contained therein, the utility's "efforts ... to contract for goods or services on favorable terms" will be impaired. § 366.093, Fla. Stats.

For all these reasons, PEF declared its intent in its RFP to keep the terms of the bidders' proposals in response to the RFP confidential. PEF has treated the bids it received as confidential. (Affidavit of Daniel J. Roeder, ¶ 6). Upon receipt of the proposals, strict procedures were established and followed to maintain the confidentiality of the proposals, including restricting access to those persons who needed the information to assist the Company in its evaluation of the proposals and restricting the number of, and access to, copies of them. Id. At no time since receiving the bids has the Company publicly disclosed the terms of the proposals, even to the other bidders. Id. The Company has treated and continues to treat the bidders' proposals as confidential. Id.

Response to Interrogatory 9 and Document Request 15

PEF's response to Staff's Interrogatory Number 9 and Document Request 15 should be afforded confidential treatment for the reasons set forth in the Affidavit of Pamela R. Murphy filed in support of this request and for the following reasons. Staff's Interrogatory Number 9 calls for information relating to PEF's ongoing negotiations with natural gas fuel suppliers. Staff's Document Request 15 calls for confidential proposals submitted to PEF by potential fuel suppliers. PEF is requesting confidential classification of its responses because they contain details, facts, and documents regarding confidential, ongoing negotiations between PEF and those potential fuel suppliers.

The purpose of PEF's negotiations with potential fuel suppliers is to obtain competitive proposals for fuel options that provide economic value to PEF and its ratepayers. (Affidavit of Pamela R. Murphy, ¶ 5). In order to obtain such proposals, however, PEF must be able to assure potential fuel suppliers that the terms of their proposals and negotiations will be kept confidential. Id. PEF has kept confidential and has not publicly disclosed the terms of proposals and negotiations between PEF and potential fuel suppliers. Id. at ¶ 6. Absent such measures, potential suppliers would run the risk that any sensitive business information that they provided in their negotiations and proposals to PEF would be made available to the public and, as a result, end up in possession of potential competitors. Id. at ¶ 5. Faced with that risk, potential suppliers might withhold such information altogether, denying PEF the ability to fully understand and accurately assess the cost and benefits of the suppliers' proposals and potential contracts with those suppliers. Id. Or, persons or companies who otherwise would have submitted proposals and offers to PEF might decide not to do so if PEF did not keep the terms of their proposals confidential. Id. In either case, without PEF's measures to maintain the confidentiality of the terms of proposals and information provided to PEF in ongoing negotiations, the Company's efforts to obtain competitive fuel purchase contracts would be undermined. Id.

Upon receipt of the confidential proposals and information from potential fuel suppliers, strict procedures were established and followed to maintain the confidentiality of the terms of the documents and information provided, including restricting access to those persons who needed the information to assist the Company in its negotiations and its evaluation of the proposals and restricting the number of, and access to the information and proposals. Id. at ¶ 6. At no time since receiving the proposals and information has the Company publicly disclosed that

information. Id. The Company has treated and continues to treat the information and documents at issue as confidential. Id.

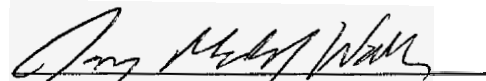
Conclusion

The terms of the bidders' proposals in response to the Company's RFP and the data contained therein, and the details, facts, and documents regarding confidential, ongoing negotiations between PEF and potential fuel suppliers fit the statutory definition of proprietary confidential business information under Section 366.093 and Rule 25-22.006, F.A.C. Attachment A hereto contains a justification matrix supporting PEF's request for confidential classification of the highlighted information contained in Attachment A.

WHEREFORE, PEF respectfully requests that its responses to Staff's Interrogatory Numbers 7 and 9, and its response to Staff's First Request for Production of Documents, Request 15 be classified as confidential for the reasons set forth above.

Respectfully submitted this 28th day of September, 2004.

JAMES A. MCGEE
Associate General Counsel
PROGRESS ENERGY SERVICE
COMPANY, LLC
P.O. Box 14042
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5519

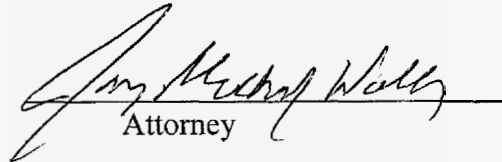

GARY L. SASSO
Florida Bar No. 622575
JAMES MICHAEL WALLS
Florida Bar No. 0706272
JOHN T. BURNETT
Florida Bar No. 173304
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

- and -

W. Douglas Hall
Florida Bar No. 347906
CARLTON FIELDS
Post Office Box 190
Tallahassee, FL 32302-0190
Telephone: (850) 224-1585
Facsimile: (850) 222-0398

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via e-mail and U.S. Mail to Wm. Cochran Keating, IV, Senior Attorney, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 and via U.S. Mail to all other interested parties as listed on the attached this 20th day of September, 2004.


Attorney

Parties of Record and Interested Persons in Docket 040817

Myron Rollins
Black & Veatch Corporation
11401 Lamar Avenue
Overland Park, KS 66211

Paul Darst
Department of Community Affairs
Division of Resource Planning/Management
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Buck Oven
Siting Coordination Office
Department of Environmental Protection (Siting)
2600 Blairstone Road
Tallahassee, FL 32301

ATTACHMENT A

DOCUMENTS	PAGE/LINE	JUSTIFICATION
PEF's Response to Staff's First Set of Interrogatories, Interrogatory No. 9	The last two words in the second sentence of the response.	§ 366.093(3)(d) PEF's response contains confidential details of PEF's ongoing negotiations with potential fuel suppliers, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
PEF's Response to Staff's First Set of Interrogatories, Interrogatory No. 7	The entire schedule following the last paragraph in the response.	§ 366.093(3)(d) The schedule in PEF's response contains data taken directly from Bidders A-D's proposals in response to the Request for Proposal ("RFP") issued by PEF on October 7, 2003, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.
PEF's Response to Staff's First Request for Production of Documents, Request No. 15	All information contained on document bearing Bates No. PEF 000159 except introductory paragraph and outline title headings; all information contained on document bearing Bates No. PEF 000160 except outline title headings; all information contained on document bearing Bates No. PEF 000160 except outline title headings; all telephone numbers of Attendees Meeting in Raleigh re: Hines 4 Project on May 26, 2004 listed on document bearing Bates No. PEF 000163; All party proposal comparisons and analysis, and Projections contained on documents bearing Bates Nos. PEF	§ 366.093(3)(d) PEF's response contains confidential proposals from potential fuel suppliers, the disclosure of which would impair the utility's efforts to contract for such services on favorable terms.

	000165 through and including PEF 000176; All information except outline titles contained on document bearing Bates No. PEF 000177 through PEF 000178.	
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